



SOGIESC FACT SHEET SERIES

Fact Sheet 6: The Yogyakarta Principles

Introduction

The Yogyakarta Principles are the most authoritative statement of what international human rights law obliges States to do and not do in promoting and protecting the rights of persons of diverse sexual orientations and gender identities.

As the long title of the Yogyakarta Principles explains, they are 'Principles on Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity'. They are also relevant for persons of diverse sex characteristics as they are based on the principle of the universality of all human rights for everyone, everywhere. They have particular significance for NHRIs.

The Yogyakarta Principles were published in November 2006, so they reflect international legal obligations at that time. They are not an aspirational statement of what the law should be but a legal statement of what the law is.

The Yogyakarta Principles were complemented with a set of new principles in 2017, called The Yogyakarta Principles Plus 10 (YP+10). The YP+10 reflects developments in international human rights law and further clarifies how these apply in relation to gender expression and sex characteristics.

Both documents are based on the legal framework of the universality of human rights. Therefore, they speak about the rights of all people in relation to sexual orientation, gender identity, gender expression and/or sex characteristics, rather than the rights of particular groups of people or identities.

1. The Yogyakarta Principles

The Yogyakarta Principles contain a Preamble of nine paragraphs and then 29 individual principles.

a. *Preamble*

The preamble provides the context for the 29 principles that follow. It acknowledges human rights violations based on sexual orientation and gender identity, and that the principles themselves reflected the current status of international human rights law and would require regular revision as that legal

framework evolved. The preamble defines two key terms - 'sexual orientation' and 'gender identity', with the latter term encompassing gender expression.

b. The 29 Principles

The 29 Principles can be grouped into eight broad areas of human rights, which are summarised below. Each one is followed by a list of States' obligations, which can be found in the Yogyakarta Principles themselves: <https://yogyakartaprinciples.org/>. These provide the details that NHRIs and civil society require in order to hold States to account for their human rights obligations.

Rights to universal enjoyment of human rights, non-discrimination and recognition before the law: Principles 1 to 3 set out the principles of the universality of human rights and their application to all persons without discrimination, as well as the right of all people to recognition before the law.

Rights to human and personal security: Principles 4 to 11 address fundamental rights to life, freedom from violence and torture, privacy, access to justice and freedom from arbitrary detention.

Economic, social and cultural rights: Principles 12 to 18 set out the importance of non-discrimination in the enjoyment of economic, social and cultural rights, including employment, accommodation, social security, education and health.

Rights to expression, opinion and association: Principles 19 to 21 emphasise the importance of the freedom to express oneself, one's identity and one's sexuality, without State interference based on sexual orientation or gender identity, including the rights to participate peacefully in public assemblies and events and otherwise associate in community with others.

Freedom of movement and asylum: Principles 22 and 23 highlight the rights of persons to seek asylum from persecution based on sexual orientation or gender identity.

Rights of participation in cultural and family life: Principles 24 to 26 address the rights of persons to participate in family life, public affairs and the cultural life of their community, without discrimination based on sexual orientation or gender identity.

Rights of human rights defenders: Principle 27 recognises the right to defend and promote human rights without discrimination based on sexual orientation and gender identity, and the obligation of States to ensure the protection of human rights defenders working in these areas.

Rights of redress and accountability: Principles 28 and 29 affirm the importance of holding rights violators accountable and ensuring appropriate redress for those who face rights violations.

c. The additional recommendations

The Yogyakarta Principles conclude by making 16 'additional recommendations' directed to other actors. These include United Nations officials, agencies and mechanisms; regional and sub-regional inter-governmental organisations, and courts; human rights NGOs, humanitarian organisations, NHRIs, professional and commercial organisations, mass media and governmental and private funders.

The recommendation directed towards NHRIs is that:

“National human rights institutions promote respect for these Principles by State and non-State actors, and integrate into their work the promotion and protection of the human rights of persons of diverse sexual orientations or gender identities.”

2. The Yogyakarta Principles Plus 10

The Yogyakarta Principles Plus 10 (YP+10) was released by a group of 33 international human rights experts on 10 November 2017 to supplement the Yogyakarta Principles.

The YP+10 document is based on developments in international human rights law. It reflects emerging understanding of violations suffered by persons on the grounds of sexual orientation and gender identity alongside recognition of the distinct and intersectional grounds of gender expression and sex characteristics.

In its preamble, the YP+10 note that all references to gender identity should be read as protecting individuals from discrimination based on gender expression too. They also note that a person's gender expression may not conform with their gender identity. This recognises, for example, that many cisgender lesbian, gay, bisexual or intersex people also face discrimination based on their gender expression.

The YP+10 set out nine Additional Principles covering the rights to:

- *state protection*
- *legal recognition* - including the right to obtain identity documents, to change gendered information on such documents based on self-determination, and to have identity documents issued without sex or gender details.
- *bodily and mental integrity* - which encompasses human rights violations due to invasive or irreversible medical procedures that modify a person's sex characteristics without the person's free, prior and informed consent
- *freedom from criminalisation and sanction*
- *protection from poverty*
- *sanitation*
- *enjoyment of human rights in relation to information and communication technologies*
- *truth* - to know the truth about the facts, circumstances and reasons why human rights violations have occurred and
- *practise, protect, preserve and revive cultural diversity.*

The YP+10 also includes 111 Additional State Obligations. Some reflect human rights developments since 2006 with regards to the original 29 Principles, including in areas such as torture, asylum, privacy, health and the protection of human rights defenders.

Importantly for NHRIs, the Additional Recommendations in YP+10 expand on their responsibilities by recommending:

“ Q. National human rights institutions ensure that in their programmes and activities they take action on human rights issues relating to sexual orientation, gender identity, gender expression and sex characteristics, mainstream those issues in all their functions, including complaint handling and human rights education, and promote the inclusion of persons of diverse sexual orientation, gender identity, gender expression and sex characteristics in their leadership and staff”.

3. The Yogyakarta principles since Yogyakarta

a. References by international human rights mechanisms and national levels

Since 2006, the status of the Yogyakarta Principles has been solidified through references to the principles in court decisions, including in this region.

In December 2007, the Supreme Court of **Nepal** held that sexual and gender minorities could not be excluded from the full enjoyment of rights under international law and the Constitution. In *Sunil Babu Pant and Others v. Nepal Government and Others*, the Supreme Court used the Yogyakarta Principles to define the terms sexual orientation and gender identity. When considering whether the State had discriminated against citizens whose sexual orientation was homosexual and whose gender identity was transgender, the Court found that the petitioners and the people they represented did indeed face violence, stigmatisation, and discrimination. It based this finding on the Yogyakarta Principles.

The Supreme Court of **India** cited the Yogyakarta Principles in its landmark 2014 decision, *National Legal Services Authority v. Union of India*. It affirmed that the fundamental rights granted under the Constitution of India were equally applicable to transgender people, and gave them the right to self-identification of their gender as male, female or as a third gender.

b. The Yogyakarta Principles and NHRIs

NHRIs have taken up the Yogyakarta Principles as seriously as any other sector in the global human rights system. The APF and NHRIs in the Asia Pacific region responded very quickly to the recommendation addressed to NHRIs. The next fact sheet details the APF's response to the Yogyakarta Principles

A number of APF members have been active for many years in promoting and protecting the human rights of lesbian, gay, bisexual, transgender and intersex people. Without doubt, the level of activity has increased across the region, involving more and more NHRIs since APF's first Yogyakarta Principles workshop in Indonesia in 2009.

Key points

- Together, the Yogyakarta Principles and the Yogyakarta Principles plus Ten (YP+10) are the most authoritative statement of what international human rights law obliges States to do and not do in promoting and protecting the rights of persons of diverse sexual orientations, gender identities, gender expressions, or sex characteristics.
- They reflect existing international legal obligations under international human rights law, initially as it was in 2006 and then updated in the YP+10 to reflect developments until 2017. They are not an aspirational statement of what the law should be but a legal statement of what the law is.
- The Yogyakarta Principles refer specifically to both sexual orientation and gender identity. They represent one of the earliest statements recognising the separate human rights issues associated with gender identity.
- The Yogyakarta Principles originally defined gender expression as one component of gender identity. The YP+10 explicitly note that all references to gender identity should be read as protecting individuals from discrimination based on gender expression too.

- The initial Yogyakarta Principles referred specifically to human rights issues associated with sex characteristics on only two occasions and did not deal with the full range of human rights issues affecting intersex people. Even at that time, within the framework of the universality of all human rights, they applied for the benefit of intersex people. The Yogyakarta Principles Plus 10 include the right to bodily and mental integrity, with a strong emphasis on its application to people with variations of sex characteristics.
- The Yogyakarta Principles were quickly accepted and cited by international human rights mechanisms, senior UN officials, regional human rights mechanisms and many States, NHRIs and NGOs.
- Asia Pacific NHRIs and the APF have responded quickly to the recommendation in the Yogyakarta Principles addressed to them. Their activities are increasing in number and scope.