

April, 2009

# A Brief Commentary On The Yogyakarta Principles

Jakob Cornides

# A Brief Commentary On The Yogyakarta Principles

Jakob Cornides, Brussels

The Yogyakarta Principles have been adopted in 2007 by a self-styled 'International Panel of Experts in International Human Rights Law and on Sexual Orientation and Gender Identity'.

Although the authors claim that these Principles apply existing human rights standards to the specific needs of persons with different (i.e., gay, lesbian, bisexual and transgender) sexual orientations, and thus reflect obligations of States under current international law, the real purpose appears to be to create new legal obligations and to impose them on sovereign States, while at the same time bypassing the rules and procedures for such law-making.

The Yogyakarta Principles would certainly, even if they had been agreed in a proper forum and under due procedure, raise serious doubts with regard to their content. The present paper has the purpose of articulating, with no claim to completeness, some of these doubts, and to provide some arguments to those States wishing to defend themselves against pretensions that the Yogyakarta principles reflect the current status of international law. It consists of the full text of the Yogyakarta Principles, including the introduction and the preamble, to which some comments have been added in the margins of the pages.

As one can see from these comments, large parts of the Yogyakarta Principles are purely and simply redundant: they restate generally and universally accepted human rights, adding that these apply also to persons of 'diverse sexual orientations' (as if anyone doubted that). Such redundancies are, of course, harmless. Hidden between such redundant statements, however, there are several Statements by which the sponsors Yogyakarta Principles seek to introduce a novel understanding of 'human rights', which is alien, if not in open contradiction, to the prevailing understanding of these rights. Perhaps the most blatant example for such manipulation is YP 24, which implies completely new interpretations of the terms 'family' and 'marriage'. These re-interpretations are a pre-condition for promoting an obligation for States to recognise same-sex 'marriages'.

Besides this, it is noteworthy that the Yogyakarta Principles, while pretending to apply human rights to the specific case of persons with diverse sexual orientations, actually seek to establish privileges for these groups. For example, YP 19 and 20 claim that notions of public order, public morality, etc. must not in any way restrict the LGBT lobby to pursue its aims (while these restrictions would, as one must suppose, still continue to apply to everyone else). As one cannot avoid noticing, these 'Principles' have a dangerous potential of undermining democracy and inner peace wherever a State should accept them.

While the comments presented in this paper mainly concern the substance of the Yogyakarta Principles, it should be noted that the way in which these Principles came into being provides even greater reason for concern: this is a deliberate attempt to manipulate our understanding of 'Human Rights' in order to promote the self-serving social agenda of a small cluster of vociferous and politically well-connected advocacy groups. States should beware of such manipulations, which, purporting to impose on them obligations and values to which they never have signed up, have the potential of undermining not only the credibility of the self-styled 'experts' who put their names under this document, but of 'Human Rights' and, ultimately, of international law as a whole.

## Introduction to the Yogyakarta Principles

All human beings are born free and equal in dignity and rights. All human rights are universal, interdependent, indivisible and interrelated. Sexual orientation<sup>1</sup> and gender identity<sup>2(a)</sup> are integral to every person's dignity and humanity and must not be the basis for discrimination or abuse.

Many advances have been made toward ensuring that people of all sexual orientations and gender identities can live with the equal dignity and respect to which all persons are entitled. Many States now have laws and constitutions that guarantee the rights of equality and non-discrimination without distinction on the basis of sex, sexual orientation or gender identity.

Nevertheless, human rights violations targeted toward persons because of their actual or perceived sexual orientation or gender identity constitute a global and entrenched pattern of serious concern. They include extra-judicial killings, torture and ill-treatment, sexual assault and rape, invasions of privacy, arbitrary detention, denial of employment and education opportunities, and serious discrimination in relation to the enjoyment of other human rights. These violations are often compounded by experiences of other forms of violence, hatred, discrimination and exclusion, such as those based on race, age, religion, disability, or economic, social or other status.

Many States and societies impose gender and sexual orientation norms on individuals through custom, law and violence and seek to control how they experience personal relationships and how they identify themselves. The policing of sexuality remains a major force behind continuing gender-based violence and gender inequality.

The international system has seen great strides toward gender equality and protections against violence in society, community and in the family. In addition, key human rights mechanisms of the United Nations have affirmed States' obligation to ensure effective protection of all persons from discrimination based on sexual orientation or gender identity. However, the international response to human rights violations based on sexual orientation and gender identity has been fragmented and inconsistent.

To address these deficiencies a consistent understanding of the comprehensive regime of international human rights law and its application to issues of sexual orientation and gender identity is necessary. It is critical to collate and clarify State obligations under existing international human rights law, in order to promote and protect all human rights for all persons on the basis of equality and without discrimination.

The International Commission of Jurists and the International Service for Human Rights, on behalf of a coalition of human rights organisations, have undertaken a project to develop a set of international legal principles on the application of international law to human rights violations based on sexual orientation and gender identity to bring greater clarity and coherence to States' human

(a) 'Sexual Orientation' and 'Gender Identity' have, for the purpose of the YP, been defined in two footnotes. According to these footnotes:

- 'Sexual orientation' is understood to refer "to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender."

- 'Gender identity' is understood to refer "to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms."

These definitions have been crafted by the authors of the YP themselves. The reference to "emotional, affectional and sexual attraction" and "deeply felt internal and individual experience", as well as the dissociation of these emotions and experiences from any factual assessment made by any other person (i.e., the "sex assigned at birth") show that these definitions do not even make any claim to objectiveness. Indeed, they make subjective sentiments prevail over objective givens. In this way, the fundamental approach of the YP is subjectivist, and truly anti-scientific.

Consequent to this underlying subjectivism, the definitions are of no value. 'Sexual orientation' and 'Gender Identity' are nothing but a jargon that has surfaced in the LGBT movement a decade and a half ago at the earliest, and the meaning of which is uncertain. Obviously, it is a mere pretension to claim that these concepts form the object of any international consensus, be it of academic or of political nature.

Indeed, the apparent lack of scientific basis for these concepts leads to glaring self-contradictions. For example, it is argued that a person's (homo)sexual orientation is genetically predetermined, inborn, immutable, and not the result of a deliberate choice. From this, it is not only deduced that claims of certain 'therapists' that homosexuality is curable must be wrong, but also that no research should be undertaken to develop such a therapy. A certain percentage of the population, it is said, is born with 'diverse sexual orientations' and must be allowed to behave according to these orientations. At the same time, however, the term 'gender identity', which, equally novel, is used to describe similar if not identical phenomena serves a completely different purpose: the 'gender' terminology promotes the idea that a person's self-identification may be different from his or her biological sex (hence the use of the word 'gender' instead of 'sex'), and that it can be the result of a free choice of the person in question. If that were true, however, that choice would not be free from responsibility, nor would it be immutable. The problem with the YP is that they are, from the outset, built on skewed, ideologically motivated, un-scientific and self defeating anthropological assumptions.

(b) "the Yogyakarta Principles reflect the existing state of international human rights law in relation to issues of sexual orientation and gender identity": To a large extent, the YP make reference to existing human rights standards, and affirm that these apply to all persons regardless of their sexual orientation and gender identity. Given that human

rights obligations.

A distinguished group of human rights experts has drafted, developed, discussed and refined these Principles. Following an experts' meeting held at Gadjah Mada University in Yogyakarta, Indonesia from 6 to 9 November 2006, 29 distinguished experts from 25 countries with diverse backgrounds and expertise relevant to issues of human rights law unanimously adopted the *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*.

The rapporteur of the meeting, Professor Michael O'Flaherty, has made immense contributions to the drafting and revision of the Yogyakarta Principles. His commitment and tireless efforts have been critical to the successful outcome of the process.

The Yogyakarta Principles address a broad range of human rights standards and their application to issues of sexual orientation and gender identity. The Principles affirm the primary obligation of States to implement human rights. Each Principle is accompanied by detailed recommendations to States. The experts also emphasise, though, that all actors have responsibilities to promote and protect human rights. Additional recommendations are addressed to other actors, including the UN human rights system, national human rights institutions, the media, non-governmental organisations, and funders.

The experts agree that the Yogyakarta Principles reflect the existing state of international human rights law in relation to issues of sexual orientation and gender identity.<sup>(b)</sup> They also recognise that States may incur additional obligations as human rights law continues to evolve.

The Yogyakarta Principles affirm binding international legal standards with which all States must comply. They promise a different future where all people born free and equal in dignity and rights can fulfil that precious birthright.

Sonia Onufer Corrêa  
Co-Chairperson

Vitit Muntarbhorn  
Co-Chairperson

<sup>1</sup> Sexual orientation is understood to refer to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.

<sup>2</sup> Gender identity is understood to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms

## **PREAMBLE**

**RECALLING** that all human beings are born free and equal in dignity and rights, and that everyone is entitled to the enjoyment of human rights without distinction of any kind, such as race, colour,

rights are enjoyed by all and everybody, this is a truism, even if, as stated above, the meaning of 'sexual orientation' and 'gender identity' remains completely unclear. If the YP only made that affirmation, they would be truly redundant (as indeed they are to a large extent), and there would be no point in either supporting or opposing them. The only reason why the YP have any relevance is that, despite the claim made by their authors that they reflect the existing state of human rights law, they surreptitiously attempt to establish a new standard, not through a legislative procedure (which, in practice, would mean that all States would have to sign up to it), but through mere affirmation by 29 persons without any political mandate. The language used is (deliberately?) ambiguous: on the one hand, it is claimed that the YP make 'recommendations' (of course, everybody has the right to do that...), but on the other hand, each of these 'recommendations' is introduced by the words 'States shall', which usually carry the sense of a binding obligation.

<sup>(a)</sup> 'Sexual relations with individuals of a different gender or the same gender or more than one gender': Very openly, the YP put all 'sexual orientations' (hetero- or homosexual, stable or transient, embedded in a personal relationship or not, etc.) on one and the same level. Sexuality is dissociated

sex, language, religion, political or other opinion, national or social origin, property, birth or other status;

**DISTURBED** that violence, harassment, discrimination, exclusion, stigmatisation and prejudice are directed against persons in all regions of the world because of their sexual orientation or gender identity, that these experiences are compounded by discrimination on grounds including gender, race, age, religion, disability, health and economic status, and that such violence, harassment, discrimination, exclusion, stigmatisation and prejudice undermine the integrity and dignity of those subjected to these abuses, may weaken their sense of self-worth and belonging to their community, and lead many to conceal or suppress their identity and to live lives of fear and invisibility;

**AWARE** that historically people have experienced these human rights violations because they are or are perceived to be lesbian, gay or bisexual, because of their consensual sexual conduct with persons of the same gender or because they are or are perceived to be transsexual, transgender or intersex or belong to social groups identified in particular societies by sexual orientation or gender identity;

**UNDERSTANDING** 'sexual orientation' to refer to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender<sup>(a)</sup>;

**UNDERSTANDING** 'gender identity' to refer to each person's deeply felt internal and individual experience of gender<sup>(b)</sup>, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms;

**OBSERVING** that international human rights law affirms that all persons, regardless of sexual orientation or gender identity, are entitled to the full enjoyment of all human rights, that the application of existing human rights entitlements should take account of the specific situations and experiences of people of diverse sexual orientations and gender identities<sup>(c)</sup>, and that in all actions concerning children the best interests of the child shall be a primary consideration and a child who is capable of forming personal views has the right to express those views freely, such views being given due weight in accordance with the age and maturity of the child;

**NOTING** that international human rights law imposes an absolute prohibition of discrimination in regard to the full enjoyment of all human rights, civil, cultural, economic, political and social, that respect for sexual rights, sexual orientation and gender identity is integral to the realisation of equality between men and women and that States must take measures to seek to eliminate prejudices and customs based on the idea of the inferiority or the superiority of one sex or on stereotyped roles for men and women<sup>(d)</sup>, and noting further that the international community has recognised the right of persons to decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free from

from procreation, and both are dissociated from social responsibility. This interpretation of sexuality is by no means neutral: if, for example, a homosexual relationship is considered 'equal' to a heterosexual relationship, this presupposes to discard as irrelevant the objective fact that the first is naturally sterile, whereas the latter is naturally fertile. This difference, one should assume, is not without importance: after all, all human persons (with exception of a small number of persons who, since 1978, have been born following a procedure of in vitro fertilization) owe their existence to the fertility of heterosexual relations, whereas nobody owes his existence to a homosexual relationship. By the same token, it would seem obvious that society has an interest in the existence of stable heterosexual pair-relationships, whereas there appears to be no societal interest in the existence of other than heterosexual relations. The YP generously ignore and discard these self-evident facts; what apparently remains as the sole basis for the assumed 'equality' of all 'sexual orientations' is that they all are capable to procure sexual pleasure to those indulging in them. Pleasure, however, is subjective, whereas all the elements by which the heterosexual orientation differs from other sexual orientations are objective.

**(b) "Each person's deeply felt internal and individual experience of gender"** - It appears that, for the drafters of the YP, 'gender identity' is the result of purely subjective sentiments and experiences, not of objective reality. It would result that no 'gender identity' could ever be deemed permanent, since it cannot be excluded that some future 'experiences' will change a person's 'personal sense of the body'. How does this correspond to the argument, so often heard from LGBT rights activists, that 'sexual orientations' are immutable?

**(c) "all persons ... are entitled to the full enjoyment of all human rights," .... "the application of existing human rights entitlements should take account of the specific situations and experiences of people of diverse sexual orientations and gender identities"** - If all persons are entitled to the full enjoyment of all human rights, it would seem logical that those rights apply to all in the same way. The YP, however, appear to be based on the contrary assumption: because all are entitled to the enjoyment of human rights, it is necessary to adapt these rights to the specific needs of (videlicet: to create specific rights for) diversely oriented people.

**(d) "Stereotyped roles for men and women"** - One basic assumption of the YP is that gender roles must be social stereotypes: The only real difference between men and women is their sexual organs, whereas all other differences are the result of education or manipulation. Any State signing up to the YP would have to adapt its entire legal and social order to this mantra of feminist ideology, which is not supported by any scientific evidence.

**(e) "This articulation must rely on the current state of international human rights law and will require revision on a regular basis in order to take account of developments in that law"** - According to the authors of the YP, human rights law is 'dynamic': the wording of international treaties or other written legislation has no certain meaning, because that meaning is subject to changing interpretations. Unsurprisingly, it is 'international human rights experts' (such as the drafters of the YP, who claim to be 'distinguished experts') whose interpretations are considered decisive for the developments in that law. As a matter of consequence, States signing up to the YP or lending support to them can have no certainty what they are signing up to.

coercion, discrimination, and violence;

**RECOGNISING** that there is significant value in articulating in a systematic manner international human rights law as applicable to the lives and experiences of persons of diverse sexual orientations and gender identities;

**ACKNOWLEDGING** that this articulation must rely on the current state of international human rights law and will require revision on a regular basis in order to take account of developments in that law<sup>(a)</sup> and its application to the particular lives and experiences of persons of diverse sexual orientations and gender identities over time and in diverse regions and countries;

**FOLLOWING AN EXPERTS' MEETING HELD IN YOGYAKARTA, INDONESIA, FROM 6 TO 9 NOVEMBER 2006, HEREBY ADOPT THESE PRINCIPLES:**

**PRINCIPLE 1. The Right to the Universal Enjoyment of Human Rights**

**All human beings are born free and equal in dignity and rights. Human beings of all sexual orientations and gender identities are entitled to the full enjoyment of all human rights.<sup>(a)</sup>**

States shall<sup>(b)</sup>:

- a) Embody the principles of the universality, interrelatedness, interdependence and indivisibility of all human rights in their national constitutions or other appropriate legislation and ensure the practical realisation of the universal enjoyment of all human rights;
- b) Amend any legislation, including criminal law, to ensure its consistency with the universal enjoyment of all human rights;
- c) Undertake programmes of education and awareness to promote and enhance the full enjoyment of all human rights by all persons, irrespective of sexual orientation or gender identity;
- d) Integrate within State policy and decision-making a pluralistic approach that recognises and affirms the interrelatedness and indivisibility of all aspects of human identity including sexual orientation and gender identity.

**PRINCIPLE 2. The Rights to Equality and Non-discrimination<sup>(a)</sup>**

**Everyone is entitled to enjoy all human rights without discrimination<sup>(b)</sup> on the basis of sexual orientation or gender identity<sup>(c)</sup>. Everyone is entitled to equality before the law and the equal protection of the law without any such discrimination whether or not the enjoyment of another human right is also affected. The law shall prohibit any such discrimination and guarantee to all persons equal and effective protection against any such discrimination.**

**Discrimination on the basis of sexual orientation or gender identity includes any distinction, exclusion, restriction or preference based on sexual orientation or gender identity which has the purpose or effect of nullifying or impairing equality before the law or the equal protection of the law, or the recognition, enjoyment or exercise, on an equal basis, of all human rights and fundamental freedoms. Discrimination based on sexual orientation or gender identity may be, and commonly is, compounded by discrimination**

<sup>(a)</sup> "All human beings are born free and equal in dignity and rights. Human beings of all sexual orientations and gender identities are entitled to the full enjoyment of all human rights." – YP 1 does not only affirm on the equality of all persons, but it puts a special emphasis on 'human beings of all sexual orientations and gender identities'. This approach is followed throughout the entire document in nearly all of the following 'Principles'. While no reasonable person would ever doubt that all human persons are entitled to the enjoyment of all human rights, the real purpose of this statement is to suggest that all 'sexual orientations and gender identities' are somehow 'equal'. However, no argument supporting such suggestion is provided. This suggested 'equality', affirmed yet unproven, is indeed the cornerstone for all that follows.

<sup>(b)</sup> "States shall" - What follows here are the first four of not less than **127 new obligations for States**, each of which is introduced by the words 'States shall...'. Before endorsing this document in whatever form, States should examine very carefully whether they really want to sign up to these obligations, **of which only few correspond to existing standards, whereas many others would turn existing legal and moral concepts upside down.**

<sup>(a)</sup> "Equality and Non-discrimination" – 'Equality' is as such generally not considered to be a Human Right. The UDHR does not make any reference to 'equality'. Art 14 ECHR guarantees 'equality' only with regard to the rights enshrined in that convention, but not as an overarching principle.

<sup>(b)</sup> "Discrimination" - Whereas, strangely, the YP fail to provide a definition for the term 'discrimination', it appears that they indiscriminately describe by this term all and any differences in treatment between heterosexual and LGBT persons. Yet in the true sense of the word, 'discrimination' means to base differences in treatment on inappropriate criteria. The problem with the concept of 'equality' in the YP is that a claim is made that *different* situations should be regulated by equal legal provisions – but no explanation is given as to why this should be done. Whoever claims that two things are 'equal' must make reference to a *tertium comparationis*. The only such reference in the YP is that to 'experiences', 'emotions' and 'affections', all of which are, obviously, purely subjective sentiments. Any comparison that is based on objective criteria is likely to establish that the

**on other grounds including gender, race, age, religion, disability, health and economic status.**

States shall:

- c) Embody the principles of equality and non-discrimination on the basis of sexual orientation and gender identity in their national constitutions or other appropriate legislation, if not yet incorporated therein, including by means of amendment<sup>(d)</sup> and interpretation, and ensure the effective realisation of these principles;
- b) Repeal criminal and other legal provisions that prohibit or are, in effect, employed to prohibit consensual sexual activity among people of the same sex who are over the age of consent, and ensure that an equal age of consent applies to both same-sex and different-sex sexual activity<sup>(e)</sup>;
- c) Adopt appropriate legislative and other measures to prohibit and eliminate discrimination in the public and private spheres on the basis of sexual orientation and gender identity;
- d) Take appropriate measures to secure adequate advancement of persons of diverse sexual orientations and gender identities as may be necessary to ensure such groups or individuals equal enjoyment or exercise of human rights<sup>(f)</sup>. Such measures shall not be deemed to be discriminatory<sup>(g)</sup>;
- e) In all their responses to discrimination on the basis of sexual orientation or gender identity, take account of the manner in which such discrimination may intersect with other forms of discrimination;
- f) Take all appropriate action, including programmes of education and training, with a view to achieving the elimination of prejudicial or discriminatory attitudes or behaviours which are related to the idea of the inferiority<sup>(h)</sup> or the superiority of any sexual orientation or gender identity or gender expression.

**PRINCIPLE 3. THE RIGHT TO RECOGNITION BEFORE THE LAW**

**Everyone has the right to recognition everywhere as a person before the law. Persons of diverse sexual orientations and gender identities shall enjoy legal capacity in all aspects of life. Each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom. No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy<sup>(a)</sup>, as a requirement for legal recognition of their gender identity. No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person's gender identity<sup>(b)</sup>. No one shall be subjected to pressure to conceal, suppress or deny their sexual orientation or gender identity.**

States shall:

- a) Ensure that all persons are accorded legal capacity in civil matters, without discrimination on the basis of sexual orientation or gender identity<sup>(c)</sup>, and the opportunity to exercise that

YP's real claim is that equal treatment must be ensured for unequal situations.

**(c) "on the basis of sexual orientation or gender identity"** - The reference is redundant. By adding it, the YP open the question whether 'sexual orientation and gender identity' enjoys a special status among all grounds of discrimination'.

**(d) "Embody the principles of equality and non-discrimination ... in their national ..., including by means of amendment"** - It is hard to see how this can be argued to be the 'current status of international law'. What the YP drafters want is that States must rewrite their constitutions. But when and where have these States consented to do so?

**(e) "an equal age of consent applies"** - It remains unclear why equal rules must apply to activities that are not equal.

**(f) "secure adequate advancement of persons of diverse sexual orientations and gender identities as may be necessary to ensure such groups or individuals equal enjoyment or exercise of human rights"** - The meaning of this sentence is very obscure. Does it refer to a policy of fixed quotas of LGBT persons in parliaments, public functions, corporate governance bodies, etc.? Affirmative action for homosexuals?

**(g) "Such measures shall not be deemed to be discriminatory"** - This could be understood to mean that, discrimination, if it is in favour of LGBT persons, shall not be deemed to be discriminatory: a dialectic masterpiece! In this way, the YP legitimate precisely what they pretend to fight against: discrimination.

**(h) inferiority or the superiority** - This could be understood to outlaw the insight that one primary purpose of sexuality is procreation, and that only heterosexual relations fulfill that purpose.

**(a) "No one shall be forced..."** - While the statement as such seems uncontroversial, it is not clear why it needs to be made. It is unclear whether in any country persons can be forced to undergo such surgery against their will (except, in situations of urgency, newly born infants, whose will is substituted by that of their parents).

**(b) "No status, such as marriage or parenthood, may be invoked..."** - This principle, if applied, would lead to the most remarkable results: if a mother of three children suddenly claims to be male, the fact of her motherhood must not be invoked. The YP remain true to their fundamental assumption that it is sentiments, not facts, that decide a person's gender identity.

**(c) "without discrimination on the basis of sexual orientation or gender identity"** - The meaning of this sentence is uncertain. It is in principle uncontested that a natural person has legal capacity in civil matters irrespective of its sexual orientation. On the other hand, if 'marriage' is defined to be the union between one man and one woman, that definition cannot be a different one for persons with e.g. homosexual or transsexual or bigamous, or pedophile orientations. In international law, the right to marry is

capacity, including equal rights to conclude contracts, and to administer, own, acquire (including through inheritance), manage, enjoy and dispose of property;

- b) Take all necessary legislative, administrative and other measures to fully respect and legally recognise each person's self-defined gender identity<sup>(d)</sup>;
- c) Take all necessary legislative, administrative and other measures to ensure that procedures exist whereby all State-issued identity papers which indicate a person's gender/sex — including birth certificates, passports, electoral records and other documents — reflect the person's profound self-defined gender identity<sup>(e)</sup>;
- d) Ensure that such procedures are efficient, fair and non-discriminatory, and respect the dignity and privacy of the person concerned;
- e) Ensure that changes to identity documents will be recognised in all contexts where the identification or disaggregation of persons by gender is required by law or policy;
- f) Undertake targeted programmes to provide social support for all persons experiencing gender transitioning or reassignment.

understood to mean: the right to marry one person of the other sex.

**(d) "self-defined gender identity"** - As already noted, the meaning of 'gender identity' appears to be totally subjective. If States are obliged to respect and recognise a person's subjective views, whichever they are, on this point, would a similar obligation not apply in all other areas? One could imagine, for example, an obligation for States, to respect or recognize each person's self-defined code of conduct (quid if a person does not recognize private property? Or if it declines to pay taxes?). It should furthermore be noted that this respect cannot be a one-way road: it would comprise an obligation to respect a homosexual person's decision to voluntarily undergo a therapy in order to change his/her sexual orientation.

**(e) passports, electoral records etc. to reflect 'self-defined gender identity'** - This would mean that, on the basis of purely subjective feelings, any person could at any time request that the indication of gender in its personal documents must be changed. It remains utterly unclear from which international human rights convention this obligation is drawn. Does this really reflect current international law?

#### **PRINCIPLE 4. THE RIGHT TO LIFE**

**Everyone has the right to life. No one shall be arbitrarily deprived of life, including by reference to considerations of sexual orientation or gender identity<sup>(a)</sup>. The death penalty shall not be imposed on any person on the basis of consensual sexual activity among persons<sup>(b)</sup> who are over the age of consent<sup>(c)</sup> or on the basis of sexual orientation or gender identity<sup>(d)</sup>.**

States shall:

- a) Repeal all forms of crime that have the purpose or effect of prohibiting consensual sexual activity among persons of the same sex who are over the age of consent and, until such provisions are repealed, never impose the death penalty on any person convicted under them;
- b) Remit sentences of death and release all those currently awaiting execution for crimes relating to consensual sexual activity among persons who are over the age of consent;
- c) Cease any State-sponsored or State-condoned attacks on the lives of persons based on sexual orientation or gender identity, and ensure that all such attacks, whether by government officials or by any individual or group, are vigorously investigated, and that, where appropriate evidence is found, those responsible are prosecuted, tried and duly punished.

**(a) "No one shall be arbitrarily deprived of life, including by reference to considerations of sexual orientation or gender identity"** - Redundant. Article 3 of the UDHR recognizes everyone's right to life.

**(b) Death penalty** - While international law does not outlaw the death penalty in general, it certainly is true that imposing the death penalty (or, for that matter, any criminal penalty) for consensual sexual activity (at least if it is between adults) is disproportionate. In any case, the abolition of the death penalty may be a policy objective that merits support, but it would be wrong to claim that it is a universally accepted human rights standard.

**(c) "over the age of consent"** - This restriction is clumsily drafted to the point of turning dangerous. Upon reading it, one could conclude that the death penalty would be legitimate if one or both persons involved are under the age of consent.

**(d) "or on the basis of sexual orientation or gender identity"** - While it is true that in a small number of States the homosexual act between consenting adults is (to the regret of the author of this comment) punished with the death penalty, it is plainly wrong to suggest that this sanction is imposed 'by reference to considerations of sexual orientation or gender identity'. The countries at question punish the homosexual act, not any 'sexual orientation' or 'gender identity' (indeed, these terminologies are not found in any legal text outside the YP).

#### **PRINCIPLE 5. THE RIGHT TO SECURITY OF THE PERSON**

**Everyone, regardless of sexual orientation or gender identity<sup>(a)</sup>, has the right to security of the person and to protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual or group.**

States shall:

**(a) "regardless of sexual orientation or gender identity"** - Here, as in many other cases, the YP merely restate generally accepted human rights standards, adding a reference to 'sexual orientation' and 'gender identity'. Such reference seems redundant: if a human right is recognised to 'everyone', there can be no serious doubt that it also applies to persons of 'diverse sexual orientations'. It is the authors of

- a) Take all necessary policing and other measures to prevent and provide protection from all forms of violence and harassment related to sexual orientation and gender identity<sup>(b)</sup>;
- b) Take all necessary legislative measures to impose appropriate criminal penalties for violence, threats of violence, incitement to violence and related harassment, based on the sexual orientation or gender identity of any person or group of persons<sup>(c)</sup>, in all spheres of life, including the family;
- c) Take all necessary legislative, administrative and other measures to ensure that the sexual orientation or gender identity of the victim may not be advanced to justify, excuse or mitigate such violence;
- d) Ensure that perpetration of such violence is vigorously investigated, and that, where appropriate evidence is found, those responsible are prosecuted, tried and duly punished, and that victims are provided with appropriate remedies and redress, including compensation;
- e) Undertake campaigns of awareness-raising, directed to the general public as well as to actual and potential perpetrators of violence, in order to combat the prejudices that underlie violence related to sexual orientation and gender identity.

#### **PRINCIPLE 6. THE RIGHT TO PRIVACY**

**Everyone, regardless of sexual orientation or gender identity, is entitled to the enjoyment of privacy without arbitrary or unlawful interference, including with regard to their family, home or correspondence as well as to protection from unlawful attacks on their honour and reputation. The right to privacy ordinarily includes the choice to disclose or not to disclose information relating to one's sexual orientation or gender identity, as well as decisions and choices regarding both one's own body and consensual sexual and other relations with others.**

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure the right of each person, regardless of sexual orientation or gender identity, to enjoy the private sphere, intimate decisions, and human relations, including consensual sexual activity among persons who are over the age of consent, without arbitrary interference;
- b) Repeal all laws that criminalise consensual sexual activity<sup>(a)</sup> among persons of the same sex who are over the age of consent, and ensure that an equal age of consent applies to both same-sex and different-sex sexual activity<sup>(b)</sup>;
- c) Ensure that criminal and other legal provisions of general application are not applied de facto to criminalise consensual sexual activity among persons of the same sex who are over the age of consent;
- d) Repeal any law that prohibits or criminalises the expression of gender identity, including through dress, speech or mannerisms, or that denies to individuals the opportunity to change their bodies as a means of expressing their gender identity;

the YP, rather than anyone else, who appear to have such doubts: otherwise, why do they see a need for such specific reference? The specific reference to 'sexual orientation' and 'gender identity' is problematic, because it makes believe that the minorities whose interests the YP seek to promote are more likely to be the victims of violence and harassment than other minorities, which simply is not true: violence based on religious or ethnic grounds is certainly a much more frequent problem (it suffices to remind of the ethnic cleansing in Darfur, or the violence perpetrated against Christian minorities in Iraq or India). The general tendency of the YP is therefore to establish a double standard of protection, shedding light on a very small group of victims, while at the same time eclipsing problems of a much larger scale. This approach is incompatible with a sound human rights policy, which would seek to secure rights not for specific target groups (Christians, black people, homosexuals, etc.), but for *all*.

<sup>(b)</sup>Why only 'related to sexual orientation and gender identity'? Should not *everyone* be protected against violence and harassment?

<sup>(c)</sup>Why only 'based sexual orientation and gender identity'?

<sup>(a)</sup> **"Repeal all laws that criminalise consensual sexual activity"** - It is certainly regrettable that more than 80 States criminalise consensual sexual activity between persons of the same sex, including 7 States that foresee the death penalty. However, given this situation, it is clear that the decriminalization of same-sex activity is not, as the YP pretend, the 'current state of international human rights law'. Quite on the contrary: if more than 80 States maintain such provisions, and the remaining States have repealed them only during the last decades, this clearly evidences that current human rights standards do *not* comprise such an obligation. The YP campaigners would gain credibility if they sought to convince the States at question of the necessity of repealing criminal laws, rather than falsely affirming that they have already agreed to do so.

<sup>(b)</sup> **equal age of consent** - Same-sex and different-sex sexual activity are not equal, but different. Why then is it a 'human right' that they must be subject to an equal age of consent?

<sup>(c)</sup> **"right of all persons ordinarily to choose when, to whom and how to disclose information pertaining to their sexual orientation or gender identity"** - This could be understood to mean that everybody should have the right to keep secret whether he/she is (or believes to be?) a man/woman. The absurd consequences of such a right, especially in the context of marriage, are all too obvious: how can anyone marry another person if the sex of that person is a secret? Similar questions arise wherever legislation foresees differential treatment of sexes, e.g. where military service is compulsory for men (but not for women), or where there is a different retirement age for men or women.

- e) Release all those held on remand or on the basis of a criminal conviction, if their detention is related to consensual sexual activity among persons who are over the age of consent, or is related to gender identity;
- f) Ensure the right of all persons ordinarily to choose when, to whom and how to disclose information pertaining to their sexual orientation or gender identity<sup>(e)</sup>, and protect all persons from arbitrary or unwanted disclosure, or threat of disclosure of such information by others.

**PRINCIPLE 7. THE RIGHT TO FREEDOM FROM ARBITRARY DEPRIVATION OF LIBERTY**

**No one shall be subjected to arbitrary arrest or detention. Arrest or detention on the basis of sexual orientation or gender identity, whether pursuant to a court order or otherwise, is arbitrary.<sup>(a)</sup> All persons under arrest, regardless of their sexual orientation or gender identity, are entitled, on the basis of equality, to be informed of the reasons for arrest and the nature of any charges against them, to be brought promptly before a judicial officer and to bring court proceedings to determine the lawfulness of detention, whether or not charged with any offence.**

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure that sexual orientation or gender identity may under no circumstances be the basis for arrest or detention, including the elimination of vaguely worded criminal law provisions that invite discriminatory application or otherwise provide scope for arrests based on prejudice;
- b) Take all necessary legislative, administrative and other measures to ensure that all persons under arrest, regardless of their sexual orientation or gender identity, are entitled, on the basis of equality, to be informed of the reasons for arrest and the nature of any charges against them, and whether charged or not, to be brought promptly before a judicial officer and to bring court proceedings to determine the lawfulness of detention;
- c) Undertake programmes of training and awareness-raising to educate police and other law enforcement personnel regarding the arbitrariness of arrest and detention based on a person's sexual orientation or gender identity<sup>(b)</sup>;
- d) Maintain accurate and up to date records of all arrests and detentions, indicating the date, location and reason for detention, and ensure independent oversight of all places of detention by bodies that are adequately mandated and equipped to identify arrests and detentions that may be motivated by the sexual orientation or gender identity of a person<sup>(c)</sup>.

**PRINCIPLE 8. THE RIGHT TO A FAIR TRIAL**

**Everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law, in the determination of their rights and obligations in a suit at law and of any criminal charge against them, without prejudice or discrimination on the basis of sexual orientation or gender**

**(a) "Arrest or detention on the basis of sexual orientation or gender identity... is arbitrary"** - Without doubt, this is true. But once more, it should be noted that there are many other circumstances that may make arrest or detention arbitrary, and this is why other Human Rights Documents use a wider definition of 'arbitrariness', describing as arbitrary any arrest or detention, if the detainee is not convicted or suspected of a serious crime, or if the detention is not otherwise necessary to enforce the law.

**(b) "programmes of training and awareness-raising"** - Who is going to finance these programmes? Does the 'current state of international human rights law' really oblige States to spend public budgets on such awareness-raising? If this is a human rights standard, it should target all cases of arbitrary arrest and detention; otherwise it would create a double standard.

**(c) "ensure independent oversight of all places of detention"** - Should similar measures not be adopted to identify other cases of arbitrary detention? The proposal seeks to establish a double standard of protection: homosexuals would get better protection than anyone else.

**(a)** Redundant, as Article 6 of the European Convention on Human Rights already guarantees the Right to a Fair Trial for everyone.

**(b) "in part"** - Quid if the procedure is 'in part' motivated not by any prejudice, but by actual wrongdoing (or reasonable grounds for suspicion thereof) of the person in question?

## identity.<sup>(a)</sup>

States shall:

- a) Take all necessary legislative, administrative and other measures to prohibit and eliminate prejudicial treatment on the basis of sexual orientation or gender identity at every stage of the judicial process, in civil and criminal proceedings and all other judicial and administrative proceedings which determine rights and obligations, and to ensure that no one's credibility or character as a party, witness, advocate or decision-maker is impugned by reason of their sexual orientation or gender identity;
- b) Take all necessary and reasonable steps to protect persons from criminal prosecutions or civil proceedings that are motivated wholly or in part<sup>(b)</sup> by prejudice regarding sexual orientation or gender identity<sup>(c)</sup>;
- c) Undertake programmes of training and awareness-raising for judges<sup>(d)</sup>, court personnel, prosecutors, lawyers and others regarding international human rights standards and principles of equality and non-discrimination, including in relation to sexual orientation and gender identity.

## **PRINCIPLE 9. THE RIGHT TO TREATMENT WITH HUMANITY WHILE IN DETENTION**

**Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Sexual orientation and gender identity are integral to each person's dignity<sup>(a)</sup>.**

States shall:

- a) Ensure that placement in detention avoids further marginalising persons on the basis of sexual orientation or gender identity or subjecting them to risk of violence, ill-treatment or physical, mental or sexual abuse;
- b) Provide adequate access to medical care and counselling appropriate to the needs of those in custody, recognising any particular needs of persons on the basis of their sexual orientation or gender identity, including with regard to reproductive health, access to HIV/AIDS information and therapy and access to hormonal or other therapy as well as to gender-reassignment treatments where desired;
- c) Ensure, to the extent possible, that all prisoners participate in decisions regarding the place of detention appropriate to their sexual orientation and gender identity;
- d) Put protective measures in place for all prisoners vulnerable to violence or abuse on the basis of their sexual orientation, gender identity or gender expression<sup>(b)</sup> and ensure, so far as is reasonably practicable, that such protective measures involve no greater restriction of their rights than is experienced by the general prison population;
- e) Ensure that conjugal visits, where permitted, are granted on an equal basis to all prisoners and detainees, regardless of the gender of their partner<sup>(c)</sup>;
- f) Provide for the independent monitoring of detention facilities

Should a person suspected to have committed a bank robbery not be put on trial if he contends that the charges against him are based on 'prejudice'? Or is it not rather the purpose of the procedure to find out whether or not such charges are well-founded? In addition, it must be noted that civil action can be brought by anyone against anyone at any time without any question being asked with regard to the 'motivation'; what is decisive is whether the claim is founded or not. The freedom to bring one's claim before a court is an important civil liberty. The prohibition to file a lawsuit on the grounds that it may be 'motivated wholly or in part by prejudice' is by itself a violation of civil liberties, and it is astonishing that the drafters of the YP, who describe themselves as 'distinguished human rights experts', should seriously endorse such a proposal.

**(c) "regarding sexual orientation or gender identity"** - Supposedly, persons should be protected against any judicial decision that is motivated by prejudice, irrespective of whether that prejudice has to do with sexual orientation or other criteria. The last part of this sentence is thus redundant and even appears to legitimize all other prejudices except that relating to sexual orientation.

**(d) "programmes of training and awareness-raising"** - Such programmes are certainly not a standard currently foreseen in international law.

**(a) "Sexual orientation and gender identity are integral to each person's dignity"** - Is this supposed to be a novel definition of 'Human Dignity'? A human person has dignity simply because it is a human person, and for no other reason. This dignity is common to all human beings, and nobody has more 'human dignity' than others. It follows that this dignity is irrespective of a person's sexual orientation. However, it does not follow that every and any sexual orientation or sexual behavior merits the same amount of 'respect' (quid with regard to pedophile orientation?). It appears thus nonsensical to say that 'sexual orientation' is integral to a person's dignity.

**(b) "protective measures"** - Why only for these prisoners, and not for all?

**(c) "conjugal visits"** - seems to pre-suppose the recognition of same-sex marriages. This is certainly not a human rights standard, but an attempt to transform the concept of "marriage" beyond recognition.

**(d) "monitoring of detention facilities by the State as well as by non-governmental organizations"** - There is certainly no provision in international law that would oblige States to grant any *locus standi* to any NGOs, let alone NGOs specializing on LGBT issues. On the contrary, it should be reminded that consultative status at the UN ECOSOC Committee was withdrawn from ILGA in 1994, following revelations that some of ILGA's member organizations actively supported and promoted pedophilia.

by the State as well as by non-governmental organisations including organisations working in the spheres of sexual orientation and gender identity<sup>(d)</sup>;

- g) Undertake programmes of training and awareness-raising for prison personnel and all other officials in the public and private sector who are engaged in detention facilities, regarding international human rights standards and principles of equality and non-discrimination, including in relation to sexual orientation and gender identity.

**PRINCIPLE 10. THE RIGHT TO FREEDOM FROM TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

**Everyone has the right to be free from torture and from cruel, inhuman or degrading treatment or punishment, including for reasons relating to sexual orientation or gender identity<sup>(a)</sup>.**

States shall:

- a) Take all necessary legislative, administrative and other measures to prevent and provide protection from torture and cruel, inhuman or degrading treatment or punishment, perpetrated for reasons relating to the sexual orientation or gender identity of the victim, as well as the incitement of such acts<sup>(b)</sup>;
- b) Take all reasonable steps to identify victims of torture and cruel, inhuman or degrading treatment or punishment, perpetrated for reasons relating to sexual orientation or gender identity<sup>(c)</sup>, and offer appropriate remedies including redress and reparation and, where appropriate, medical and psychological support;
- c) Undertake programmes of training and awareness-raising for police, prison personnel and all other officials in the public and private sector who are in a position to perpetrate or to prevent such acts.

**PRINCIPLE 11. THE RIGHT TO PROTECTION FROM ALL FORMS OF EXPLOITATION, SALE AND TRAFFICKING OF HUMAN BEINGS**

**Everyone is entitled to protection from trafficking, sale and all forms of exploitation, including but not limited to sexual exploitation, on the grounds of actual or perceived sexual orientation or gender identity<sup>(a)</sup>. Measures designed to prevent trafficking shall address the factors that increase vulnerability, including various forms of inequality and discrimination on the grounds of actual or perceived sexual orientation or gender identity, or the expression of these or other identities. Such measures must not be inconsistent with the human rights of persons at risk of being trafficked.**

States shall:

- a) Take all necessary legislative, administrative and other measures of a preventive and protective nature regarding the trafficking, sale and all forms of exploitation of human beings, including but not limited to sexual exploitation, on the grounds of actual or perceived sexual orientation or gender identity;
- b) Ensure that any such legislation or measures do not criminalise the behaviour of, stigmatise, or in any other way, exacerbate

<sup>(a)</sup>Redundant. Art 5 of the UDHR foresees that *nobody* shall be subjected to torture and cruel, inhuman or degrading treatment or punishment. This YP diverts attention from the number of persons who, not being gay or lesbian, become the victims of torture, and focuses on one small sub-group of torture victims.

<sup>(b)</sup>This reference appears to restrict the scope of an already existing obligation. It could be read as legitimizing torture for reasons not relating to sexual orientation.

<sup>(c)</sup>This could be read as meaning that only cases where torture was perpetrated for reasons relating to sexual orientation should be investigated, or that only in these cases victims merited redress or support.

<sup>(a)</sup> It is not at all clear why LGBT persons should be more likely to become victims of such crimes than other persons. The entire section seems thus redundant.

the disadvantage of those vulnerable to such practices;

- c) Establish legal, educational and social measures, services and programmes to address factors that increase vulnerability to trafficking, sale and all forms of exploitation, including but not limited to sexual exploitation, on the grounds of actual or perceived sexual orientation or gender identity, including such factors as social exclusion, discrimination, rejection by families or cultural communities, lack of financial independence, homelessness, discriminatory social attitudes leading to low self-esteem, and lack of protection from discrimination in access to housing accommodation, employment and social services.

#### **PRINCIPLE 12. THE RIGHT TO WORK<sup>(a)</sup>**

**Everyone has the right to decent and productive work, to just and favourable conditions of work and to protection against unemployment, without discrimination on the basis of sexual orientation or gender identity.**

States shall:

- a) Take all necessary legislative, administrative and other measures to eliminate and prohibit discrimination on the basis of sexual orientation and gender identity in public and private employment, including in relation to vocational training, recruitment, promotion, dismissal, conditions of employment and remuneration;
- b) Eliminate any discrimination on the basis of sexual orientation or gender identity to ensure equal employment and advancement opportunities in all areas of public service, including all levels of government service and employment in public functions, including serving in the police and military, and provide appropriate training and awareness-raising programmes to counter discriminatory attitudes.

#### **PRINCIPLE 13. THE RIGHT TO SOCIAL SECURITY AND TO OTHER SOCIAL PROTECTION MEASURES**

**Everyone has the right to social security and other social protection measures, without discrimination on the basis of sexual orientation or gender identity<sup>(a)</sup>.**

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure equal access, without discrimination on the basis of sexual orientation or gender identity, to social security and other social protection measures, including employment benefits, parental leave, unemployment benefits, health insurance or care or benefits (including for body modifications related to gender identity), other social insurance, family benefits, funeral benefits, pensions and benefits with regard to the loss of support for spouses or partners as the result of illness or death;
- b) Ensure that children are not subject to any form of discriminatory treatment within the social security system or in the provision of social or welfare benefits on the basis of their sexual orientation or gender identity, or that of any member of

<sup>(a)</sup>The 'Right to Work' as such raises some important questions. Of course, nobody should be excluded from the labour market in a discriminatory matter (except that some measures will be necessary to prevent child labour). But does this mean that anybody can be entitled to be given a job? Measures such as those foreseen in Principle 12 have a strong potential of undermining the contractual freedom of potential employers, and to have a chilling effect on the employment market. Apart from this, it seems self-evident that these proposals do not reflect any existing standard of international law.

<sup>(a)</sup>Legislators beware! This 'Principle' is likely to be used as a basis for claiming that homosexual couples must get the same social benefits as married couples. The unequal treatment between married couples and homosexual 'partners' is, however, fully justified by their factual inequality: the classical family contributes to the future of society, whereas sterile homosexual relationships do not. Obviously, there is no international obligation for States to provide equal social benefits to both.

their family;

- c) Take all necessary legislative, administrative and other measures to ensure access to poverty reduction strategies and programmes, without discrimination on the basis of sexual orientation or gender identity.

**PRINCIPLE 14. THE RIGHT TO AN ADEQUATE STANDARD OF LIVING**

**Everyone has the right to an adequate standard of living, including adequate food, safe drinking water, adequate sanitation and clothing, and to the continuous improvement of living conditions<sup>(a)</sup>, without discrimination on the basis of sexual orientation or gender identity.**

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure equal access, without discrimination on the basis of sexual orientation or gender identity, to adequate food, safe drinking water, adequate sanitation and clothing.

**PRINCIPLE 15. THE RIGHT TO ADEQUATE HOUSING**

**Everyone has the right to adequate housing, including protection from eviction, without discrimination on the basis of sexual orientation or gender identity<sup>(a)</sup>.**

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure security of tenure and access to affordable, habitable, accessible, culturally appropriate and safe housing, including shelters and other emergency accommodation, without discrimination on the basis of sexual orientation, gender identity or marital or family status;
- b) Take all necessary legislative, administrative and other measures to prohibit the execution of evictions that are not in conformity with their international human rights obligations; and ensure that adequate and effective legal or other appropriate remedies are available to any person claiming that a right to protection against forced evictions has been violated or is under threat of violation, including the right to resettlement, which includes the right to alternative land of better or equal quality and to adequate housing, without discrimination on the basis of sexual orientation, gender identity or marital or family status;
- c) Ensure equal rights to land and home ownership and inheritance without discrimination on the basis of sexual orientation or gender identity<sup>(b)</sup>;
- d) Establish social programmes, including support programmes<sup>(c)</sup>, to address factors relating to sexual orientation and gender identity that increase vulnerability to homelessness, especially for children and young people, including social exclusion, domestic and other forms of violence, discrimination, lack of financial independence, and rejection by families or cultural communities, as well as to promote schemes of neighbourhood support and security;
- e) Provide training and awareness-raising programmes<sup>(c)</sup> to

<sup>(a)</sup>The assertion that ‘the continuous improvement of living conditions’ is a human right is unheard of and, in times of a world-wide economic crisis, ridiculous. It would be better if the YP focused on *real* Human Rights.

<sup>(a)</sup>The fundamental problem with this Principle is that it undermines the principle of contractual freedom and every landlord’s right to let apartments to whomever he likes. It appears that in States signing up to this Principle landlords would have no right to turn out tenants displaying an ostentatious homosexual or lesbian or similar lifestyles, even if neighbors find such exhibitions of ‘diversity’ repellent. Even if such limitation of contractual freedom is a legitimate desideratum for LGBT groups, it is far from accepted by the rest of society - even less can it be pretended that this is a human rights standard to which all countries in the world are committed.

<sup>(b)</sup>Clause c) will probably be used as a basis to claim that in inheritance law, same-sex couples must be treated like married couples. Not only is this no current human rights standard, but it would even create injustice, because the mutual dependence in a ‘normal’ marriage typically is different from that in a same-sex relation. The clause would oblige States to treat different situations equally.

<sup>(c)</sup>Such programmes are not a current human rights standard.

ensure that all relevant agencies are aware of and sensitive to the needs of those facing homelessness or social disadvantage as a result of sexual orientation or gender identity.

#### **PRINCIPLE 16. THE RIGHT TO EDUCATION**

**Everyone has the right to education, without discrimination on the basis of, and taking into account, their sexual orientation and gender identity<sup>(a)</sup>.**

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure equal access to education, and equal treatment of students, staff and teachers within the education system, without discrimination on the basis of sexual orientation or gender identity;
- b) Ensure that education is directed to the development of each student's personality, talents, and mental and physical abilities to their fullest potential, and responds to the needs of students of all sexual orientations and gender identities;
- c) Ensure that education is directed to the development of respect for human rights, and of respect for each child's parents and family members, cultural identity, language and values, in a spirit of understanding, peace, tolerance and equality, taking into account and respecting diverse sexual orientations and gender identities<sup>(a)</sup>;
- d) Ensure that education methods, curricula and resources serve to enhance understanding of and respect for, inter alia, diverse sexual orientations and gender identities<sup>(a)</sup>, including the particular needs of students, their parents and family members related to these grounds;
- e) Ensure that laws and policies provide adequate protection for students, staff and teachers of different sexual orientations and gender identities against all forms of social exclusion and violence within the school environment, including bullying and harassment;
- f) Ensure that students subjected to such exclusion or violence are not marginalised or segregated for reasons of protection, and that their best interests are identified and respected in a participatory manner;
- g) Take all necessary legislative, administrative and other measures to ensure that discipline in educational institutions is administered in a manner consistent with human dignity, without discrimination or penalty on the basis of a student's sexual orientation or gender identity, or the expression thereof;
- h) Ensure that everyone has access to opportunities and resources for lifelong learning without discrimination on the basis of sexual orientation or gender identity, including adults who have already suffered such forms of discrimination in the educational system.

#### **PRINCIPLE 17. THE RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF HEALTH**

**Everyone has the right to the highest attainable standard of physical and mental health, without discrimination on the basis of**

<sup>(a)</sup> "right to education" – the title of this chapter is misleading: it deals not with the right to education of people with a 'diverse sexual orientation', but seeks to establish an *obligation* for all other persons to undergo an education that would teach them that diverse sexual orientations are 'equal'. It must be doubted that everybody finds this strange kind of 'education' desirable.

Like the right to work or the right to health, the right to education refers rather to political desiderabilia than to a subjective right: States should adopt policies that are conducive to a non-discriminatory access to education. In the YP however, the purpose appears to be to influence the *content* of that education: In the school curricula, diverse sexual orientations should be represented as 'normal' or 'equal'. It is unclear by which concept of 'normality' or 'equality' this Principle is underpinned. It is a self-evidence, and therefore needs no further argument, that different sexual orientations are different. But why should children at school be taught to 'respect' the LGBT lifestyle, and to accept a presupposition according which the one and only purpose of sexuality is the mutual procurement of pleasure (whereas the primary biological purpose of sexuality, i.e. procreation, is an (undesirable?) side effect? Is this view on sexuality, which the YP want to impose as an obligation onto the whole global society, not biased and highly ideological?

Certainly this ideology is not something many outside the closed circle of the drafters of the YP would agree with. Much less can it be described as an international human rights standard.

<sup>(a)</sup> "without discrimination on the basis of sexual orientation or gender identity" - Redundant, for reasons already stated above (cf. YP 5).

**sexual orientation or gender identity<sup>(a)</sup>. Sexual and reproductive health<sup>(b)</sup> is a fundamental aspect of this right.**

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure enjoyment of the right to the highest attainable standard of health, without discrimination on the basis of sexual orientation or gender identity;
- b) Take all necessary legislative, administrative and other measures to ensure that all persons have access to healthcare facilities, goods and services, including in relation to sexual and reproductive health, and to their own medical records, without discrimination on the basis of sexual orientation or gender identity<sup>(a)</sup>;
- c) Ensure that healthcare facilities, goods and services are designed to improve the health status of, and respond to the needs of, all persons without discrimination on the basis of, and taking into account, sexual orientation and gender identity<sup>(a)</sup>, and that medical records in this respect are treated with confidentiality;
- d) Develop and implement programmes to address discrimination, prejudice and other social factors which undermine the health of persons because of their sexual orientation or gender identity<sup>(c)</sup>;
- e) Ensure that all persons are informed and empowered to make their own decisions regarding medical treatment and care, on the basis of genuinely informed consent, without discrimination on the basis of sexual orientation or gender identity<sup>(a)</sup>;
- f) Ensure that all sexual and reproductive health<sup>(b)</sup>, education, prevention, care and treatment programmes and services respect the diversity of sexual orientations and gender identities, and are equally available to all without discrimination;
- g) Facilitate access by those seeking body modifications related to gender reassignment to competent, non-discriminatory treatment, care and support;
- h) Ensure that all health service providers treat clients and their partners without discrimination on the basis of sexual orientation or gender identity, including with regard to recognition as next of kin<sup>(a)</sup>;
- i) Adopt the policies, and programmes of education and training, necessary to enable persons working in the healthcare sector to deliver the highest attainable standard of healthcare to all persons, with full respect for each person's sexual orientation and gender identity.<sup>(e)</sup>

<sup>(b)</sup> “**Sexual and Reproductive Health**” - a novel concept of unclear meaning. Usually the discussion focuses on the question whether access to abortion or artificial contraception is part of that right. In the LGBT context, however, the question must be a different one: can ‘diverse sexual orientations and gender identities’ really be described with the term ‘health’? Given that the primary biological purpose of sexuality is procreation, can someone whose sexual orientation is directed at persons of the same sex, with whom procreation is not possible, be called ‘healthy’? YP 17 thus appears to promote a distorted understanding of ‘health’.

<sup>(c)</sup>Such programmes may be desirable, but do not correspond to any current standard of internationally recognized human rights.

<sup>(d)</sup> “**next of kin**” - promotes a distorted view of the family (see below).

<sup>(e)</sup>Such programmes may be desirable, but do not correspond to any current standard of internationally recognized human rights.

**PRINCIPLE 18. PROTECTION FROM MEDICAL ABUSES**

**No person may be forced to undergo any form of medical or psychological treatment, procedure, testing, or be confined to a medical facility, based on sexual orientation or gender identity. Notwithstanding any classifications to the contrary, a person's sexual orientation and gender identity are not, in and of themselves, medical conditions and are not to be treated, cured or**

<sup>(a)</sup> “**a person's sexual orientation and gender identity are not, in and of themselves, medical conditions**” - Whether something constitutes or not a ‘medical condition’ is, one should suppose, for the medical science, and not for lawyers, to decide. YP 18 illustrates once more the voluntaristic, indeed anti-scientific, ideology of its sponsors.

<sup>(b)</sup>If anything, States should take measures against *all*

**suppressed<sup>(a)</sup>.**

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure full protection against harmful medical practices based on sexual orientation or gender identity<sup>(b)</sup>, including on the basis of stereotypes, whether derived from culture or otherwise, regarding conduct, physical appearance or perceived gender norms;
- b) Take all necessary legislative, administrative and other measures to ensure that no child's body is irreversibly altered by medical procedures in an attempt to impose a gender identity without the full, free and informed consent of the child in accordance with the age and maturity of the child and guided by the principle that in all actions concerning children, the best interests of the child shall be a primary consideration;
- c) Establish child protection mechanisms whereby no child is at risk of, or subjected to, medical abuse;
- d) Ensure protection of persons of diverse sexual orientations and gender identities<sup>(c)</sup> against unethical or involuntary medical procedures or research, including in relation to vaccines, treatments or microbicides for HIV/AIDS or other diseases;
- e) Review and amend any health funding provisions or programmes, including those of a development-assistance nature, which may promote, facilitate or in any other way render possible such abuses;
- f) Ensure that any medical or psychological treatment or counselling does not, explicitly or implicitly, treat sexual orientation and gender identity as medical conditions to be treated, cured or suppressed<sup>(a)</sup>.

**PRINCIPLE 19. THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION**

**Everyone has the right to freedom of opinion and expression, regardless of sexual orientation or gender identity<sup>(a)</sup>. This includes the expression of identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or any other means, as well as the freedom to seek, receive and impart information and ideas of all kinds, including with regard to human rights, sexual orientation and gender identity, through any medium and regardless of frontiers.**

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure full enjoyment of freedom of opinion and expression, while respecting the rights and freedoms of others, without discrimination on the basis of sexual orientation or gender identity, including the receipt and imparting of information and ideas concerning sexual orientation and gender identity, as well as related advocacy for legal rights, publication of materials, broadcasting, organisation of or participation in conferences<sup>(a)</sup>, and dissemination of and access to safer-sex information<sup>(b)</sup>;

harmful medical practices.

**(c) “unethical or involuntary medical procedures or research”** – Why should only persons of ‘diverse sexual orientations’ be protected against such practices?

**(a) “Freedom of opinion and expression”** - It is true that everybody has the right to freedom of opinion and expression. YP 19, however, wants to turn this right into a right to exhibitionism of LGBT lifestyles. This becomes clear when, in clause d), it is stated that this right must supersede any notion of public order or public morality. In that context, it should be noted that the European Convention on Human Rights foresees in its Article 10 (2): *“The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”*

It follows that all expressions of opinion and public manifestations are subject to such limitations. It is thus difficult to see how any human rights expert could seriously affirm that under current human rights law the freedom of expression for persons with ‘diverse sexual orientations’ are not subject to any such limitations. It appears that, contrary to the statement made by the drafters, the YP seek to affirm a new right, indeed a privilege for their LGBT constituency: while everybody else's freedom of expression is limited by

- b) Ensure that the outputs and the organisation of media that is State-regulated is pluralistic and non-discriminatory in respect of issues of sexual orientation and gender identity and that the personnel recruitment and promotion policies of such organisations are non-discriminatory on the basis of sexual orientation or gender identity<sup>(c)</sup>;
- c) Take all necessary legislative, administrative and other measures to ensure the full enjoyment of the right to express identity or personhood, including through speech, deportment, dress, bodily characteristics, choice of name or any other means;
- d) Ensure that notions of public order, public morality, public health and public security are not employed to restrict, in a discriminatory manner, any exercise of freedom of opinion and expression that affirms diverse sexual orientations or gender identities<sup>(d)</sup>;
- e) Ensure that the exercise of freedom of opinion and expression does not violate the rights and freedoms of persons of diverse sexual orientations and gender identities<sup>(e)</sup>;
- f) Ensure that all persons, regardless of sexual orientation or gender identity, enjoy equal access to information and ideas, as well as to participation in public debate.

notions of 'public order' or public morality', there is no such restriction for supporters of the lesbian/gay rights agenda. Quite obviously, this 'interpretation of 'human rights' is not only wrong, but outright dangerous: it calls into question the equality of all before the law, undermines democracy, directly affects the rights of those not supporting the LGBT agenda, and betrays the totalitarian mindset of the YP drafting panel.

**(b) "safer-sex information"** - Is this information related to contraception or to the prevention of infections?? Does it include any information concerning the specific risks associated with the homosexual lifestyle (e.g. the fact that this lifestyle carries a highly increased risk of HIV/AIDS infection)?

**(c) "Ensure that the outputs and the organisation of media that is State-regulated is pluralistic and non-discriminatory"** – It is questionable whether the media concerned could be called independent if their output is controlled in such a way. Indeed, the substance of this provision seems to be that a certain quota of journalists employed in those media would have to be gay or lesbian and promote the LGBT agenda. At the same time, it seems questionable whether the principle of 'pluralism' mentioned here would allow anyone to criticize or question the agenda set by the YP.

**(d) "Ensure that notions of public order, public morality, public health and public security are not employed to restrict, in a discriminatory manner, any exercise of freedom of opinion and expression that affirms diverse sexual orientations or gender identities"** - If accepted, this clause will have devastating effects on the freedom of opinion and expression, reaching far beyond the special purposes of the YP. If the particular interests of the LGBT rights movement supersede concerns of public order and morality, any other pressure group may make legitimately make the same claims. The notions of public order and public morality would therefore be completely undermined by this clause.

**(e) "Ensure that the exercise of freedom of opinion and expression does not violate the rights and freedoms of persons of diverse sexual orientations and gender identities"** - It is foreseeable, this clause could be used as a basis for attempts to silence all criticism of the LGBT lifestyle.

## **PRINCIPLE 20. THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY AND ASSOCIATION**

**Everyone has the right to freedom of peaceful assembly and association, including for the purposes of peaceful demonstrations, regardless of sexual orientation or gender identity. Persons may form and have recognised, without discrimination, associations based on sexual orientation or gender identity, and associations that distribute information to or about, facilitate communication among, or advocate for the rights of, persons of diverse sexual orientations and gender identities<sup>(a)</sup>.**

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure the rights to peacefully organise, associate, assemble and advocate around issues of sexual orientation and gender identity, and to obtain legal recognition for such associations and groups, without discrimination on the basis of sexual orientation or gender identity;
- b) Ensure in particular that notions of public order, public

**(a)The right to freedom of peaceful assembly** is generally recognized as a fundamental right. In the context of the YP, however, this right is understood to supersede notions of public order and morality, which in all countries of the world set certain limits to the freedom of expression. Similar considerations apply as with regard to YP 19 above. The European Convention on Human Rights (Article 11(2)) explicitly recognizes the right, indeed the necessity, to subject assemblies to a legislation protecting the public order etc.

It should be noted that, if YP 20 was accepted, associations, assemblies and demonstrations promoting the LGBT lifestyle would be the *only* ones not being subject to any restriction of public order and morality; it would give them unlimited freedom to insult or provoke persons not sharing their views or opposing the promotion of their agenda. This kind of privilege is completely unacceptable in a democratic society; to accept it would mean to give up democracy in exchange for the LGBT agenda. One is astonished to see such a proposal coming from a 'distinguished group of human rights experts'. Would the same experts recommend that the promotion of other political agendas (for example one opposing the promotion of LGBT particular interests) should also be

morality, public health and public security are not employed<sup>(a)</sup> to restrict any exercise of the rights to peaceful assembly and association solely on the basis that it affirms diverse sexual orientations or gender identities;

- c) Under no circumstances impede the exercise of the rights to peaceful assembly and association on grounds relating to sexual orientation or gender identity, and ensure that adequate police and other physical protection against violence or harassment is afforded to persons exercising these rights;
- d) Provide training and awareness-raising programmes to law enforcement authorities and other relevant officials to enable them to provide such protection;
- e) Ensure that information disclosure rules for voluntary associations and groups do not, in practice, have discriminatory effects for such associations and groups addressing issues of sexual orientation or gender identity, or for their members.

exempted from the obligation to respect the public order?

### **PRINCIPLE 21. THE RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION**

**Everyone has the right to freedom of thought, conscience and religion, regardless of sexual orientation or gender identity<sup>(a)</sup>. These rights may not be invoked by the State to justify laws, policies or practices which deny equal protection of the law, or discriminate, on the basis of sexual orientation or gender identity<sup>(b)</sup>.**

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure the right of persons, regardless of sexual orientation or gender identity, to hold and practise religious and non-religious beliefs, alone or in association with others, to be free from interference with their beliefs and to be free from coercion or the imposition of beliefs;
- b) Ensure that the expression, practice and promotion of different opinions, convictions and beliefs with regard to issues of sexual orientation or gender identity is not undertaken in a manner incompatible with human rights.<sup>(c)</sup>

<sup>(a)</sup> “regardless of sexual orientation or gender identity” - The reference to sexual orientation is redundant. Art 18 of the UDHR already recognizes these freedoms for *everyone*.

<sup>(b)</sup> “These rights may not be invoked...” - The true purpose of this ‘Principle’ is apparently not to guarantee the freedom of thought, conscience and religion, but, in fact, to limit it.

<sup>(c)</sup> “Ensure that the expression, practice and promotion of different opinions, convictions and beliefs with regard to issues of sexual orientation or gender identity is not undertaken in a manner incompatible with human rights” - The sponsors of the YP are likely to interpret YP21 as curtailing the right of religious, e.g. Christian or Muslim, communities to articulate dissent with regard to the LGBT agenda. The reference to ‘human rights’ must, in the YP context, be understood to mean the very peculiar concept of ‘human rights’ underpinning the YP themselves: any opposition to the LGBT agenda is ‘a breach of human rights’. It is for this reason that States should be very cautious in accepting YP21, even if it is self-evident that all expressions of opinions should always take place in a manner compatible with human rights (the true ones, of course...).

### **PRINCIPLE 22. THE RIGHT TO FREEDOM OF MOVEMENT**

**Everyone lawfully within a State has the right to freedom of movement and residence within the borders of the State, regardless of sexual orientation or gender identity. Sexual orientation and gender identity may never be invoked to limit or impede a person’s entry, egress or return to or from any State, including that person’s own State.<sup>(a)</sup>**

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure that the right to freedom of movement and residence is guaranteed regardless of sexual orientation or gender identity.

<sup>(a)</sup>Redundant, given that this right is guaranteed for everybody in Article 13 of the UDHR.

### **PRINCIPLE 23. THE RIGHT TO SEEK ASYLUM**

**Everyone has the right to seek and enjoy in other countries asylum**

<sup>(a)</sup>Redundant. The right to asylum is not a privilege for gays and lesbians, but a right for *all* persons facing the risk of

**from persecution, including persecution related to sexual orientation or gender identity. A State may not remove, expel or extradite a person to any State where that person may face a well-founded fear of torture, persecution, or any other form of cruel, inhuman or degrading treatment or punishment, on the basis of sexual orientation or gender identity<sup>(a)</sup>.**

States shall:

- a) Review, amend and enact legislation to ensure that a well-founded fear of persecution on the basis of sexual orientation or gender identity is accepted as a ground for the recognition of refugee status and asylum;
- b) Ensure that no policy or practice discriminates against asylum seekers on the basis of sexual orientation or gender identity;
- c) Ensure that no person is removed, expelled or extradited to any State where that person may face a well-founded fear of torture, persecution, or any other form of cruel, inhuman or degrading treatment or punishment, on the basis of that person's sexual orientation or gender identity.

#### **PRINCIPLE 24. THE RIGHT TO FOUND A FAMILY**

**Everyone has the right to found a family, regardless of sexual orientation or gender identity. Families exist in diverse forms<sup>(a)</sup>. No family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members.**

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure the right to found a family, including through access to adoption or assisted procreation (including donor insemination), without discrimination on the basis of sexual orientation or gender identity<sup>(b)</sup>;
- b) Ensure that laws and policies recognise the diversity of family forms, including those not defined by descent or marriage<sup>(a)</sup>, and take all necessary legislative, administrative and other measures to ensure that no family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members, including with regard to family-related social welfare and other public benefits, employment, and immigration;
- c) Take all necessary legislative, administrative and other measures to ensure that in all actions or decisions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration, and that the sexual orientation or gender identity of the child or of any family member or other person may not be considered incompatible with such best interests;
- d) In all actions or decisions concerning children, ensure that a child who is capable of forming personal views can exercise the right to express those views freely, and that such views are given due weight in accordance with the age and maturity of the child;

unjust persecution, torture, cruel and inhuman treatment, etc.

<sup>(a)</sup> **"Families exist in diverse forms"** - Hidden somewhere near the end of a lengthy document, YP 24 is probably the most insidious point on the agenda that the YP seek to promote. Without openly discussing it, YP 24 introduces a novel concept of 'family' and, by implication, a novel concept of 'marriage'. In the text of YP 24 itself, we find only a vague statement that 'families exist in diverse forms'. Further below, clause b) provides somewhat more detail: it seeks to impose on States *an obligation to recognise 'the diversity of family forms, including those not defined by descent or marriage'*. How a 'family' is to be defined, if it is not defined by descent or marriage, remains completely obscure; the YP do not even attempt to offer any definition. *Yet in all cultures and at all times, families were always defined by descent and marriage, and marriage was always between a man and a woman.* The concept of 'family' promoted by YP 24 appears to be of a purely voluntaristic nature: if the criteria 'descent' and 'marriage' are given up, any group of 2 or more persons can be styled as a 'family' if it chooses to call itself so. Indeed, accepting YP 24 would prohibit States from maintaining the current concept of marriage and family, for which until today there has been a broad inter-cultural and inter-religious consensus. Contrary to the pretensions of its drafters, YP 24 is therefore not promoting Human rights, nor would it contribute to extending them, but it *stands in clear and direct contradiction to Article 16 of the UDHR.*

<sup>(b)</sup> **"access to adoption or assisted procreation"** - Clause a) seeks to create two new 'human rights' (1) a right to adoption and (2) a right to artificial insemination. In actual fact, there are no such 'human rights', neither for different-sex couples, nor for same-sex couples, nor for individuals of whatever sexual orientation. As the ECtHR (*Fretté vs. France*) pointed out, adoption has the purpose of finding parents for a child, not that of finding a child for would-be parents.

<sup>(c)</sup> Clause e) relies on a judgment of the ECJ (*Maruko v. Versorgungswerk der deutschen Bühnen*); that judgment, however, is based on the EC Treaty and not on a universally recognized understanding of human rights. As even the sponsors of the YP cannot avoid recognizing, States *are free* to decide whether or not they recognize same-sex 'marriages' or 'registered partnerships'. It logically follows that they are also free to decide upon the legal effects they give to such

- e) Take all necessary legislative, administrative and other measures to ensure that in States that recognise same-sex marriages or registered partnerships, any entitlement, privilege, obligation or benefit available to different-sex married or registered partners is equally available to same-sex married or registered partners<sup>(a)</sup>;
- f) Take all necessary legislative, administrative and other measures to ensure that any obligation, entitlement, privilege or benefit available to different-sex unmarried partners is equally available to same-sex unmarried partners;
- g) Ensure that marriages and other legally-recognised partnerships may be entered into only with the free and full consent of the intending spouses or partners.

#### **PRINCIPLE 25. THE RIGHT TO PARTICIPATE IN PUBLIC LIFE**

**Every citizen has the right to take part in the conduct of public affairs, including the right to stand for elected office, to participate in the formulation of policies affecting their welfare, and to have equal access to all levels of public service and employment in public functions, including serving in the police and military, without discrimination on the basis of sexual orientation or gender identity<sup>(a)</sup>.**

States should:

- a) Review, amend and enact legislation to ensure the full enjoyment of the right to participate in public and political life and affairs, embracing all levels of government service and employment in public functions, including serving in the police and military, without discrimination on the basis of, and with full respect for, each person's sexual orientation and gender identity;
- b) Take all appropriate measures to eliminate stereotypes and prejudices regarding sexual orientation and gender identity that prevent or restrict participation in public life;
- c) Ensure the right of each person to participate in the formulation of policies affecting their welfare, without discrimination on the basis of, and with full respect for, their sexual orientation and gender identity.

#### **PRINCIPLE 26. THE RIGHT TO PARTICIPATE IN CULTURAL LIFE**

**Everyone has the right to participate freely in cultural life, regardless of sexual orientation or gender identity, and to express, through cultural participation, the diversity of sexual orientation and gender identity<sup>(a)</sup>.**

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure opportunities for the participation in cultural life of all persons, regardless of, and with full respect for, their sexual orientations and gender identities;
- b) Foster dialogue between, and mutual respect among, proponents of the various cultural groups present within the State, including among groups that hold different views on matters of sexual orientation and gender identity, consistently

formalized relationships. There can be no obligation for any State to treat equally cases or situations that, by their nature, are not equal. In actual fact, the obligations for States under Art 16 of the UDHR are of a completely different nature. In the first place, States are obliged to recognize the institution of marriage between one man and one woman. In the second place, they are prevented from diluting that institution, e.g. by recognising 'fake marriages', i.e. marriages consisting of more than two persons, or of persons of the same sex, and conferring the legal effects of marriage also on these. Arguably, the recognition of low-profile 'registered partnerships' would also constitute a violation of Article 16 UDHR, if and where these partnerships have the same legal effects as marriage.

<sup>(a)</sup>Redundant. Under Article 21 of the UDHR these rights are already recognized, not as specific rights for persons with 'diverse sexual orientations', but for *all*. At the same time, it seems at least questionable whether a right to serve in the police or military is included in this right (YP 25 is therefore not a mere restatement, but seeks to postulate a novel right). Given, for example, that serving in the military implies a very close personal contact (including the sharing of sleeping and washing facilities) between recruits, it is at least arguable that non-homosexuals have a right not to be exposed to persons with a homosexual lifestyle.

<sup>(a)</sup> "Right to Participate in Cultural Life" - In the YP context, this right is re-interpreted as meaning: a right to openly exhibit one's own sexual life. What a strange concept of culture!

<sup>(b)</sup>As noted above (see, for example, YP 21), the claim that the YP refer to human rights should be questioned. The reference is not to *real* human rights, but to the strange concept of 'human rights' underpinning the YP.

with respect for the human rights referred to in these Principles<sup>(b)</sup>.

**PRINCIPLE 27. THE RIGHT TO PROMOTE HUMAN RIGHTS**

**Everyone has the right, individually and in association with others, to promote the protection and realisation of human rights at the national and international levels, without discrimination on the basis of sexual orientation or gender identity. This includes activities directed towards the promotion and protection of the rights of persons of diverse sexual orientations and gender identities, as well as the right to develop and discuss new human rights norms and to advocate their acceptance<sup>(a)</sup>.**

States shall<sup>(b)</sup>:

- a) Take all necessary legislative, administrative and other measures to ensure a favourable environment for activities directed towards the promotion, protection and realisation of human rights, including rights relevant to sexual orientation and gender identity;
- b) Take all appropriate measures to combat actions or campaigns targeting human rights defenders working on issues of sexual orientation and gender identity, as well as those targeting human rights defenders of diverse sexual orientations and gender identities;
- c) Ensure that human rights defenders, regardless of their sexual orientation or gender identity, and regardless of the human rights issues they advocate, enjoy non-discriminatory access to, participation in, and communication with, national and international human rights organisations and bodies;
- d) Ensure the protection of human rights defenders, working on issues of sexual orientation and gender identity, against any violence, threat, retaliation, de facto or de jure discrimination, pressure, or any other arbitrary action perpetrated by the State, or by non-State actors, in response to their human rights activities. The same protection should be ensured, to human rights defenders working on any issue, against any such treatment based on their sexual orientation or gender identity;
- e) Support the recognition and accreditation of organisations that promote and protect the human rights of persons of diverse sexual orientations and gender identities at the national and international levels.

**PRINCIPLE 28. THE RIGHT TO EFFECTIVE REMEDIES AND REDRESS**

**Every victim of a human rights violation, including of a violation based on sexual orientation or gender identity<sup>(a)</sup>, has the right to effective, adequate and appropriate remedies. Measures taken for the purpose of providing reparation to, or securing adequate advancement of, persons of diverse sexual orientations and gender identities are integral to the right to effective remedies and redress<sup>(b)</sup>.**

States shall:

- a) Establish the necessary legal procedures, including through the revision of legislation and policies, to ensure that victims of human rights violations on the basis of sexual orientation or

<sup>(a)</sup>Promoting human rights is not only a right but, in a sense, also a moral obligation. However, in the YP the term ‘human rights’ does not refer to any generally accepted concept of human rights, such as that underlying the UDHR. Instead, the term is used as a synonym for the political agenda of a small but vociferous special interest group on the lookout for privileges. As we have pointed out, some points on this agenda even seem to be in direct contradiction to the ‘real’ (i.e. universally recognized) human rights. The highlighted text paradoxically refers to a ‘human right’ to develop and advocate new human rights (which, therefore cannot be recognized as such at the time of such development and advocacy). This is precisely what the YP themselves are doing: the rights they seek to promote are no human rights, but the slogans of a pressure group

<sup>(b)</sup>With these clauses, YP 27 seeks to secure a privileged status for LGBT activist groups, whose radical social agenda is baptized ‘human rights advocacy’, and which are therefore styled as ‘human rights defenders’.

<sup>(a)</sup> “including of a violation based on sexual orientation or gender identity” - Redundant. If the human rights violation really is one, every victim must have the same access to remedies.

<sup>(b)</sup>Having styled LGBT persons as the permanent ‘victims’ of ‘human rights violations’, YP 28 sets out an obligation for States to take measures for the ‘advancement’ of these persons. Once more it seems that the primary purpose of the YP is not to protect human rights, but to seek privileges.

<sup>(c)</sup> “standards in accordance with these Principles” - The pretension that the YP set out ‘human rights standards’ is false.

gender identity<sup>(c)</sup> have access to full redress through restitution, compensation, rehabilitation, satisfaction, guarantee of non-repetition, and/or any other means as appropriate;

- b) Ensure that remedies are enforced and implemented in a timely manner;
- c) Ensure that effective institutions and standards for the provision of remedies and redress are established, and that all personnel are trained in issues of human rights violations based on sexual orientation and gender identity;
- d) Ensure that all persons have access to all necessary information about the processes for seeking remedies and redress;
- e) Ensure that financial aid is provided to those who are unable to afford the cost of securing redress, and that any other obstacles to securing such redress, financial or otherwise, are removed;
- f) Ensure training and awareness-raising programmes, including measures aimed at teachers and students at all levels of public education, at professional bodies, and at potential violators of human rights, to promote respect for and adherence to international human rights standards in accordance with these Principles<sup>(c)</sup>, as well as to counter discriminatory attitudes based on sexual orientation or gender identity.

#### **PRINCIPLE 29. ACCOUNTABILITY**

**Everyone whose human rights, including rights addressed in these Principles<sup>(a)</sup>, are violated is entitled to have those directly or indirectly responsible for the violation, whether they are government officials or not, held accountable for their actions in a manner that is proportionate to the seriousness of the violation. There should be no impunity for perpetrators of human rights violations related to sexual orientation or gender identity<sup>(b)</sup>.**

States shall:

- a) Establish appropriate, accessible and effective criminal, civil, administrative and other procedures, as well as monitoring mechanisms, to ensure the accountability of perpetrators for human rights violations related to sexual orientation or gender identity<sup>(b)</sup>;
- b) Ensure that all allegations of crimes perpetrated on the basis of the actual or perceived sexual orientation or gender identity of the victim<sup>(b)</sup>, including such crimes described in these Principles<sup>(a)</sup>, are investigated promptly and thoroughly, and that, where appropriate evidence is found, those responsible are prosecuted, tried and duly punished;
- c) Establish independent and effective institutions and procedures to monitor the formulation and enforcement of laws and policies to ensure the elimination of discrimination on the basis of sexual orientation or gender identity<sup>(c)</sup>;
- d) Remove any obstacles<sup>(d)</sup> preventing persons responsible for human rights violations based on sexual orientation or gender

<sup>(a)</sup>The pretension that the YP set out 'human rights standards' is false. YP 29, like YP 28, would make States 'accountable' with regard to this erroneous interpretation of human rights.

<sup>(b)</sup>Redundant. There should be no impunity for *any* human rights violation.

<sup>(c)</sup>Clause c) appears to require States to change their constitutional set-up: the 'formulation' of laws would no more be the responsibility of (as one may hope: democratically elected) legislators, but of 'independent and effective institutions'. Independent from whom? From the will of those governed??). Similar considerations apply to the enforcement of law: the YP exhibit distrust against judicial institutions, which, in most democracies, are independent, and seek to replace them by new 'independent and effective institutions'. The exact composition and powers of these novel institutions are not specified. However, there is reason for concern that the sponsors of the YP understand as 'independent' only institutions that are under full control of LGBT advocacy groups, and that they consider 'effective' only procedures in which views and opinions that oppose the radical agenda of these groups cannot be articulated and will not be taken into account.

<sup>(d)</sup> "remove any obstacles" - The sweeping reference to 'any obstacles' could be interpreted widely; it would then include rules and principles that are necessary in a democratic society respecting the rule of law: e.g. the prohibition of certain investigation measures, the application of foreclosure limits, the principle that facts must be proven by the party asserting them, etc. Once more, the YP exhibit a dangerous potential

identity<sup>(b)</sup> from being held accountable.

for undermining the legal systems of States accepting them.

### ADDITIONAL RECOMMENDATIONS

**All members of society and of the international community have responsibilities regarding the realisation of human rights. We therefore recommend that:**

- a) The United Nations High Commissioner for Human Rights<sup>(a)</sup> endorse these Principles, promote their implementation worldwide, and integrate them into the work of the Office of the High Commissioner for Human Rights, including at the field-level;
- b) The United Nations Human Rights Council<sup>(a)</sup> endorse these Principles and give substantive consideration to human rights violations based on sexual orientation or gender identity, with a view to promoting State compliance with these Principles;
- c) The United Nations Human Rights Special Procedures<sup>(a)</sup> pay due attention to human rights violations based on sexual orientation or gender identity, and integrate these Principles into the implementation of their respective mandates;
- d) The United Nations Economic and Social Council<sup>(a)</sup> recognise and accredit non-governmental organisations whose aim is to promote and protect the human rights of persons of diverse sexual orientations and gender identities, in accordance with its Resolution 1996/31;<sup>(b)</sup>
- e) The United Nations Human Rights Treaty Bodies <sup>(a)</sup> vigorously integrate these Principles into the implementation of their respective mandates, including their case law and the examination of State reports, and, where appropriate, adopt General Comments or other interpretive texts on the application of human rights law to persons of diverse sexual orientations and gender identities<sup>(c)</sup>;
- f) The World Health Organization and UNAIDS<sup>(a)</sup> develop guidelines on the provision of appropriate health services and care, responding to the health needs of persons related to their sexual orientation or gender identity, with full respect for their human rights and dignity;
- g) The UN High Commissioner for Refugees<sup>(a)</sup> integrate these Principles in efforts to protect persons who experience, or have a well-founded fear of, persecution on the basis of sexual orientation or gender identity, and ensure that no person is discriminated against on the basis of sexual orientation or gender identity in relation to the receipt of humanitarian assistance or other services, or the determination of refugee status;
- h) Regional and sub-regional inter-governmental organisations<sup>(a)</sup> with a commitment to human rights, as well as regional human rights treaty bodies, ensure that the promotion of these Principles is integral to the implementation of the mandates of their various human rights mechanisms, procedures and other arrangements and initiatives;
- i) Regional human rights courts<sup>(a)</sup> vigorously integrate those Principles that are relevant to the human rights treaties they

<sup>(a)</sup> Typical for the YP: States and Governments are circumvented. The Principles have been drafted by self-proclaimed 'experts' under the false pretension of summarizing existing obligations under international law; they are to be promulgated not by the States and Governments whose (pretended) obligations they concern, but by unelected UN bureaucrats. The sponsors of the YP seem to have fear of a procedure under which they would have to establish a 'real' international consensus.

<sup>(b)</sup> Clause d) appears to specifically target the case of ILGA, the International Gays and Lesbians Association. ILGA is the most important LGBT rights advocacy group, bringing together more than 600 lesbian and gay groups from around the world. It gained consultative status on the UN Economic and Social Council (ECOSOC) as a Non-Governmental-Organization. However, that status was suspended in 1994 after it was noticed that several of ILGA's member associations support and promote pedophilia. Subsequently, ILGA, in an effort to cleanse itself, excluded several organizations whose 'predominant aim (was) to support or promote pedophilia'. However, it is unclear which (if any) action has been taken with regard to groups supporting or promoting pedophilia as a 'secondary' purpose. Since 1994, several attempts have been made by ILGA to re-obtain the coveted consultative status. So far, these attempts have remained unsuccessful. Clause c), it must be noted, does not exclude organizations promoting pedophilia.

<sup>(c)</sup> The UN Treaty monitoring bodies play a key role in the promotion of the LGBT rights agenda. These bodies are not democratically elected, but they assume the roles of supreme judges in the human rights field; holding States and Governments accountable not only with regard to the human rights documents they have signed up to, but also with regard to temerarious interpretations of these documents. In that context, these monitoring bodies appear very receptive to the positions of certain NGOs with a radical social agenda, which, like the bodies themselves, dispose of no democratic legitimation. If recommendation e) is followed, the YP could, despite not having been accepted or endorsed by States, be turned into the law by which de facto they will be judged. This is even highly probable, given that several of the drafters of the YP are actually sitting on these bodies. The democratic principle of separation of powers is apparently not applicable to the YP!

<sup>(d)</sup> The problem with most NGOs is that they have no democratic mandates. This is why the approach of conferring a political role to these organizations is highly questionable.

<sup>(e)</sup> Despite having no democratic mandate and pursuing a questionable and self-serving agenda, LGBT groups should receive funding from Governments. The fact that this would violate the rights of all who are not committed to this particular agenda does not seem to worry the sponsors of the YP.

interpret into their developing case law on sexual orientation and gender identity;

- j) Non-governmental organisations working on human rights at the national, regional and international levels promote respect for these Principles within the framework of their specific mandates<sup>(a)</sup>;
- k) Humanitarian organisations incorporate these Principles into any humanitarian or relief operations, and refrain from discriminating against persons on the basis of sexual orientation or gender identity in the provision of aid and other services;
- l) National human rights institutions promote respect for these Principles<sup>(a)</sup> 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;
- m) Professional organisations, including those in the medical, criminal or civil justice, and educational sectors, review their practices and guidelines to ensure that they vigorously promote the implementation of these Principles;
- n) Commercial organisations acknowledge and act upon the important role they have in both ensuring respect for these Principles with regard to their own workforces and in promoting these Principles nationally and internationally;
- o) The mass media avoid the use of stereotypes in relation to sexual orientation and gender identity, and promote tolerance and the acceptance of diversity of human sexual orientation and gender identity, and raise awareness around these issues;
- p) Governmental and private funders provide financial assistance, to non-governmental and other organisations, for the promotion and protection of the human rights of persons of diverse sexual orientations and gender identities<sup>(a)</sup>.

**These Principles and Recommendations** reflect the application of international human rights law to the lives and experiences of persons of diverse sexual orientations and gender identities<sup>(a)</sup>, and nothing herein should be interpreted as restricting or in any way limiting the rights and freedoms of such persons as recognised in international, regional or national law or standards.

<sup>(a)</sup>It is self-evident that this statement is mere pretension. In truth, these Principles and recommendations constitute a novel interpretation of human right, if they are not in direct contradiction to them.

## ANNEX

### SIGNATORIES TO THE YOGYAKARTA PRINCIPLES

**Philip Alston** (Australia), UN Special Rapporteur on extrajudicial, summary and arbitrary executions and Professor of Law, New York University School of Law, USA

**Maxim Anmeghichean** (Moldova), European Region of the International Lesbian and Gay Association

**Mauro Cabral** (Argentina), Researcher Universidad Nacional de Córdoba, Argentina, International Gay and Lesbian Human Rights Commission

**Edwin Cameron** (South Africa), Justice, Supreme Court of Appeal,

Bloemfontein, South Africa

**Sonia Onufer Corrêa** (Brazil), Research Associate at the Brazilian Interdisciplinary AIDS Association (ABIA) and co-chair of Sexuality Policy Watch (Co-Chair of the experts' meeting)

**Yakin Ertürk** (Turkey), UN Special Rapporteur on Violence against Women, Professor, Department of Sociology, Middle East Technical University, Ankara, Turkey

**Elizabeth Evatt** (Australia), Former member and chair of the UN Committee on the Elimination of Discrimination Against Women, former member of the UN Human Rights Committee and Commissioner of the International Commission of Jurists

**Paul Hunt** (New Zealand), UN Special Rapporteur on the right to the highest attainable standard of health and Professor, Department of Law, University of Essex, United Kingdom

**Asma Jahangir** (Pakistan), Chairperson, Human Rights Commission of Pakistan

**Maina Kiai** (Kenya), Chairperson, Kenya National Commission on Human Rights

**Miloon Kothari** (India), UN Special Rapporteur on the right to adequate housing

**Judith Mesquita** (United Kingdom), Senior Research Officer, Human Rights Centre, University of Essex, United Kingdom

**Alice M. Miller** (United States of America), Assistant Professor, School of Public Health, Co-Director, Human Rights Program, Columbia University, USA

**Sanji Mmasenono Monageng** (Botswana), Judge of the High Court (The Republic of the Gambia), Commissioner of the African Commission on Human and Peoples' Rights, Chairperson of the Follow Up Committee on the implementation of the Robben Island Guidelines on prohibition and prevention of Torture and other Cruel, Inhuman or Degrading Treatment (African Commission on Human and Peoples' Rights)

**Vitit Muntarbhorn** (Thailand), UN Special Rapporteur on the human rights situation in the Democratic People's Republic of Korea and Professor of Law at Chulalongkorn University, Thailand (Co-Chair of the experts' meeting)

**Lawrence Mute** (Kenya), Commissioner with the Kenya National Commission on Human Rights

**Manfred Nowak** (Austria), UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; member of the International Commission of Jurists, Professor of Human Rights at Vienna University, Austria and Director of the Ludwig Boltzmann Institute of Human Rights

**Ana Elena Obando Mendoza** (Costa Rica), feminist attorney, women's human rights activist, and international consultant

**Michael O'Flaherty** (Ireland), Member of the UN Human Rights Committee and Professor of Applied Human Rights and Co-Director of the Human Rights Law Centre at the University of Nottingham, United Kingdom (Rapporteur for development of the Yogyakarta

Principles)

**Sunil Pant** (Nepal), President of the Blue Diamond Society, Nepal

**Dimitrina Petrova** (Bulgaria), Executive Director, The Equal Rights Trust

**Rudi Mohammed Rizki** (Indonesia), UN Special Rapporteur on international solidarity and senior Lecturer and Vice Dean for Academic Affairs of the Faculty of Law at the University of Padjadjaran, Indonesia

**Mary Robinson** (Ireland), Founder of Realizing Rights: The Ethical Globalization Initiative and former President of Ireland and former United Nations High Commissioner for Human Rights

**Nevena Vuckovic Sahovic** (Serbia), Member of the UN Committee on the Rights of the Child and President of the Child Rights Centre, Belgrade, Serbia

**Martin Scheinin** (Finland), UN Special Rapporteur on human rights and counter-terrorism, Professor of Constitutional and International Law and Director of the Institute for Human Rights, Åbo Akademi University, Finland

**Wan Yanhai** (China), Founder of the AIZHI Action Project and director of Beijing AIZHIXING Institute of Health Education

**Stephen Whittle** (United Kingdom), Professor in Equalities Law at Manchester Metropolitan University, United Kingdom

**Roman Wieruszewski** (Poland), Member of the UN Human Rights Committee and head of Poznan Centre for Human Rights, Poland

**Robert Wintemute** (Canada and United Kingdom), Professor of Human Rights Law, School of Law, King's College London, United Kingdom.