

## *The Yogyakarta Principles - an Overview*

### 《日惹原则》概述

The Yogyakarta Principles address a broad range of international human rights standards and their application to issues of sexual orientation and gender identity. This Overview provides a short outline of the Principles, and some examples of their application.

**Please refer to the Principles themselves for a detailed awareness of the text.**

针对性倾向与性别认同问题，《日惹原则》发表了一系列国际人权标准以及对这些标准的应用。此概述是《日惹原则》一个简要提纲与应用的例子。

**Preamble:** The Preamble acknowledges human rights violations based on sexual orientation and gender identity, establishes the relevant legal framework, and provides definitions of key terms.

导言 导言中申明了基于性倾向与性别认同的违反人权事实，建立了相关的法律框架，提供了关键术语的解释。

**Rights to Universal Enjoyment of Human Rights, Non-Discrimination and Recognition before the Law:** Principles 1 to 3 set out the principles of the universality of human rights and their application to all persons without discrimination, as well as the right of all people to recognition before the law.

广泛享有的人权，在法律面前的反歧视与认同：原则 1 至 3，规定了人权的广泛性，广泛人权的非歧视应用，法律面前每个人都应该得到认同的原则。

*Example:*

- Laws criminalising homosexuality violate the international right to non-discrimination (decision of the UN Human Rights Committee).

例如：“同性恋非法化”的法律规定违反了反歧视的国际权利条约（见联合国人权委员会的决议）。

**Rights to Human and Personal Security:** Principles 4 to 11 address fundamental rights to life, freedom from violence and torture, privacy, access to justice and freedom from arbitrary detention.

人类与个人安全的权利：原则 4 至 11 涉及到生命基本权，免于暴力与折磨，隐私，获得正义和免于随意拘留的权利。

*Examples:*

- The death penalty continues to be applied for consensual adult sexual activity between persons of the same sex, despite UN resolutions emphasizing that the death penalty may not be imposed for “sexual relations between consenting adults.”
- Eleven men were arrested in a gay bar and held in custody for over a year. The UN Working Group on Arbitrary Detention concluded that the men were detained in violation of international law, noting with concern that “one of the prisoners died as a result of his arbitrary detention”.

例如：

- 1、尽管联合国坚决强调，死刑不能用于发生在成人间、双方自愿基础上的性关系，但是死刑仍然适用在成人之间的、双方同意的同性之间的性行为。
- 2、已有 11 位男性在同志吧中遭拘捕，被关押 1 年多。联合国暴力拘留调查工作组认定，这些拘留事件违反了国际法，并格外提到，“其中一名‘犯人’还死于暴力拘捕”。

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

经济、社会和文化权利：原则 12 至 18 规定了在广泛享有经济、社会和文化权利基础上反歧视的重要性，这些权利包括就业、居住、社会安全、教育和健康等方面。

*Examples:*

- Lesbian and transgender women are at increased risk of discrimination, homelessness and violence (report of UN Special Rapporteur on adequate housing).
- Girls who display same-sex affection face discrimination and expulsion from educational institutions (report of UN Special Rapporteur on the right to education).

## DRAFT – NOT FOR CIRCULATION

- The UN High Commissioner for Human Rights has expressed concern about laws which “prohibit gender reassignment surgery for transsexuals or require intersex persons to undergo such surgery against their will”.

例如：

- 1、女同性恋与跨性别的女性遭受歧视、无处可居、暴力侵犯的风险加大（见联合国关于足够住房调查特别报告人的报告）。
- 2、表现出同性爱倾向的女孩遭遇歧视和面临着从教育机构被驱逐出去的问题（见联合国受教育权特别报告人报告）。
- 3、联合国高级人权官员对这些法律予以关注，如禁止为想变性人群提供外科手术，或者违反本人的意志，强行要求两性人进行外科手术的问题。

**Rights to Expression, Opinion and Association:** Principles 19 to 21 emphasise the importance of the freedom to express oneself, one’s identity and one’s sexuality, without State interference based on sexual orientation or gender identity, including the rights to participate peaceably in public assemblies and events and otherwise associate in community with others.

言论、建议和集会的权利：原则 19 至 21 强调自我表达的自由，包括表达性别认同和性倾向，也包括以和平的方式参与公共集会和事件，联合社区的其他人士。

*Example:*

- A peaceful gathering to promote equality on the grounds of sexual orientation and gender identity was banned by authorities, and participants were harassed and intimidated by police and extremist nationalists shouting slogans such as “Let’s get the fags” and “We’ll do to you what Hitler did with Jews” (report of the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia & related intolerance).

例如：

基于性倾向和性别认同而推动平等的和平集会遭到当局的禁止，参加集会的人遭到警察和极端的民族主义者的骚扰与胁迫，他们叫嚣着这样的口号“我们来政治你们这些同志”，“我们将像希特勒对待犹太人一样对待你们”（见联合国关于当代各种种族主义、种族歧视，仇外以及相关的偏狭特别报告人的报告）。

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

行动自由和寻求庇护的权利：原则 22 和 23 强调了个人寻求庇护，免于基于性倾向和性别认同迫害的权利。

*Example:*

- Refugee protection should be accorded to persons facing a well-founded fear of persecution based on sexual orientation (Guidelines of the United Nations High Commissioner for Refugees).

例如

应为面临着实实在在地遭受着基于性倾向迫害的人提供难民庇护。（联合国高级难民专员）

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

参加文化和家庭生活的权利：原则 24 至 26 强调了参与家庭生活、公共事务和社群文化生活的权利，不得有基于性倾向或性别认同的歧视。

*Example:*

- States have an obligation not to discriminate between different-sex and same-sex relationships in allocating partnership benefits such as survivors’ pensions (decision of the UN Human Rights Committee).

例如：

在分配伴侣的权益，如养老金时，国家有义务不因同性、异性之别而作歧视性处理。

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

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人权捍卫者的权利；原则第 27 条认可辩护与促进人权的权利，反对基于性倾向和性别认同的权利，国家有义务保护在这个领域工作的人权捍卫者。

### *Examples:*

- Human rights defenders working on sexual orientation and gender identity issues in countries and regions around the world “have been threatened, had their houses and offices raided, they have been attacked, tortured, sexually abused, tormented by regular death threats and even killed. A major concern in this regard is an almost complete lack of seriousness with which such cases are treated by the concerned authorities.” (report of the Special Representative of the UN Secretary-General on Human Rights Defenders).

例如：世界各国和地区从事性倾向和性别认同问题工作的人权捍卫者遭到威胁，住宅与办公室遭侵犯，他们本人被攻击、折磨、性虐待，经常性地遭受死亡的威胁，甚至被杀死。一个主要的问题是，这种问题几乎完全没有引起相关权威机构的重视。

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

申请救助与问责的权利：原则的第 28 和 29 条确认了保留追究侵权者责任的权利的重要性，并确保向侵权者索取适当经济赔偿的权利。

### *Example:*

- The UN High Commissioner for Human Rights has expressed concern about “impunity for crimes of violence against LGBT persons” and “the responsibility of the State to extend effective protection.” The High Commissioner notes that “excluding LGBT individuals from these protections clearly violates international human rights law as well as the common standards of humanity that define us all.”

例如：

联合国的人权高级专员开始关注“对同性恋/跨性别/双性恋人群暴力侵犯犯罪”和“国家有责任提供有效保护”的问题。高级专员提到，“将同性恋/双性恋/跨性别人群排斥在保护之外明显是违反了国际人权法，也违反了我们界定的基本的人性标准”。

**Additional Recommendations:** The Principles set out 16 additional recommendations to national human rights institutions, professional bodies, funders, NGOs, the High Commissioner for Human Rights, UN agencies, treaty bodies, Special Procedures, and others.

进一步建议：《日惹原则》向国家人权机构，专业团体，基金会，非政府组织，人权高级专员，联合国机构，缔约团体，特别程序和其他机构提出了 16 条进一步的建议。

### *Example:*

- The Principles conclude by recognising the responsibility of a range of actors to promote and protect human rights and to integrate these standards into their work. A joint statement delivered at the UN Human Rights Council by 54 States from four of the five UN regions on 1 December 2006, for example, urges the Human Rights Council to “pay due attention to human rights violations based on sexual orientation and gender identity” and commends the work of civil society in this area, and calls upon “all Special Procedures and treaty bodies to continue to integrate consideration of human rights violations based on sexual orientation and gender identity within their relevant mandates.” As this statement recognises, and the Yogyakarta Principles affirm, effective human rights protection truly is the responsibility of all.

例如：

原则认可各参与者促进和保护人权的责任，并将这些标准与他们的工作结合。2006 年 12 月 1 日，联合国 4 个地区的 54 个国家在联合国人权理事会上发表了一项联合声明，声明督促人权理事会应该对基于性倾向和性别认同的违权行为给予应有的重视，评价了这些地区市民社会的工作，号召启动特别程序和法律实体来持续地一同来解决基于性倾向与性别认同的违反人权行为。随着申明得到认可，《日惹原则》认定有效地人权保护是所有人的责任。