

Implementation of the Yogyakarta Principles: Key Factors for Implementation in  
Montenegro and Achievements in Implementation in Other Parts of the World  
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I would like to thank the Ministry of Human Rights and Minorities, the Ministry of Foreign Affairs and European Integration, and the Adviser of the Prime Minister for Human Rights And Protection From Discrimination for hosting today's roundtable. I would also like to recognize the participation of officials from the Ministry of Health, the Ministry of Interior Affairs, the Ministry of Labor and Social Welfare and the Ministry of Justice for participating in today's event. I would like to give special acknowledgement to the representatives from NGOs here today. The wide array of attendees signifies the collective commitment to respecting, protecting and fulfilling the human rights of lesbian, gay, bisexual and transgender people in Montenegro.

On May 9, 2013, the government of Montenegro adopted the Strategy for Improving the Quality of Life for LGBT Persons, 2013-2018. Embedded in that document is the goal of supporting the adoption and implementation of international human rights standards, including the Yogyakarta Principles. Those principles, recently translated into Montenegrin, are the basis for today's roundtable. The principles were developed by an esteemed group of international human rights experts who sought to answer the following question: what are the obligations of governments under current human rights law?

As one UN guidance document states, the "Yogyakarta Principles reflect binding international legal standards."<sup>1</sup> The Commissioner for Human Rights of the Council of Europe has suggested that "all governments of the Council of Europe Member States ...should study the document and build on its principles through concrete action. In fact, some of the Member States have already made them an integral part of their human rights policies." In the spirit of this suggestion, this roundtable will be discussing how the Principles can be implemented. I have been asked to comment on the use of the Principles in other countries and to make some observations about implementation of the Principles in Montenegro.

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<sup>1</sup> *Guidance Note On Refugee Claims Relating To Sexual Orientation And Gender Identity*, United Nations High Commissioner for Refugees, Protection Policy and Legal Advice Section Division of International Protection Services, Geneva, 21 November 21, 2008, p.7.

The first, and possibly most basic, element of the Principles which has gained acceptance has been the delineation of the population to which they apply. The Principles are based on the notion that all humans have a sexual orientation and gender identity, and that human rights are universally shared by all. In particular situations, governments may disfavor people with certain sexual orientations and gender identities. Implementation of the principles may focus on LGBT populations, but the underlying rights are shared by all.

Secondly, the Yogyakarta Principles have helped to sort out a complex normative system of multiple treaties and multiple mechanisms. By distilling some of the most relevant and urgent rights into one list, the Principles have helped communicate the obligations of governments and the needs of LGBT people. Governments can reference the Yogyakarta Principles in those fora where a recitation of these rights may not be possible.

For example, at the UN Human Rights Council, the Czech Republic, Finland, and Slovenia all agreed during their Universal Periodic Reviews to look to the Yogyakarta Principles as the standard for developing future policy, rather than having to reference the litany of rights encompassed by the Principles. National legislatures in Argentina, Brazil, Canada, Uruguay, the Netherlands, Germany and Mexico have introduced or passed bills citing the Yogyakarta Principles as among the documents outlining international human rights law. Brazil's Ministry of Education, Bolivia's Justice Ministry, Ecuador's Ministry of Public Health, Spain's Social Affairs Ministry, and the Foreign Ministries of Belgium, the Netherlands and the United Kingdom, and the National Human Rights Institutions of several countries in the Asian Pacific Forum have actively engaged in a process of examining whether domestic law in their respective countries fulfills the standards set out in the Yogyakarta Principles.

Today's conference will focus on two principles: the right to work, and the right to security of the person. The International Lesbian and Gay Association Europe Rainbow Map Index shows that Montenegro has adopted a number of legal standards in the areas of equality, bias-motivated violence and freedom of assembly. In some areas, Montenegro's statutory scheme is among the best in the world. However, the enduring struggle in the pursuit of human rights is to translate legal norms to the lived experience. Jobs and safety are among the primary concerns of all Montenegrins.

Principle Twelve states that "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."<sup>2</sup> This

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<sup>2</sup> The Principles also recommend that states:

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,

Principle is based on Article Twenty-Three of the Universal Declaration of Human Rights and is echoed in greater detail in United Nations treaties, the International Labor Organization Conventions, and the European Social Charter.<sup>3</sup>

Like all the rights listed in the Yogyakarta Principles, the right to work includes the prohibition of discrimination. However, the right to work is not just about being treated the same as everyone else. Simply overlaying a principle of equality on the activity of work does not fully recognize the powerfully important role of work in the lives of Montenegrins. Work can determine the standard of living of the worker and those in their household. It can be both a product of, and a prerequisite for, education, health, safety and participation. It can be how an individual contributes to a nation, and how a nation supports its citizens. Work is part of the social web. In a survey a few years ago, 50.7 per cent of Montenegrins said they found their jobs through personal friendships.<sup>4</sup> Secure work consistently ranks as a concern for young Montenegrins, and the high youth unemployment rate in Montenegro is a central social concern.

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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.

<sup>3</sup> The International Convention on Economic, Social and Cultural Rights, article (6)1, provides in article 6(1) for the "right to work, which includes the right of everyone to the opportunity to gain his living by work." It also says, in article 6(2) that "the full realization of this right shall include technical and vocational guidance and training programmes." Under article 1(2) of ILO Convention No. 122 each member shall ensure that "there is work for all who are available for and seeking work." Article 1 of the European Social Charter states: With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake:

1. to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;
2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;
3. to establish or maintain free employment services for all workers;
4. to provide or promote appropriate vocational guidance, training and rehabilitation.

<sup>4</sup> Nedjeljka Sindik, *Minority Access to Employment in Montenegro*, Minority Rights Group International, 2006

More than non-discrimination, I would state the right to work as the right of everyone to the circumstances and opportunities to gain a living by work which is freely chosen and accepted. The state respects this right by not interfering with a person's opportunities and choices. The state protects this right by preventing others from limiting opportunities. And it fulfills it by promoting circumstances for each person to obtain and maintain employment.

Implementation of this right in Montenegro includes seeking to have each person, including LGBT people, well-educated, healthy, safe and employable. One other step might be to engage in data gathering to determine the educational attainment levels among LGBT people, to find out whether they can find jobs, and to understand how workplace climates influence their ability to maintain employment. The question is not just whether employers are acting non-discriminatorily, but whether individual LGBT people can find and retain jobs.

On a larger scale, the Montenegrin government is concerned about the economy. To survive the economic crises, Montenegro must continue to attract new capital investment, but also how increase productivity and rebalance the economy to one where growth is driven by productivity as opposed to outside investment. Seeking inclusion of LGBT workers is an economic issue. The relationship between inclusion and economic growth can be traced through several processes.<sup>5</sup>

First, LGBT inclusion is a step in increasing integration between the Montenegrin and the global economy in order to attract investment. Montenegro has done a superlative job of modernizing its legal scheme so that it can integrate into the legal standards of the international system. What I am suggesting here is that Montenegro examine the business environment in the same way. Most of the largest firms in the world have non-discrimination policies for their LGBT workers. Increasingly, LGBT people are also becoming more visible as business owners and leaders throughout Europe. An effort to strategically modernize the Montenegrin business climate would entail taking measures to ensure that workplaces in Montenegro reflect the principles of inclusion and productivity that are developing on other countries.

A second connection between inclusion and economic growth is referred to as the "business case for diversity." This analysis proposes that businesses open to diversity can decrease the cost of doing business and increase productivity and profits. Loyal workers produce more. Business can also attract a broader scope of applicants and business partnerships. For an LGBT person, hiding one's life from one's colleagues limits those workplace relationships that can be vital to advancement and productivity, and creates stress and distraction that can result in additional costs for businesses.

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<sup>5</sup> Several studies are listed at <http://williamsinstitute.law.ucla.edu/headlines/research-on-lgbt-workplace-protections/>.

Third, developing the skills and abilities of LGBT people results in an increase in the human capital in the workforce. Improving skills in Montenegro's labor force is a long-term goal in order for Montenegro's economy to be more competitive. This includes modernizing higher education, and tailoring practical skills and vocational training and lifelong learning to private sector demand.<sup>6</sup> Again, a good, fair system of higher education and vocational training for LGBT people is not just an issue of rights, it is one of economic success.

Implementing the right to work includes fully prosecuting those employers alleged to have discriminated against LGBT workers. Additionally, the Montenegrin government should gather data to understand the experiences of LGBT workers, managers and business owners. LGBT issues should be included in trainings of human resource managers and meetings of business associations. NGOs and civil society should also view economic issues and LGBT issues, and seek inclusion of LGBT perspectives in economic debates.

The second right to be discussed in today's conference is Principle Five, the Right to security of the Person: "Everyone, regardless of sexual orientation or gender identity, 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."<sup>7</sup>

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<sup>6</sup> *Executive Summary, Montenegro: Preparing for Prosperity Ensuring Sustainability, Connectivity, and Flexibility for Dynamic Growth, Country Economic Memorandum, Report No. 73826-ME, Poverty Reduction and Economic Management Unit Europe and Central Asia Region, World Bank, December 21, 2012.*

<sup>7</sup> The Principles include the following recommendations to States:

- 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;
- 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, 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.

The Principles, in their recommendations to states, recognize the necessity for each component of the criminal justice system to respond to anti-LGBT violence. Montenegrin police have made strong, visible efforts to protect LGBT events over the past several years.<sup>8</sup> However, the lack of response by the Office of the Supreme State Prosecutor remains a serious barrier to realization of the right to security. Prosecutions of bias-motivated violence act as a lighthouse to those considering engaging in such violence.

The high number of arrests and well-documented instances of violence and injury at the recent Pride event in Budva spotlight the concerns. I recommend that the Supreme State Prosecutor publically clarify the evidentiary standards used to determine whether crimes qualify as misdemeanors or felonies, as well as clarify the administrative process to transfer accountability on an investigation from the Office of the Police to the Office of the Prosecutor. I also recommend that the Supreme State Prosecutor appoint a liaison to work with LGBT civil society organizations and that such a liaison has the ability to initiate discussions with each of the local prosecutors. Finally, the prosecutor should initiate prosecutions of violent felony-level crimes against LGBT people and endeavor to keep the victims of those crimes informed as to the status of the litigation.

I would like to thank the organizers of this roundtable for offering me the opportunity to participate, and commend the participants in their efforts to consider the human rights of LGBT people.

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<sup>8</sup> Police activities have generally conformed to the series of activities outlined in the <http://www.osce.org/odihr/39821?download=true>

