



**Submission to the Human Rights Council at the 36th Session
of the Universal Periodic Review:
Mongolia**

**Submission by:
LGBT Centre**

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This report is submitted by the LGBT Centre of Mongolia, an NGO established in 2007 and officially registered in 2009. This report deals with sexual minorities' human rights in Mongolia and refers specifically to the situation facing lesbian, gay, bisexual, transgender and intersex (LGBTI) people. The report was compiled based upon the Centre's systematic documentation of various violations against LGBTI people, including social perceptions of sexuality, violence and discrimination against LGBTI people, and the lack of institutional protection and redress mechanisms.

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Summary

1. This submission examines enjoyment of the rights to equality and non-discrimination for lesbian, gay, bisexual, transgender and intersex (LGBTI) persons in Mongolia. Building upon first-hand testimony, collected by the LGBT Centre, it indicates that discrimination against LGBTI persons in Mongolia is endemic; with individuals experiencing ostracism, harassment and, in some cases, violence, in multiple areas of life. Whilst this report is not intended to be comprehensive, it demonstrates both the spread and severity of patterns of discrimination affecting the LGBTI community in Mongolia. Such discrimination can only be addressed through the adoption of comprehensive equality legislation. As such, we urge states participating in the review of Mongolia to recommend that the state enacts such legislation, in consultation with civil society organisations and other stakeholders.
2. Between 2010 and 2015, as a result of the LGBT Centre's international advocacy efforts, a total of 25 UPR recommendations were made by states to Mongolia, urging the increased recognition and protection of rights for LGBTI persons. Despite these recommendations, as indicated below, intolerance and discrimination persist.

National Legal Framework

Status of International Law

3. Mongolia is a party to eight of the nine core UN human rights treaties, alongside other relevant human rights instruments. Under Article 10 of the Constitution, the state is required to “adhere to universally recognized norms and principles of international law”,¹ and “fulfil in good faith its obligations under international treaties to which it is a party”.² International treaties ratified by the state, “shall become effective as national legislation upon the entry into force of the laws or on their ratification or accession”.³

Need for Comprehensive Equality Law

4. Article 14 of the Mongolian Constitution provides for the equality of all persons lawfully resident within the state before the law and courts. Further:

*No person shall be discriminated against on the basis of ethnic origin, language, race, age, sex [gender], social origin and status, property and assets, employment occupation and official position, religion and conscience, conviction and opinion, and education. Every human being shall be a legal person.*⁴

5. This provision contains a number of shortcomings that undermine rights to equality and non-discrimination in practice. Discrimination is not defined, leaving the scope of protection and the forms of discrimination which are prohibited unclear. The Constitution does not specifically require the adoption of positive action measures to address substantive inequalities, in line with

¹ Constitution of Mongolia, 1992, Article 10(1).

² Constitution of Mongolia, 1992, Article 10(2).

³ Constitution of Mongolia, 1992, Article 10(3).

⁴ Constitution of Mongolia, 1992, Article 14(2).

international standards,⁵ and best practice.⁶ The list of protected grounds is closed and omits reference to several personal characteristics recognised under international law, including sexual orientation and gender identity.⁷ Whilst Article 14 of the Criminal Code makes discrimination, *inter alia*, on the grounds of sexual orientation and gender identify, as a crime, as discussed elsewhere, international best practice requires that discrimination be treated as a matter of civil law rather than criminal law.⁸

6. Despite weaknesses in the domestic legal framework, contrary to the recommendations of states⁹ and UN treaty bodies¹⁰ Mongolia has failed to adopt comprehensive equality legislation in line with its international human rights obligations.¹¹

OVERARCHING RECOMMENDATION

7. Mongolia should adopt comprehensive equality legislation appropriate for the implementation of the rights to equality and non-discrimination. Such legislation should *inter alia* prohibit all forms of discrimination, on all grounds recognized at international law (including sexual orientation and gender identity) and in all areas of life regulated by law; require the adoption of positive action measures to address substantive inequalities; and provide the procedural safeguards necessary for the effective functioning of the rights protected therein. The state should engage in further meaningful consultations with civil society in the development of such a law and establish an independent equality body with a large mandate and institutional guarantees to secure its enforcement.

Patterns of Discrimination and Inequality

8. In the absence of comprehensive equality legislation, as discussed below, LGBTI persons are

⁵ See, for instance, Convention on the Elimination of All Forms of Discrimination against Women, Article 4; International Convention on the Elimination of All Forms of Racial Discrimination, Article 1(4).

⁶ *Declaration of Principles on Equality*, Equal Rights Trust, London, 2008, Principle 3.

⁷ Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights*, UN Doc. E/C.12/GC/20, 2009, Para 32.

⁸ For further discussion of the reasons why criminal prohibition of discrimination contradicts international best practice, see Equal Rights Trust, *A Past Still Present: Addressing Discrimination and Inequality in Egypt*, 2018, pp. 53-54.

⁹ See, for instance, Committee on the Elimination of Racial Discrimination, Concluding Observations: Mongolia, UN Doc. CERD/C/MNG/CO/23-24, 17 September 2019, Para 8.

¹⁰ See for instance, Human Rights Council, Report of the Working Group on the Universal Periodic Review, UN Doc. A/HRC/30/6, 13 July 2015, Recommendations 108.19, 108.20, 108.41, and 108.42.

¹¹ See Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights*, UN Doc. E/C.12/GC/20, 2009, Para 37; Committee on the Rights of Persons with Disabilities, *General Comment No. 6: Equality and Non-Discrimination*, UN Doc. CRPD/C/GC/6, 2018, Para 22.

denied access to their rights, and face discrimination in multiple areas of life.¹²

Violence against LGBTI Persons

9. Evidence gathered by the LGBT Centre suggests that forms of violence against LGBTI people are commonplace in Mongolia. Perpetrators of hate crimes (even if and when victims report such cases and attempt criminal prosecution), act with impunity, which has led to a loss of trust in the justice system by the LGBT community. Familial violence – both physical and psychological – is particularly common when a person’s sexuality and/or gender identity has become known or is suspected.

Case Study 1

In September 2019, an official ultra-nationalist NGO, “Bosoo Khukh Mongol” along with TV4-TV station attacked a transgender woman, N, in a hotel and threatened and forced her to give an interview, then broadcasted the interview. The attackers publicly announced that they will continue to discriminate against transgender people and posted a detailed plan of how they would humiliate transgender persons. One such hate speech was posted on facebook by the director of the NGO, “.we will impinge on the “rights” that they talk about so much, and will insult them, we will shave their heads, wash their faces, strip them and take their nude photos to disgrace them...” The same NGO held a press conference and publicly threatened transgender people.

10. Testimony gathered from the LGBTI community suggests that the harassment of LGBTI persons by members of law enforcement, including covert surveillance of known LGBTI persons, monitoring of LGBTI social events, arbitrary detention, intimidation, threats of, and actual, and physical violence is widespread and pervasive. It also suggests that there it is necessary to develop relevant legislation to guarantee the effective protection of the human rights of LGBTI persons and undertake impartial investigations regarding allegations of attacks against LGBTI persons.

Case Study 2

In 2017, M, transgender woman, was tackled, had her arms pinned above her head and striped to expose her chest and genital by police officers at the police station in front of many people. The officers used extremely transphobic speech. M reported this case to the LGBT Centre and the Mongolian National Human Rights Commission. The Commission concluded that act tantamount to torture had occurred against M and that the police stations need to abide by the Mongolian laws and the international treaties. Despite the gravity of this misconduct by the police officers tantamount to torture of M in the police custody, the Commission did not recommend anything to restore M’s rights and did not assist further when M’s complaints to the Metropolitan Police Department and the General Police Department were dismissed by the above institutions without due investigations. M’s complaints have led to the situation of a possible retaliation by the police officers and further endangerment of her life

Case Study 3

In 2017, O was attacked by two strangers on the street due to O’s gender identity and expression. O outreached to the LGBT Centre and the Centre documented the case. After this incident, strangers came to O’s home and threatened O. The Centre took security measures and assisted O with a safer place to

¹² Contrary to recommendations made by states in Mongolia’s most recent Universal Periodic Review. See Human Rights Council, *Report of the Working Group on the Universal Periodic Review*, UN Doc. A/HRC/30/6, 13 July 2015, Recommendations 108.21; 108.53; 108.54; 108.55; 108.56; 108.57; 108.58; 108.59; and 108.60.

stay and made an official complaint at the police station. Despite this crime was publicly broadcasted and attackers were caught on videos, the police did not find the attackers.

Case Study 4

In 2018, the LGBT Centre staff, B, was contacted by a stranger about a missing youth. B was asked to assist the stranger to locate the youth through his LGBTI network. The stranger tricked and brought B to the police station where B learned that there was a complaint of child seduction against the LGBT Centre by the family. The youth participated in the Equality Walk. The Walk was organized just three days ago. The police summoned the executive director, M, of the Centre afterwards on the same day. The police sent the family to bring someone from the Centre. On the way to the police station they verbally abused B and threatened to kill him. Outside of the police station the family threatened to kill B, M and even tried to stone them. Despite being seen as being subjected to abuse, the police did nothing to prevent abuse or any action. The B, M requested protection from the police station to safely leave the police station but the request was denied. The complaint had no legal ground but the B, M were held and questioned seven hours at the police station.

Case Study 5

During the Equality Walk in 2019, the police demanded that children should not be involved in the Walk which has no legal ground. Before the Walk started, police asked a woman not to participate in the Walk because she brought her children. They could not partake. During the Walk, another woman with a child was asked to leave.

Same-sex couples and their children:

11. Prejudice against LGBTI persons severely impacts upon their ability to live wherever they choose, and with whomever they choose. Testimony and case studies documented by the Centre from LGBTI persons indicate that LGBTI persons are discriminated against in the housing sector and are denied housing or evicted if it is suspected that they are cohabiting with their same-sex partners. If LGBTI persons choose to cohabit, they do so under the pretext of being friends, relatives or co-workers. Mongolia continues to frame its human rights discourse in a heteronormative and narrow manner, a prime example of which is the official Mongolian-language translation of the UN Convention on Consent to Marriage which Mongolia acceded in April 1991. Preamble 2 of the Convention, which states that “Marriage shall be entered into only with the free will and consent of intending spouses”, is mistranslated as “Marriage shall be entered into only with the free will and consent of a man and a woman”, thus illustrating the state’s deeply heteronormative notion of marriage. By not fulfilling its international obligation to recognise and legitimise same-sex marriages, and by reinforcing a heteronormative family framework, the Government is acting in a discriminatory manner towards same-sex family units, and in so doing is denying the right of same-sex couples to be recognised as a “natural and fundamental group unit of society” entitled to the “the widest possible protection and assistance” as stipulated in Article 10 (1) of the International Covenant on Economic, Social and Cultural Rights. As a result, children born in same-sex families are less protected than children born in heterosexual marriages.

Education

12. Within the education system, there is a lack of information on sexual orientation and gender identity, and stereotypes regarding LGBTI persons are prevalent. Violence and discrimination at home/schools appears common, and has been identified as a major barrier to the realisation

of rights for LGBTI children.¹³ To date, little has been done by government to address this issue, leading to the continued marginalisation of LGBTI children in schools:

[T]hey don't have any regard for human rights, especially when it comes to various types of discrimination. When I see my teachers, peers and family, I can see that they have no clue about what I deal with everyday.¹⁴

13. In 2016, the LGBT Centre completed a participatory assessment on the situation of LGBT children and adolescents in Mongolia, which consisted of individual interviews and a series of focus group discussions. The results of the assessment were alarming:
 - 79% of those LGBT children interviewed faced some form of discrimination or ostracism because of their sexual orientation and gender identity.
 - 45.16% of the LGBT children faced discrimination, violence or ostracism at home.
 - 21% of the LGBT children had access to some level of information on sexual orientation in education.¹⁵

Healthcare

14. Evidence gathered from the Mongolian LGBTI community suggests there is a lack of understanding of both sexual minorities among healthcare providers and the associated physical and psychological problems the LGBTI community face as a result of sexuality-related trauma. Many LGBTI persons interviewed by the Centre have stated the belief that the disclosure of their sexuality to health-service providers would lead to ridicule, outright dismissal, a denial of services. Also indicates a high suicide attempt rate among LGBTI youth. Often, sexual orientation and gender identity/expression was misunderstood as a psychiatric disorder or addiction, and community members were treated as psychiatric patients. There is a lack of mental healthcare services for LGBTI persons. The heteronormative framework of the health sector and the lack of information within the sector itself in relation to the physical and psychological wellbeing of LGBTI persons, results in LGBTI persons being denied access to complete medical care.

Case Study 1

In 2016, B is Christian woman outreached to transgender youth and promised conversion therapy to heal them. After talking to transgender youth and gaining their trust, B 'outed' them to their families and shared their private personal and medical condition information. B repeatedly perpetuated hate speech against the LGBTQI persons on social media and Christian networks.

Gender Markers

15. Since 2009, intersex and transgender people have been able to change their gender marker on their identification documents through the Civil Registration Law of Mongolia. The law was

¹³ The LGBT Centre (Mongolia), 2016. "Assessment on the situation of LGBT youth and adolescents in Mongolia", Youth Leadership Programme for Human Rights Report

¹⁴ Nyamdorj, A, The LGBT Centre (Mongolia), 2013, "Implementation of sexual minority rights in Mongolia", p.52

¹⁵ The LGBT Centre (Mongolia), 2016. "Assessment on the situation of LGBT youth and adolescents in Mongolia", Youth Leadership Programme for Human Rights Report

revised in November 2018. As a result of these changes, individuals are now required to provide evidence that they have gone through a ‘full’ gender transition – a more arduous requirement than existed under the old law. In this respect, the Government of Mongolia has stepped backwards in its protection of intersex and trans people’s human rights.

RECOMMENDATIONS FOR THE GOVERNMENT OF MONGOLIA FOR THE 3rd CYCLE

16. Improve the implementation of the new Criminal Law to protect minorities from hate crimes, ensure privacy and confidentiality of information, emphasise education and conciliation, and provide for speedy and effective criminal, administrative and civil remedies.
 - a. Provide continued training for the law enforcement and judicial sectors on the prevalence of sexuality and gender-based violence against LGBTI persons and codify their obligation to uphold non-discriminatory and inclusive practices, including the preservation of dignity and confidentiality, in their dealings with such victims.
 - b. Provide social services and support for sexual minorities who are victims of familial violence, including the provision of State protective shelters for victims, medical care and psychological counselling.
17. Introduce a universal non-discrimination policy inclusive of sexual orientation and gender identity/expression in all educational institutions to ensure a safe environment for LGBTI youth to develop and express themselves without fear of retribution by faculty or peers. Review curricula of teacher training, social work and the psychology and medical professions in order to mainstream human rights, with particular attention paid to the inclusion of a wide concept of sexuality and by paying special attention to sexual minorities and their social and legal issues, in order to promote a supportive and enabling environment in which LGBTI youth may study, in line with their right to receive education and information.
18. Enable LGBTI people to access needs-based healthcare:
 - a. Ensure that healthcare providers are informed about both the physical and psychological issues that pertain to sexual minorities and that equality and non-discrimination are prescribed as ethical standard in the provision of healthcare.
 - b. Ensure that sub-communities are able to access specific healthcare (such as universal healthcare insurance-covered access to IVF for lesbian and bisexual women; and universal healthcare insurance-covered access to hormone replacement therapy and transition-related medical procedures by trans persons).
 - c. Mandate the professionalisation of psychological counselling methods and techniques in line with international standards and criteria, and enforce those instead of the remnants of socialist curricula, through which non-heteronormative sexual orientations and gender identities/expressions are considered disorders.
19. Review the Family Law, which in Article 3.1.1 defines marriage as: “Marriage is a man and a woman registering with a competent government authority to found a family based on their free will, consent and equality”, and which in Article 3.1.3 defines spouses as: “A husband and a wife related to each other through marriage and who have equal rights and responsibilities”, and bring the spirit and language of the law in line with international obligations to provide the widest possible protection and assistance to all consenting adults to marry and found a family, without discrimination based on their sexual orientation.
20. Launch a public awareness-raising campaign to fight and prevent discrimination and violence against LGBTI persons and to promote tolerance.