
MONGOLIA

The UN Committee on the Economic, Social and Cultural Rights

Protection of the Rights of LGBTI persons



29 August 2022

LGBT Centre

This report is submitted by the LGBT Centre of Mongolia (hereinafter LGBTCM), 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 (hereinafter **LGBTI**) persons. The report was compiled based upon the LGBTCM's systematic documentation of various violations against LGBTI persons, including social perceptions of sexuality, violence and discrimination against LGBTI persons, and the lack of institutional protection and redress mechanisms. **AND**



ILGA WORLD

ILGA World – the International Lesbian, Gay, Bisexual, Trans and Intersex Association - is a worldwide federation of more than 1,700 organisations from over 160 countries and territories campaigning for lesbian, gay, bisexual, trans and intersex human rights. ILGA works to achieve and maintain recognition and protection of the human rights of people with diverse sexual orientation, gender identity/expressions, and sex characteristics by the United Nations and other global institutions.

I. In recent years, Mongolia has taken several positive steps to advance the rights of sexual and gender minorities. However, there are still significant areas of law, regulation and policy where considerable work is required for Mongolia to meet its obligations under the ICESCR and to achieve compliance with the economic, social and cultural rights of sexual and gender minorities.

1. In 2015, in its Concluding Observations¹ regarding Mongolia, the ICESCR Committee raised concerns about the absence of a comprehensive anti-discrimination law that covers all grounds of discrimination, including sexual orientation and gender identity. To date, Mongolia has not taken steps to adopt comprehensive equality legislation guaranteeing protection for all against discrimination and the enjoyment of economic, social and cultural rights, and encompassing all prohibited grounds of discrimination including sexual orientation and gender identity. Mongolia continues to ignore the Covenant's general comment No.20² (2009) on non-discrimination in economic, social and cultural rights.

II. Replies to the list of issues prior to reporting

A. Reply to paragraph (2) (b) of the list of issues

2. The absence of a specific prohibition on sexual orientation and gender identity discrimination within the 1999 Labour Law left LGBTI persons open to be discriminated against with impunity in the workplace, allowing employers to refuse to hire someone who identifies as LGBTI, to harass or otherwise discriminate against them during their employment, or to terminate their employment on these grounds, with essentially no consequences.

3. Mongolia revised the Labour Law, effective January 2022, which bans³ discrimination based on sexual orientation and gender identity by employers. According to a 2022 study, only one in five LGBTI Mongolians (20%) in full or part-time employment felt safe enough to disclose their sexual orientation or gender identity to their employer.⁴ Nearly a quarter of LGBTI Mongolians (23%) had personally experienced discrimination in the workplace because of their sexual and gender identity and 78% believe such discrimination remains common.⁵

4. LGBTI persons, particularly transgender persons do not have access to fair wages, to begin with, due to systemic discrimination, prejudice and stigma based on their gender identity and expression.

5. The State report⁶ stated that Mongolia increased minimum wages by 33.3 per cent, however, despite recent new laws designed to protect the rights of Mongolian sexual and gender minorities, more than three-quarters (78%) of survey respondents indicated these laws had made no difference or very little difference to them⁷.

¹ E/C.12/MNG/CO/4

² Committee on Economic, Social and Cultural Rights, General Comment 20, Non-Discrimination in Economic, Social and Cultural Rights (Forty-second session, 2009), U.N. Doc.E/C.12/GC/20 (2009).

³ Labour Law of Mongolia, 2021. Article 6.1

⁴ Out in Mongolia- Research Project conducted between June-August 2022 by the LGBT Centre and ReportOut.

⁵ Out in Mongolia- Research Project conducted between June-August 2022 by the LGBT Centre and ReportOut.

⁶ E/C.12/MNG/5, paragraph 8

⁷ Out in Mongolia- Research Project conducted between June-August 2022 by the LGBT Centre and ReportOut

6. Unemployment among transgender persons continue to prevail, and Mongolia continues to overlook unemployment among transgender persons. Many transgender women are forced into sex work, yet their survival is prohibited and criminalized by multiple laws.^{8 9}

Recommendation

7. We urge the Committee to include in its concluding observations a recommendation that the Government to improve the implementation of the new 2021 Labour Law to protect minorities from discrimination in workplace, ensure privacy and confidentiality of information, emphasise education and conciliation, and provide for speedy and effective civil and administrative remedies.

Reply to paragraph 4 of the list of issues

8. For the LGBTI community in Mongolia finding safer living conditions, free from fear of eviction is a continuous problem. In 2022, over half of survey respondents (52%) believe Mongolia is unsafe for LGBTI people, rising to 65% when considering rural areas.¹⁰ Fear of homelessness was commonly expressed in association with identity exposure. Some young people were certain that they would be abandoned by their parents if their identities were exposed. Negative attitudes towards LGBTI people were regularly seen by LGBTI youth in the family home. Moreover, witnessing friends become homeless due to identity exposure contributed to the fear that the same thing would happen to them. The fear of homelessness often involved domestic violence as well.¹¹

9. Mongolia has no instruments in place to identify LGBTI homelessness, none of the state-sponsored strategies towards homelessness and poverty counts for the intersection between poverty and sexual orientation and gender identity. Sayanaa Wellness Association¹² (SWS) reported on the situations of transgender persons during the covid-19 pandemic. SWS reported that state response to the pandemic excluded transgender persons, many transgender persons faced homelessness due to state-enforced strict pandemic restrictions such as lockdown of hotels and motels. Most transgender persons are unable to rent and thus live in hotels and motels. The lockdown forced many transgender people to become homeless. Transgender persons were unable to access government aid programs during the pandemic due to preexisting prejudice and discriminated and their gender marker on their legal documents such as citizen identification cards.

10. Young LGBTI people observed their families' attitudes towards LGBT issues, whether positive or negative, over a long period, feeling that experiences within the family had strongly influenced their overall outlook on life. Within the main theme of family experience, three sub-themes were identified: fear of homelessness; the pressure of heteronormativity and coming out to parents.¹³

Recommendation

11. We urge the Committee to include in its concluding observations a recommendation that the Government expedite the enactment of legislation that prohibits discrimination on the basis of sexual orientation and gender identity in all areas of public life through a consultative process to ensure that all actors participate in the process.

B. Reply to paragraph (5) of the list of issues

12. Mongolia¹⁴, in line with the human rights principles and its commitments taken under international treaties, has revised or approved the following legislation with a view to

⁸ Law on Petty Offences of Mongolia, 2017 Article 6.13 (4)

⁹ Law on Combating Adultery of Mongolia, 1998, Article 4.1 (2012 amendment)

¹⁰ <https://www.reportout.org/post/out-in-mongolia-largest-ever-survey-on-the-experiences-of-mongolian-lgbtqi-community> August 2022

¹¹ Dorjjantsan Ganbaatar, Cathy Vaughan, Shahinoor Akter & Meghan A. Bohren (2021) Exploring the identities and experiences of young queer people in Mongolia using visual research methods, Culture, Health & Sexuality, DOI: [10.1080/13691058.2021.1998631](https://doi.org/10.1080/13691058.2021.1998631)

¹² Transgender organization, focus group discussion in March 2022.

¹³ Dorjjantsan Ganbaatar, Cathy Vaughan, Shahinoor Akter & Meghan A. Bohren (2021) Exploring the identities and experiences of young queer people in Mongolia using visual research methods, Culture, Health & Sexuality, DOI: [10.1080/13691058.2021.1998631](https://doi.org/10.1080/13691058.2021.1998631)

¹⁴ E/C.12/MNG/5, para 64

improve the domestic laws and implement the legislation aimed at promoting and protecting human rights at all levels: In 2015 the Criminal Code... revised.

13. Article 14 of the 2015 Criminal Code (effective 01 July 2017) prohibits discrimination based on sexual orientation and gender identity. However, it should be noted that between 2017 to 2022 there have been zero cases that were resolved under law¹⁵. Between 2017 to 2021, there have been just five cases registered with the police.¹⁶ Between 2017 to 2021, there are 13 cases recorded at the General Prosecutor's Office, and ten out of the 13 cases were dismissed, three cases are under investigation, and two cases are transferred to court.¹⁷

14. While¹⁸ the Criminal Code of 2015 criminalizes hate crimes, including those based on sexual orientation and gender identity, the implementation of the Code's provisions has been challenging. The Special Rapporteur on Violence Against Women notes (report on the country visit to Mongolia) that service providers and public officials are still insufficiently sensitized to the protection needs of women and girls of diverse sexual orientations and gender identities, including those on the multidisciplinary teams and those who work in the justice system. There is a need to improve outreach and inclusion in mainstream government programmes and response mechanisms. There is also a need to improve data collection and statistics regarding the situation of these groups.

15. In September 2019¹⁹, an ultra-nationalist NGO, "Bosoo Khukh Mongol" along with a TV4-TV station attacked a transgender woman, N, in a hotel and threatened and forced her to speak in front of a camera, then broadcasted her video. The attackers publicly announced that they would 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. LGBTCM supported the victim to file a discrimination case under Article 14 of the Criminal Code against the ultranationalist groups, appealing to the supreme court. However, the supreme court ruled that the victim was not discriminated against based on her sexual orientation and gender identity.

16. September 2021, a government official discriminated against the LGBTCM by ordering to remove the LGBTCM's public campaign contents from public transportation during Equality and Pride Days, doing so with impunity. The LGBTCM reported the incident as discrimination against LGBTI persons, LGBT Centre staff, and the LGBT Centre under Article 14 of the 2015 Criminal Code. However, the prosecutor's office continues to refuse to open a case. LGBTCM repeatedly appealed to open a case under Article 14 of the Criminal Case to the prosecutor's office, and as of August 2022 appealed to the State General Prosecutors Office of Mongolia. Yet due to this case, a homophobic group was formed and began to burn rainbow flags, threatening the LGBTCM and LGBTI persons. The case created enormous hatred against LGBTI persons and inserted fear in the LGBTI community.

17. LGBTCM reported the above-mentioned case to the National Human Rights Commission of Mongolia (NHRCM), and three recommendations²⁰ were issued to the mayor of Ulaanbaatar by a member of the NHRCM: 1) To instruct B. Odsuren, the head of projects responsible for road and transport issues of the capital city, to immediately apologize in a way that is accessible to the public for his actions that discriminate against sexual minorities on social networks; 2) Provide introduction and information to employees of local administrative institutions of the capital about the human rights and living conditions of sexual minorities, the principles and norms of non-discrimination, and the Law on the Legal Status of Human Rights Defenders; 3) Within the scope of its mandate, take other appropriate measures to compensate for the damages caused to the NGO "LGBT Center" and to restore the violated rights. To this day, B.Odsuren has not made any apologies to the LGBTI

¹⁵ Official letter № 03/1082 of General Judicial Council of Mongolia, 07 December 2021

¹⁶ Official letter № 2/477 of General Police Department of Mongolia, 08 December 2021

¹⁷ Official letter № 1/7766 of General Prosecutors Office of Mongolia, 14 December 2021

¹⁸ A/HRC/50/26/Add.1 Para 31

¹⁹ <https://www.aljazeera.com/news/2019/10/9/charges-in-mongolia-lgbt-attack-hint-at-changing-attitudes>

²⁰ Order of issue №3/31, published on NHRCM official website 16 September 2021

community, no financial redress, and no written report or records from the NHRCM to the LGBTCM on the implementation of how recommendation №2 was implemented.

18. It should be noted that the Law on NHRCM Article 28.1²¹ states that Organisations, officials, and legal entities that receive the requirements and recommendations of the commission member are obliged to comply. Article 28.2²² states that organisations, officials, and legal entities shall respond in writing within 30 days after receiving the request and within 60 days after receiving the recommendation. Depending on the nature of the human rights violation and enforcement measures, the member of the commission may set a different deadline for the response. Article 28.3²³ states that If measures are not taken according to the requirements of the member of the commission, it will be a reason to submit a proposal to the authorised organisation and official to dismiss the official from his position, cancel the licence of the legal entity, or stop its operation. Article 28.4²⁴ states that failure to take action in accordance with the recommendations of a member of the commission shall be grounds for demotion of the official or suspension of the licence of the legal entity or temporary suspension of the operation of the legal entity to the authorised organisation and official.

19. Furthermore, 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 required²⁵ to “adhere to universally recognized norms and principles of international law”, and “fulfil in²⁶ good faith its obligations under international treaties to which it is a party”. 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”.²⁷

20. 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, social origin and status, property and assets, employment occupation and of social position, religion and conscience, conviction and opinion, and education. Every human being shall be a legal person.²⁸

21. Above 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 international standards, and best practice²⁹. The list³⁰ of protected grounds is closed and omits reference to several personal characteristics recognised under³¹ international law, including sexual orientation and gender identity. Whilst Article 14 of the Criminal Code makes discrimination, *inter alia*, on the grounds of sexual orientation and gender identity, as a crime, as discussed elsewhere, international best practice requires that discrimination be treated as a matter of civil law rather than criminal law.³²

22. In the absence of comprehensive equality legislation, LGBTI persons are denied access to their economic, social and cultural rights, and face discrimination in multiple areas of life including employment, healthcare and education.

²¹ The Law on the National Human Rights Commission of Mongolia 2020 Article 28.1

²² The Law on the National Human Rights Commission of Mongolia 2020 Article 28.2

²³ The Law on the National Human Rights Commission of Mongolia 2020 Article 28.3

²⁴ The Law on the National Human Rights Commission of Mongolia 2020 Article 28.4

²⁵ Constitution of Mongolia, 1992, Article 10(1).

²⁶ Constitution of Mongolia, 1992, Article 10(2).

²⁷ Constitution of Mongolia, 1992, Article 10(3).

²⁸ Constitution of Mongolia, 1992, Article 14(2).

²⁹ 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).

³⁰ *Declaration of Principles on Equality*, Equal Rights Trust, London, 2008, Principle 3.

³¹ 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.

³² 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.

23. Despite weaknesses in the domestic legal framework, contrary to the recommendations of ³³states and UN treaty bodies Mongolia has failed to adopt comprehensive equality legislation in line with its international human rights obligations.³⁴

Recommendation

24. We urge the Committee to include in its concluding observations a recommendation that the Government 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 by 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.

25. We urge the Committee to include in its concluding observations a recommendation that the Government should intensify its efforts to combat stereotypes and prejudices against LGBTI persons, and ensure that acts of discrimination and violence directed against them are investigated, that perpetrators are prosecuted and, if convicted, punished with appropriate penalties, and that victims are provided with full reparation.

26. Launch a public awareness-raising campaign to fight and prevent discrimination and violence against LGBTI persons and to promote tolerance.

Reply to paragraph 6 of the list of issues

27. In 2021, the Law on the Legal Status of Human Rights Defenders was adopted and entered into force. It consolidated legal protections for human rights defenders but also contained provisions that could be interpreted to restrict human rights defenders' voices and put them at risk of prosecution. However³⁵, some shortcomings should be noted particularly, Article 7.2.1³⁶ /receiving funds from organisations and individuals that engage in or finance terrorist and extremist activities, money laundering, terrorist and extremist activities, or receive funds from unknown donors;/ and 8.1.3³⁷./defaming human rights and freedoms, others' dignity, reputation, and business reputation./ Are potentially harmful to human rights defenders. These provisions are already included in the Criminal Law, the Law on Combating Money Laundering and Terrorist Financing, the Civil Code, and the Criminal Law, which must be followed by every person and any legal entity living and working on the territory of Mongolia. However, it is not clear why this law is being duplicated and targeted at human rights defenders. It is not clear when and which organisations or authorities will be responsible to release the blacklist and identify individuals or organisations who are international intelligence service or their covert organisations or conduct activities harming national unity... All this uncertainty creates a risk of abuse and can be a challenge for human rights defenders.

Recommendation

28. We urge the Committee to include in its concluding observations a recommendation that the Government should develop and maintain a mechanism which protects and prevents human rights defenders from being used by foreign intelligence, by providing lists of banned sources, clear and transparent guidelines and procedures for establishing violations of Articles 7.2.1 and 8.1.3 provisions, and make available financing and other resources for human rights defenders to support their work.

³³ 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.

³⁴ 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.

³⁵ Direct quote from a Speech by B. Altantuya, Executive Director of Amnesty International Mongolia, at the meeting with Human Rights Defenders by the Speaker of the Great Khural of Mongolia G. Zandanshatar 25 May 2021.

³⁶ Legal Status of the Human Rights Defenders Law 2021, Article 7.1.2

³⁷ Legal Status of the Human Rights Defenders Law 2021, Article 8.1.3

Reply to paragraph 10 of the list of issues

29. Mongolia reported that in terms of within the scope of implementing the Law on Employment Support³⁸, the following programmes, approved by the National Employment Council, have been carried out to promote employment amongst target vulnerable groups: “Job Preparation and Skills Development Programme,” “Workplace Support Programme,” “Youth Employment and Start-Up Support Programme,” “Employment Promotion Programme for Herders,” “Employment Promotion Programme for Persons with Disabilities,” and “Programme to Promote Consulting Services by Senior Persons.” Voluntary enrolment in these programmes is open to both men and women belonging to the above-mentioned target groups with 56.3 per cent of total beneficiaries being women.

30. None of the above-mentioned programmes includes supporting LGBTI persons, particularly transgender persons. LGBTI issues continue to be overlooked by government programmes.

31. Moreover since 2009, intersex and transgender persons have been able to change their gender marker on their identification documents through the Civil Registration Law of Mongolia. The law was 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, Mongolia has stepped backwards in its protection of intersex and trans people’s human rights.

Recommendation

32. Mongolia should improve the implementation of the new 2021 Labour Law to protect LGBTI persons from discrimination in the workplace, ensure privacy and confidentiality of information, emphasise workplace ethics and non-discrimination policies, and provide speedy and effective redress mechanisms to combat workplace discrimination.

33. Furthermore, Mongolia should abolish the requirements from the Civil Registration Law of Mongolia, Article 14, for medical interventions for transgender and intersex people who wish to obtain legal recognition of their gender.

Reply to paragraph 12 of the list of issues

34. There has not been a specific focus on gender-based violence against women in setting up this framework, which has resulted in some biases in how these government entities have designed and implemented policies and services... the law on combating domestic violence does not include gender-sensitive language, which has led to implementing bodies and services that are not fully sensitive to the specific needs of women when it comes to their experiences of gender-based violence. Most of the services that provide immediate care for victims, such as the multidisciplinary teams, one-stop service centres and shelters, have prioritized violence against children, subsuming the issue of domestic violence against women in it.³⁹

35. As a result, domestic violence against women has been tackled within a family-centred framework, leading to gaps and inconsistencies. Additionally, the Government has concentrated almost the entirety of its efforts and resources on addressing domestic violence, which has led to important challenges regarding other manifestations of gender-based violence, such as workplace harassment, online violence against women and violence against women in politics.⁴⁰

36. During the visit, it also became clear to the Special Rapporteur that, despite favourable policies targeting women as a whole, there are groups of women and girls that continue to be invisible in their suffering and who are falling through the cracks of the safety nets, particularly victims of trafficking; persons of diverse sexual orientations and gender identities; sex workers; and foreign migrant women who are not identified, protected or

³⁸ E/C.12/MNG/5, paragraph 111

³⁹ A/HRC/50/26/Add.1 Para 28

⁴⁰ A/HRC/50/26/Add.1 Para 29

assisted promptly. A victim-centred approach to dealing with the phenomena of violence against sex workers and victims of trafficking is overshadowed by a crime prevention and law enforcement focus. Where there is a victim-centred approach, the focus is primarily on children.⁴¹

37. The Special Rapporteur was concerned⁴² to learn that violence against lesbian, bisexual and transgender women and girls continue to be underreported, and victims mistrust government officials and service providers due to prevailing stereotypes and biases against this group. Social and institutional discrimination against lesbian, gay, bisexual, transgender and intersex persons continues unabated, even though, during the universal periodic review of Mongolia in 2020, the State had been urged to “further develop and implement the legal provisions to protect people from discrimination and harassment based on sexual orientation, gender identity, intersex status or gender expression”.⁴³

38. Mongolia does not recognise same-sex unions, either in the form of marriage or any other legal structure (such as registered partnerships or cohabitation rights). Article 16(11)⁴⁴ of the Constitution states, “Men and women enjoy equal rights in political, economic, social and cultural fields as well as in marriage. Marriage is based on the equality and mutual consent of the spouses who have reached the age determined by law.” This neither prohibits nor mandates the recognition of same-sex marriage.

39. The Family Law of Mongolia defines⁴⁵ “spouses” in gender-specific terms, as “husband and wife who are connected by marriage bonds and have equal rights and obligations”.

40. Mongolia’s failure to legally recognise same-sex relationships results in same-sex couples not being able to access the rights, benefits and privileges that married opposite-sex couples are entitled to.⁴⁶ This not only prevents them from realising their right to have their families protected under Article 10⁴⁷ but also affects a range of other social and economic rights, such as the right to health under Article 12⁴⁸.

41. In Mongolia, same-sex couples are unable to legally adopt. They are also unable to access other parenting-related rights. The inability to adopt has led some people to circumvent the adoption system. This creates accountability issues if, for example, an LGBTI caregiver dies or if the official guardians of the adoptive child die.

42. Mongolia’s attitude towards providing legal recognition to same-sex couples was evident, during the 36th⁴⁹ UPR Working Group Sessions. Mongolia refused to provide legal recognition to same-sex couples. Mongolia *noted* two specific recommendations relating to the recognition of same-sex couples; “Consider⁵⁰ giving legal recognition to same-sex couples to ensure that they are protected by law (6.12)” as well as “Consider⁵¹ giving legal recognition to same-sex couples to ensure that they are protected by law (6.13)”, Mongolia responded “On the issues of LGBGTIQ persons in special in respect to allowing same-sex marriage. In the Constitution of Mongolia, it is specified that marriage shall be contracted by men and women based on the voluntary will and equal rights of these two. This is very clear in the constitution of Mongolia.”. Thus illustrating Mongolia’s deep notion of the gender binary and heterosexual nuclear family structure. This indicates Mongolia’s repeated ignorance of the General Comment 20.

43. Mongolia fails to fulfil its international obligation to recognise and legitimise same-sex marriages, and by reinforcing a gender binary heterosexual framework, and in so doing is

⁴¹ A/HRC/50/26/Add.1 Para 30

⁴² A/HRC/50/26/Add.1 Para 31

⁴³ A/HRC/46/9, para. 116.30.

⁴⁴ Constitution of Mongolia, 1992 Article 16 (11)

⁴⁵ Family Law of Mongolia, 1999 Article 3.1.3

⁴⁶ UNDP, USAID (2014), “*Being LGBT in Asia: Mongolia Country Report*”, p.33.

⁴⁷ International Covenant on Economic, Social and Cultural Rights, Article 10

⁴⁸ International Covenant on Economic, Social and Cultural Rights, Article 12

⁴⁹ During the 36th UPR Working Group Sessions, Mongolia received 15 SOGIESC recommendations. It noted 3 recommendations and will respond to the remaining 12 no later than the 46th session of the Human Rights Council.

⁵⁰ Recommendation from Luxembourg to Mongolia during the 36th UPR Working Group Sessions, 04 November 2020

⁵¹ Recommendation from Denmark to Mongolia during the 36th UPR Working Group Sessions, 04 November 2020

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.

Recommendation

44. We urge the Committee to include in its concluding observations a recommendation that the Government consult on and introduce legislation recognising the rights of same-sex couples, including parenting rights. 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 and gender identity.

Reply to paragraph 17 of the list of issues

45. In Mongolia, LGBTI healthcare issues are often understood within the framework of HIV/STI, disregarding sub-communities' specific healthcare needs.

46. According to the 2015 survey⁵², one in five people in Mongolia suffers from anxiety and nonorganic insomnia, one in six from chronic fatigue, one in eight has inexplicable symptoms, one in fifteen is addicted to alcohol and one in sixteen suffers from depression. However, according to the 2020 study⁵³ of the transgender community, when asked “Is there a health centre that provides trans-specific mental health service in Mongolia?”, the majority or 90.6% of participants answered DO NOT KNOW, 3.7% answered NO and 5.7% answered YES. No participants answered YES to “Is there a health centre that provides hormone therapy for gender transition in Mongolia?” but 81.1% said DO NOT KNOW.

47. In November 2013, the Ministry of Health adopted a new Code of Ethics for health professionals in which non-discrimination was defined to include appearance, health status, sexual orientation/gender identity, and belonging to a particular population group.⁵⁴ However, in October 2019, the Ministry of Health revised the Code of Ethics for health professionals, and it removed the non-discrimination clause.⁵⁵ In this respect, Mongolia has stepped backwards in its protection of LGBTI people’s human rights.

48. Evidence gathered from the Mongolian LGBTI community suggests there is a lack of understanding of sexual and gender minorities among healthcare providers and the associated physical and psychological problems the LGBTI community face as a result of LGBTI-related trauma. Many LGBTI persons reported that the disclosure of their LGBTI to health-service providers would lead to ridicule, outright dismissal, and a denial of services. The following are testimonies of FGD of doctors during a study in 2020.⁵⁶

49. National Centre for Maternal and Child Health, Dr A stated, "I want such people [trans people] to be removed from the world by natural selection."⁵⁷

⁵² E/C.12/MNG/5, paragraph 173

⁵³ Knowledge and attitude of healthcare professionals and trans community with regards to the trans specific healthcare service (2020), p.50

⁵⁴ UNDP, USAID (2014), *Being LGBT in Asia: Mongolia Country Report*, p.17; United States Department of State, (2013), *Mongolia 2013 Human Rights Report*, p.31

⁵⁵ Order № A/406 of the Ministry of Health, September 4, 2019, effective October 1, 2019.

⁵⁶ LGBT Centre, 2020, *“Knowledge and Attitude among healthcare professionals and Trans* community with regards to trans specific healthcare”*

⁵⁷ LGBT Centre, 2020, *“Knowledge and Attitude among healthcare professionals and Trans* community with regards to trans specific healthcare”* p.29.

50. Urgoo Maternity hospital, Psychologist A: "... We need to pay attention to secondary school and tell them. They may be tempted and imitate each other. The school social worker needs to work well. I do not support it, but I will not refuse to provide professional services."⁵⁸

51. Diverse sexual orientation, gender identity and expression are often misunderstood as psychiatric disorders or addictions, and community members were treated as psychiatric patients. A 2020 study indicates a lack of mental health care services for LGBTI persons. Heteronormative frameworks of the healthcare sector, and the lack of information within the sector concerning the physical and psychological wellbeing of LGBTI persons, result in LGBTI persons being denied access to comprehensive medical care.

Recommendation

52. We urge the Committee to include in its concluding observations a recommendation that the Government ensure that healthcare providers are informed about both the physical and psychological issues that sexual minorities experience and that equality and non-discrimination are promoted as ethical standards in the provision of healthcare.

53. We urge the Committee to include in its concluding observations a recommendation that the Government ensure that sub-communities can 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 transgender and intersex persons).

54. We urge the Committee to include in its concluding observations a recommendation that the Government consider the adoption of Trans Healthcare Standards in accordance with international standards and best practices to ensure that transgender persons can access both general healthcare and trans-specific healthcare.⁵⁹

Reply to paragraph 20 of the list of issues.

55. According to 2021 study⁶⁰, participants expressed their high school years were highly stressful, and they had to live under constant fear of emotional and physical abuse due to peer bullying...Teachers' attitudes at high school were perceived as prejudicial against queer students and promoted peer bullying instead of preventing it, providing a missed opportunity for community and social support.

56. 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 and schools appear common and have been identified as major barriers to the realization of rights for LGBTI children. To date, little has been done by Mongolia to address this issue, leading to the continued marginalisation of LGBTI children in schools.

57. A 2021 study revealed that there remains a lack of support by teachers, "Participants stressed lack of positive and reliable information on queer issues within the school curriculum and the lack of support from teachers and school administrators regarding bullying.⁶¹ Same-sex relationships and gender diversity were briefly mentioned (usually in health education classes), with information being delivered negatively and in line with teachers' prejudices.

58. *"LGBTI issues were discussed according to a textbook. However, the teacher explained that women become lesbians when they start getting pleasure without the presence of men. I remember being scared of becoming a lesbian at that time."* – Naraa, 22, genderqueer lesbian.

⁵⁸ LGBT Centre, 2020, "Knowledge and Attitude among healthcare professionals and Trans* community with regards to trans specific healthcare" p.29.

⁵⁹ World Professional Association for Transgender Health. (2012). *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People* [7th Version]. <https://www.wpath.org/publications/soc>

⁶⁰ Dorjjantsan Ganbaatar, Cathy Vaughan, Shahinoor Akter & Meghan A. Bohren (2021) Exploring the identities and experiences of young queer people in Mongolia using visual research methods, Culture, Health & Sexuality, DOI: [10.1080/13691058.2021.1998631](https://doi.org/10.1080/13691058.2021.1998631)

⁶¹ Dorjjantsan Ganbaatar, Cathy Vaughan, Shahinoor Akter & Meghan A. Bohren (2021) Exploring the identities and experiences of young queer people in Mongolia using visual research methods, Culture, Health & Sexuality, DOI: [10.1080/13691058.2021.1998631](https://doi.org/10.1080/13691058.2021.1998631)

59. Participants reported being frustrated by the homophobic attitudes of teachers, and afraid to seek support from teachers due to a lack of trust in them. Many had to go through bullying on their own without proper support. In the same study, participants reported that “their high school years were highly stressful, and they had to live under constant fear of emotional and physical abuse due to peer bullying... Teachers’ attitudes at high school were perceived as prejudicial against queer students and promoted peer bullying instead of preventing it, providing a missed opportunity for community and social support.”⁶²

Recommendation

60. We urge the Committee to include in its concluding observations a recommendation that the Government introduce a universal non-discrimination policy inclusive of sexual orientation, gender identity and expressions 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.

61. We urge the Committee to include in its concluding observations a recommendation that the Government review curricula for teacher training, social work, and psychology to mainstream human rights, with particular attention paid to the inclusion of a wide concept of gender and sexuality and by paying special attention to sexual and gender minorities and their social and legal issues, and to promote a supportive and enabling environment in which LGBTI youth may study, in line with their right to receive education and information.

Conclusion

62. The overarching recommendation is 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 by 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.

⁶² Dorjjantsan Ganbaatar, Cathy Vaughan, Shahinoor Akter & Meghan A. Bohren (2021) Exploring the identities and experiences of young queer people in Mongolia using visual research methods, Culture, Health & Sexuality, DOI: [10.1080/13691058.2021.1998631](https://doi.org/10.1080/13691058.2021.1998631)