

Mongolia CEDAW Shadow Report

Violence and Discrimination against Lesbian, Bisexual Women, Trans and Intersex persons

**Submission by:
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1. EXECUTIVE SUMMARY

Mongolia is 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”, and “fulfill in good faith its obligations under international treaties to which it is a party”.¹ 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”, and “the right to appeal to the court for protection if one considers the rights or freedoms spelt out by the Mongolian law or an international treaty to have been violated.”²

The CEDAW states, *“the rights set forth therein are applicable to all persons without distinction of any kind, such as race, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”* Thus, the State has an obligation to fulfill and maintain the human rights of all persons regardless of one’s sexual orientation, gender identity/expression, and sexual characteristics (SOGIESC) within all spheres of society, and to ensure all people benefit from adequate security and systemic protection against violence and discrimination.

Yet widespread social, cultural, economic and institutional discrimination against LBTI persons in Mongolia persists, and manifests in physical, mental and sexual violence. Discrimination on the basis of SOGIESC is endemic in public, private and non-governmental sectors, and is perpetuated the police and the judiciary, health services, education, and the housing sector.

The Criminal Code includes sexual orientation and gender identity (SOGI) as prohibited grounds, yet there exists only one case that was processed through the judicial system between 2017-2022.³ LBTI persons continue to be vulnerable due to lack of effort on enforcement of anti-discrimination laws, policies, plans of action, and poor performance of state mechanisms. This is partly happening due to lack of infrastructure, resources and responsible governance, but mostly because the government of Mongolia (hereafter the State) is unwilling to invest enough resources in the protection of LBTI rights. In 2016, the CEDAW Committee provided broad-based concluding observations on non-discrimination against lesbian and bisexual women and trans people in all spheres of society, including culture and healthcare to the State, and the State’s report to CEDAW reveals a complete lack of effort by the State in regards LBTI issues.⁴ The LGBT Centre believes the State has acted in contravention of the spirit of the CEDAW through its direct engagement in and/or systematic ignoring of exclusionary practices that deny LBTI persons their enjoyment of human rights and fundamental freedoms.

Therefore we request the Committee to recommend the following to the Government of Mongolia in relation to its obligations under the CEDAW:

1. In relation to Article 1:

- a. To recognize human rights violations against LBTI persons, and ensure LBTI persons are recognized in all subsequent discourse, practice and policy on women’s rights in Mongolia.

2. In relation to Article 2:

¹ Constitution of Mongolia, 1992, Article 10 (1); Constitution of Mongolia, 1992, Article 10 (2) https://www.constituteproject.org/constitution/Mongolia_2001.pdf?lang=en

² Constitution of Mongolia, 1992, Article 10 (3); Constitution of Mongolia, 1992, Article 16(14)

³ Criminal Code of Mongolia, 2015, Article 14(1); March 2022, General Prosecutors Office to the LGBT Centre’s request for information.

⁴ CEDAW/C/MNG/10 <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhs-gOTxO5cLIZ0CwAvhyns%2byK4vYOZ5u6e%2f8kU7OL8Fy6ZHozyuehSHcwn94DzIzAy%2fWe4spnOZ-CTKPhQ7lkYDt1R0o%2ftwyKuOOpEyK2X6IMmr>

- a. Define *discrimination* in the Constitution and all other relevant laws in accordance with the international standards.
 - b. Launch a public awareness-raising campaign to fight and prevent gender based discrimination and violence.
 - c. Make concerted efforts towards the guarantee, protection and implementation of human rights in accordance with Article 10 (2) and Article 10 (3).
- 3. In relation to Article 5:**
- a. Review the Family Law 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.
- 4. In relation to Article 10:**
- a. Introduce a universal non-discrimination policy inclusive of SOGIE in all educational institutions.
 - b. 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 sexuality.
- 5. In relation to Article 12:**
- a. 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.
 - 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 and intersex persons)
 - c. Consider adoption of Trans Healthcare Standards in accordance with international standards and best practice to ensure that trans persons can access both general healthcare and trans specific healthcare.

2. ORGANIZATION BACKGROUND

The LGBT Centre (hereafter the **Centre**) is the first and only non-governmental, non-profit and non-partisan organization working to secure, promote and safeguard the civil, political, economic, cultural and social rights of the lesbian, gay, bisexual, trans, queer, intersex, and plus (LGBTQI+) persons in Mongolia since 2007, and legally recognized in 2009. The Centre has been working consistently and successfully on raising awareness of the situation of sexual and gender minorities in Mongolia, legal changes necessary to ensure LGBTQI+ persons can exercise their fundamental human rights, and engaging in domestic and international advocacy to facilitate legislative and policy changes towards protecting the rights of LGBTQI+ persons.

3. METHODOLOGY

The report/research methodology is both quantitative and qualitative, based on one-on-one interviews with LGBTI community members, periodic focus group discussions (FGDs) with the community members, including the LBT FGD hosted by the LGBT Centre in March 2020 and in 2022 as well as documented SOGIESC human rights violation cases.

4. FOCUS ISSUES

Articles 1, 2, 5, 10c, 12.1, and General Recommendation 28 (hereafter GR 28) under Article 2.

4.1. Article 1

The Centre contends that the definition of discrimination against women as outlined in Article 1, “*any distinction, exclusion or restriction made on the basis of sex*”, includes discrimination on the basis of SOGIESC. The notion of the inclusivity of all women under Article 1 would be contrary if ‘sex’ and ‘gender’ were not given equal consideration. There exists a broad range of systemic discrimination and exclusion that directly impair “enjoyment and/or exercise” of LGBTI persons’ fundamental human rights and freedom in Mongolia yet the United Nations recognized the right to one’s sexuality as one of those fundamental freedoms.

We contend that due to the prevailing social sentiment of sexual and gender minorities, the State failed to provide an environment that is conducive for LGBTI persons to fully participate in life and enjoy their freedoms. Therefore we request the Committee to recommend the State to recognize human rights violations against LGBTI persons, and ensure LGBTI persons are recognized in all subsequent discourse, practice and policy on women’s rights in Mongolia.

4.2. Article 2

The Centre contends that the notion of equality for all women under this article should embody equality for LGBTI persons, and should be reflected in the Mongolian Constitution and relevant legislations. Article 14 of the Constitution provides for the equality of all persons lawfully resident within the state before the law and courts.⁵ 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 political position, religion and conscience, conviction and opinion, and education. Every human being shall be a legal person.*”

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 international standards, and best practice.⁶ The list of protected grounds is closed and omits reference to several personal characteristics recognized under international law, including SOGI.⁷

⁵ Constitution of Mongolia, 1992, Article 14

⁶ 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).

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.

Furthermore, the State continues to ignore GR 28, *“Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in Article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race...and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways than men. States parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned.”*⁸ SOGI as factors that affect women and the concept of ‘intersectionality’ are not embedded in the Mongolian Constitution and relevant legislations.

The law on Gender Equality, Article 4 provides definitions for ‘gender’, ‘gender equality’, and ‘gender based discrimination’, yet the definitions discount other factors such as SOGI, reinforcing gender binaries and heteronormative language relating only to men and women.⁹ Thus, state sponsored studies and research intended to evaluate state development excludes LGBTI persons, and misses opportunities to account for LGBTI specific issues.

The National Program on Gender Equality (2017) has no consideration and no recognition of LGBTI persons. The State report to the CEDAW Convention, paragraph 5 states that “The National Committee on Gender Equality (NCGE) in cooperation with the NSO signed an MoU in 2018 to ensure transparency, openness and adequacy of official statistics and other information classified by gender, create gender database, establish a common network, compile sex-aggregated gender statistics at sectoral and local levels, and develop methodology for using gender statistics in policy planning and operations as specified in the Law of Mongolia on Promotion of Gender Equality (2011) and the National Program on Gender Equality (2017).¹⁰

One of the three objectives within the framework was cooperation between the “National Committee on Gender Equality” (NCGE) and the NSO to re-develop the Gender Statistics Indicator Framework and Calculation Methodology as approved by Order No. A/173 of the NSO Chairman dated November 19, 2019. The framework covers in total 241 indicators in 14 chapters, of which 12 indicators measure the implementation of the SDGs. 129 of these indicators were calculated from official and administrative statistics, 96 from statistical surveys, and 16 from statistical census data.”¹¹ The State’s effort to create a gender database is solely based on heteronormative perspectives, and excludes LGBTI persons. In May, 2019 the Ministry of Labour and Social Protection conducted a comprehensive national-level review which reveals that there is a complete lack of intersectional approaches to conduct gender database research and analysis, particularly on discrimination on the basis of sex and gender as per GR 28. recommendation №28.

The State report is evidence of continued exclusion of LGBTI persons in State policies and development strategy.¹² In the light of the Committee’s previous concluding observations (para. 19) and the related follow-up report submitted by the State party, please specify measures taken to increase financial resources for the effective implementation, monitoring and enforcement of the revised Law on Combating Domestic Violence (2016) and subsequent relevant procedures.¹³ Please indicate whether those measures are targeted

⁸ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, 16 December 2010, CEDAW/C/GC/28, available at: <https://www.refworld.org/docid/4d467ea7.html> [accessed 26 April 2022]

⁹ The Law on Gender Equality of Mongolia (2017), Article (4).

¹⁰ CEDAW/C/MNG/10 para 5.

¹¹ CEDAW/C/MNG/10 para 6 (1).

¹² CEDAW/C/MNG/10.

¹³ CEDAW/C/MNG/CO/8-9/Add.1, para. 28

at all groups of women, including women with disabilities, LGBTI persons and migrant women.

The State report does not indicate any measures taken towards LGBTI persons within the framework of the project, actually there was zero mention and/or consideration of LGBTI persons. The Centre is disappointed in the missed opportunities to address LGBTI issues, and the impact of State sponsored systematic discrimination that will further exclude LGBTI persons in all spheres of Mongolian society.

Whilst Article 14 of the Criminal Code makes discrimination on the grounds of SOGI a crime, as discussed above, international best practice requires that discrimination be treated as a matter of civil law rather than criminal law.¹⁴

The lack of an adequate gender database is further evidenced by continued heteronormative and binary approaches to State sponsored laws, action plans, and interventions including the Law on Promotion of Gender Equality 2011, Mid-term Strategy and Action Plan for Implementation of the LPGE 2013-2016, National Programme on Gender Equality 2017-2021, Action Plan on the Implementation of the NPGE 2017-2021, Law on Victim and Witness Protection 2013, Law on Combat Domestic Violence (as revised 2016), and Youth Development Law 2017. None of them addresses SOGI, and we believe this is clear evidence that the State systemically ignores discrimination against LGBTI persons by all actors. We contend that the notion of equality for all women must include equality for LGBTI persons, and that this must be reflected in the Mongolian Constitution and relevant legislation.

We therefore request the Committee to recommend to the State:

- Define *discrimination* in the Constitution and all other relevant laws in accordance with the international standards to enhance the scope of protection and make clear of forms of discrimination to address all substantive inequalities, including those based on SOGI.
- Launch a public awareness-raising campaign to fight and prevent gender based discrimination and violence, particularly against LGBTI persons and to promote tolerance.
- Make concerted efforts towards the guarantee, protection and implementation of human rights in accordance with Article 10 (2) and Article 10 (3).

4.3. Article 5

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. 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 recognize and legitimize same-sex marriages, and by reinforcing

¹⁴ Criminal Code of Mongolia Article 14 (1) 2015; 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.

a heteronormative family framework, the State 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 recognized 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.

Therefore we request the Committee to recommend to the State to 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.

4.4. Article 10 (c)

Within the education system, there is a lack of information on SOGI, and stereotypes regarding LGBTI persons are prevalent. Violence and discrimination at home and schools appears common, and has been identified as a major barrier to the realization of rights for LGBTI children. To date, little has been done by the State to address this issue, leading to the continued marginalization of LGBTI youth in schools.

A 2021 study revealed that there remains 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.¹⁵ Same sex relationships and gender diversity were briefly mentioned (usually in health education classes), with information being delivered negatively and in line with teachers’ own prejudices.

“LGBT 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.

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 “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.”¹⁶

Therefore we request the Committee to recommend our government to

- Introduce a universal non-discrimination policy inclusive of SOGIESC 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 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

¹⁵Dorjjantsan 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)

¹⁶Umbrella term for LGBTQI+ persons

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.

4.5. Article 12

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 SOGI-related trauma. Many LGBTI persons reported that the disclosure of their SOGI 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 2020.¹⁷

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

*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."*¹⁸

Diverse SOGIEs are often misunderstood as a psychiatric disorder or addiction, and community members were treated as psychiatric patients. 2020 study indicates there is a lack of mental health care services for LGBTI persons. Heteronormative frameworks of the healthcare 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 comprehensive medical care.

Therefore we request the Committee to recommend to the State:

- 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.
- 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 and intersex persons).
- Consider adoption of Trans Healthcare Standards in accordance with international standards and best practice to ensure that trans persons can access both general healthcare and trans specific healthcare.¹⁹

¹⁷ LGBT Centre, 2020, "Knowledge and Attitude among healthcare professionals and Trans* community with regards to trans specific healthcare"

¹⁸ LGBT Centre, 2020, "Knowledge and Attitude among healthcare professionals and Trans* community with regards to trans specific healthcare" p.29.

¹⁹World 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>