

Report on Mongolia
Ninth Session of the Universal Periodic Review - November 2010

A. Introduction

1. This report is submitted by: **the Mongolian LGBT Centre**¹ NGO and **the Sexual Rights Initiative**.² This report deals with sexual rights in Mongolia and makes references specifically to the situation facing lesbian, gay, bisexual and transgendered (LGBT) people, social perceptions of sexuality, violence and discrimination against, and persecution of, LGBT people, and the lack of institutional protection or redress mechanisms.

B. LEGAL AND INSTITUTIONAL FRAMEWORK

2. Mongolia has joined a range of major international human rights treaties, such as the Convention of the Elimination of All Forms of Discrimination Against Women, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of all Forms of Racial Discrimination, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the ILO Discrimination (Employment and Occupation) Convention, and the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, and Convention against Discrimination in Education. Moreover, Article 10 of the Constitution of Mongolia, paragraph 1 states: "Mongolia shall adhere to universally recognised norms and principles of international law and pursue a peaceful foreign policy"; paragraph 2 of the same article states: "Mongolia shall fulfil in good faith its obligations under international treaties to which it is a party"; and paragraph 3 of the same article confirms: "The international treaties to which Mongolia is a party shall become effective as national legislation upon the entry into force of the laws or on their ratification or accession".

C. DISCRIMINATION

3. Mongolia's stated commitment to its international obligations to uphold human rights for all has not been implemented³ as evidenced by its consistent systematic and institutional failure to ensure and protect the human rights of all, by its failure to implement treaty bodies' recommendations, and by consistent reports of widespread discrimination faced by sexuality minorities. Sexuality minorities suffer discrimination due to being perceived as not conforming to dominant notions of male/female gender identity and heteronormativity and are routinely victims of hate crimes.
4. Ignoring the rights of sexuality minorities is not representative of a democracy, and it is not compatible with the democratic values that Mongolia as a state professes to uphold, and it is contrary to Mongolia's international obligations. The current level of discrimination and violence against LGBT persons raise such questions as: Is Mongolia truly fulfilling its international human rights obligations? Is Mongolia exercising exclusivity in the acknowledgement and upholding of human rights and in its commitment to fulfilling its international obligations?

5. We recommend the Government of Mongolia:

¹ The LGBT Centre was established in December 2009 after a three-year fight for registration. It is the first LGBT human rights NGO in Mongolia. Its mission is to "uphold, protect, and promote the human rights of LGBT people and promote the correct understanding of sexual orientation and gender identity within Mongolian society."

² The Sexual Rights Initiative is a coalition that includes Mulabi – Latin American Space for Sexualities and Rights; Action Canada for Population and Development; Creating Resources for Empowerment and Action-India, the Polish Federation for Women and Family Planning, and others.

³ Ibid., p. 7.

- 6.1 Enacts an anti-discrimination law that explicitly reflects non-discrimination based on sexual orientation and gender identity/expression to provide effective legal protection for sexuality and other – ethnic, religious, linguistic – minorities in Mongolia, and establishes a mechanism of anti-discrimination law enforcement through specifically assigned and mandated offices in accordance with Article 1 of the Universal Declaration of Human Rights.
- 6.2 Enacts anti-hate crime 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.

D. RIGHT TO LIFE, LIBERTY AND SECURITY OF PERSONS

6. Testimonies gathered from the Mongolian LGBT community suggest widespread and pervasive harassment and persecution of LGBT persons by the General Police Department and the General Intelligence Agency. This includes covert surveillance of known LGBT persons, keeping files on known LGBT persons, monitoring LGBT social events and photographing/filming those in attendance, phone-tapping, arbitrary arrests, intimidation, threats, and physical and sexual assaults on LGBT persons while in custody.
7. Evidence gathered from the Mongolian LGBT community suggests that sexual violence against lesbian and bisexual women in particular and against transgendered persons is commonplace when their sexuality and/or gender identity has become known or is suspected. The Government of Mongolia has consistently failed to protect or provide protection mechanisms for those at risk, which constitutes discriminatory treatment and a violation of the state's obligation to ensure that all women, without exclusion, are afforded equal protection from gender-based violence.
8. Familial violence – physical and psychological (threats, taunts, ostracism) – is the most common form of violence facing LGBT persons in Mongolia, and generally occurs when a person's sexuality and/or gender identity has become known or is suspected. So prolific is the societal prejudice and hatred against LGBT persons that very few LGBT persons have escaped some degree of familial harassment or violence when their sexual orientation has become known.

10. We recommend the Government of Mongolia to:

- 10.1 Ensure through legislation equal protection for sexuality minorities who are victims of hate crimes and violence.
- 10.2 End its surveillance of LGBT persons simply on the basis of their sexual orientation and/or gender identity and disclose the criteria on which persons within Mongolia may be surveilled as such surveillance interferes with LGBT persons' right to privacy, life, liberty and security both directly and indirectly.
- 10.3 Undertake concrete measures to end to the actions of the General Police Department and the General Intelligence Agency that involve intimidation and discrimination against LGBT, considering that such actions constitute grave human and civil rights violations.⁴ These include conducting training in non-discrimination issues and undertaking awareness-raising campaigns in order to promote non-discrimination based on sexuality.
- 10.4 Provide continued training for the law enforcement and judicial sectors on the prevalence of sexual and gender-based violence against LGBT 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 of sexual abuse.
Amend the 2004 Domestic Violence Law to include specific references to domestic violence against LGBT persons, providing legal redress for LGBT persons who are victims of familial violence.

⁴ See also CEDAW, General Recommendation 19, paragraph 9:
<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

- 10.5 Provide social services and support for sexuality minorities who are victims of familiar violence, including the provision of state protective shelters for victims, medical care and psychological counselling.

E. RIGHT TO FREEDOM OF ASSOCIATION AND PEACEFUL ASSEMBLY

11. The submitting NGO, the Mongolian LGBT Centre, first filed for registration as a non-governmental organisation with a mandate to work for the human and civil rights of LGBT persons in Mongolia with the Ministry of Justice and Home Affairs in February 2007. However the application was not received because of the NGO's name, LGBT Centre. The refusal to accept the documentation was verbally explained to be because the words "lesbian", "gay", "bisexual" and "transgender" were not Mongolian and needed to be approved by the Linguistics Institute of the Mongolian Academy of Sciences, despite the submission of a letter together with the documentation that "lesbian", "gay", "bisexual" and "transgender" were internationally accepted terminology.
12. The LGBT Centre again applied for registration in early 2009, at which time the registration of NGOs was no longer under the mandate of the Ministry of Justice and Home Affairs but with the Legal Entities Registration Authority. The LERA officially denied the NGO's registration on 23 June 2009 in a letter that said: "The name "Lesbian, Gay, Bisexual and Transgender Centre" has a meaning that conflicts with Mongolian customs and traditions and has the potential to set the wrong example for youth and adolescents". The LGBT Centre was eventually registered on December 16, 2009, after interventions from the Office of the President of Mongolia and the National Human Rights Commission of Mongolia.
13. Existing NGOs in Mongolia who work with gay and bisexual men were also denied the right to include a mandate for working for the human rights of sexuality minorities in their bylaws at the time of their registration, leaving them with only a mandate to work on MSM health issues.
14. ***We recommend the Government of Mongolia to:***
- 14.1 Ensure the full enjoyment of freedom of association and peaceful assembly for sexuality minorities, and create an environment in which this is accessible without requirements that are tantamount to nullifying this right.

F. RIGHT TO WORK

15. Evidence gathered from the LGBT community suggests widespread discrimination in the workplace in both the private and public sectors, and that both sectors are actively engaged in the overt violation of LGBT persons' right to work. Many LGBT persons have reported harassment, bullying, intimidation and ostracism at workplace, and even loss of jobs, when their sexuality and/or gender identity has become known or is suspected.⁵
16. ***We recommend the Government of Mongolia:***
- 16.1 Fulfil its international obligation under ILO Convention 111 and guarantee non-discrimination based on sexual orientation and/or gender identity in the workplace, including both private and public institutions, and ensure that the government and the private sector develop codes of conduct regarding sexuality minorities that translate human rights principles into codes of professional responsibility and practice, with accompanying mechanisms to implement and enforce these codes.

G. RIGHT TO EDUCATION AND FREEDOM OF INFORMATION

17. The culturally pervasive notion of heteronormativity is implicit in the state education system, which serves to reinforce ignorance about social diversity, and specifically about LGBT persons, and implicitly promotes stereotypical perceptions of sexuality and LGBT people and

⁵ Nyamdorj A, Garner R, 2008, "The Status of Lesbian and Bisexual Women and Transgendered Persons in Mongolia", shadow report for the 42nd CEDAW Committee Session, p. 12.

reflects a lack of understanding of their fundamental human rights. With the exception of the Sexual and Reproductive Health secondary school textbook, in which the lives of three gay people are outlined, the secondary-school education curriculum does not carry comprehensive information regarding sexuality and sexual orientation.

18. *We recommend the Government of Mongolia:*

18.1 Review the secondary education and teacher training curricula in order to mainstream human rights, with particular attention paid to the inclusion of a wide concept of sexuality, paying special attention to sexuality minorities and their social and legal issues so as to promote a supportive and enabling environment in which LGBT youth may study in line with their right to receive education and information.

18.2 Introduce a universal non-discrimination policy inclusive of sexual orientation and gender identity/expression at all educational institutions to ensure a safe educational environment for LGBT youth to develop and express themselves without fear of retribution by faculty or peers.

H. RIGHT TO AN ADEQUATE STANDARD OF LIVING

19. The deeply rooted prejudice against LGBT persons severely impacts on their ability to live wherever they choose, and to live together in relationship with their partners. Testimonies gathered from the LGBT community depict that LGBT persons are discriminated against in the housing sector and are denied housing or evicted if it is suspected they are from the LGBT community or are cohabiting with their partners. If LGBT persons choose to cohabit, they do so under the pretext of being friends, relatives or co-workers.

20. *We recommend the Government of Mongolia:*

20.1 Adopt an anti-discrimination law that promotes a supportive and enabling environment for sexuality minorities, must address the underlying societal prejudices and inequalities, and provide social services and support for sexuality minorities who are evicted from their homes.

I. RIGHT TO ENJOYMENT OF THE HIGHEST ATTAINABLE STANDARD OF HEALTHCARE

21. Evidence gathered from the Mongolian LGBT community suggests a lack of understanding of sexualities minorities among healthcare providers and a lack of understanding of the attendant physical and psychological problems the LGBT community face as a result of sexuality-related trauma. Many LGBT persons feared that the disclosure of their sexuality to health-service providers would lead to ridicule, outright dismissal, a denial of services or further reporting of their sexuality to other government authorities.

22. There are testimonies among the LGBT community members that sexual orientation and gender identity/expression are always misunderstood as a psychiatric disorder or addiction, and that community members whose parents sought help from psychiatrists were treated as psychiatric patients.

23. Evidence also indicates a high suicide rate among the LGBT community, particularly among LGBT youth, that is generally related to confusion about sexuality and ostracism on the basis of their sexual orientation and/or gender identity. The problem is compounded by a lack of counselling services for LGBT persons, meaning there is no psychological support for at-risk community members. The lack of understanding of the realities of life for the LGBT community, 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 LGBT persons results in LGBT persons being denied access to complete medical care.

24. *We recommend the Government of Mongolia:*

- 24.1 Ensure healthcare providers are informed about both the physical and psychological issues that pertain to sexuality minorities and that they must provide health care without discrimination or ostracism.
- 24.2 Ensure healthcare providers are given training about the specific needs and issues of sexuality minorities.
- 24.3 Promote contemporary psychological counselling methods and techniques as opposed to the dominant remnants of socialism wherein sexual orientation and gender identity/expression are negated or considered a disorder.

J. RIGHT TO MARRY AND FOUND A FAMILY

- 25. Mongolia frames its human rights discourse in a heteronormative, exclusionary and narrow manner, a prime example of which is the official Mongolian-language version of the UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages to which Mongolia acceded in April 1991⁶ 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. This is further illustrated by the lack of any response to a marriage recognition query which a legally married⁷ female same-sex couple submitted through their employer to the Government of Mongolia, for which the Government of Mongolia has remained silent for more than a year (January 2009 and continuing as of April 2010).
- 26. Same-sex marriages are neither registered nor recognised despite Article 16 (1) and (2) of the Universal Declaration on Human Rights, and Mongolia’s accession in 1991 to the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages that stipulates equality in marrying and founding a family among full-age adults with their free will and consent.
- 27. The government of Mongolia reinforces a heteronormative family framework by not recognising and legitimising same-sex marriages, and denies the right of same-sex couples to be recognised as a “fundamental group unit of society”.⁸

28. We recommend the Government of Mongolia:

28.1 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 its 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.

28.2 Ensure that a same-sex marriage that is legally recognised and registered elsewhere is afforded the same status of recognition and legal and civil protections as a heterosexual marriage in line with Mongolia’s international obligation under the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, and that there is recognition of any marriage to which the intending spouses have entered into with free will and consent and which was recognized as such and registered by relevant authorities.

⁶ Preamble 2 states: “Marriage shall be entered into only with the free will and consent of intending spouses”

⁷ The married lesbian couple, a bi-national couple, where one of the spouses is a citizen of Mongolia and the other is a citizen of Australia, were married in September 2005 in British Columbia, Canada.

⁸ As stipulated in Article 10 (1) of the International Covenant on Economic, Social and Cultural Rights: ... a “natural and fundamental group unit of society” entitled to the “the widest possible protection and assistance ... particularly for its establishment”.