

Shadow Report to the UN Committee on Economic, Social and Cultural Rights regarding Mongolia's Protection of the Rights of LGBTI Persons

**Compiled by the Kaleidoscope Human Rights Foundation
with the assistance of DLA Piper International LLP,
the LGBT Centre and the Youth for Health Centre**

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1. BACKGROUND

- 1.1 **Kaleidoscope Human Rights Foundation** is an NGO that works with local activists to protect and promote the rights of lesbian, gay, bisexual, transgender and intersex (**LGBTI**) persons in the Asia-Pacific region.
- 1.2 Kaleidoscope has prepared this report with the assistance of global law firm **DLA Piper International LLP** and with the input and support of the following Mongolian LGBTI rights organisations:
 - 1.2.1 the **LGBT Centre**, a Mongolian NGO established in 2007 and officially registered in 2009 with a focus on the human rights of LGBT people; and
 - 1.2.2 the **Youth for Health Centre**, a Mongolian NGO established in 2011 with a specific focus on the health issues facing men who have sex with men.

2. EXECUTIVE SUMMARY

- 2.1 This report has been prepared to inform the UN Committee on Economic, Social and Cultural Rights (**Committee**) of areas where Mongolia is failing to comply with its obligations under the International Covenant on Economic, Social and Cultural Rights (**ICESCR**) to respect and protect the human rights of LGBTI persons. It concludes with recommendations of matters that we urge the Committee to include within its concluding observations to Mongolia.
- 2.2 In recent years, the Mongolian Government has taken several positive steps to advance the rights of the LGBTI population (see paragraph 4.1 below). However, there are still significant areas of law, regulation and policy where considerable work is required in order for Mongolia to meet its obligations under the ICESCR and to achieve compliance with regard to the economic, social and cultural rights of LGBTI persons. In particular, Mongolia has:
 - 2.2.1 failed to enact and implement anti-discrimination legislation to reduce discrimination on the basis of sexual orientation and/or gender identity in employment, housing, health care and education (Articles 2, 6, 7, 11, 12 and 13);
 - 2.2.2 failed to protect same-sex families through the legal recognition of same-sex relationships and through parenting rights for same-sex couples (Article 10); and
 - 2.2.3 failed to introduce policies to prevent bullying and harassment of LGBTI people in the education system (Article 13).
- 2.3 We therefore urge the Committee to make the following **recommendations** to Mongolia in its concluding observations:
 - 2.3.1 enactment of legislation that prohibits discrimination on the basis of sexual orientation and gender identity in all areas of public life, including employment, housing, health care and education (Articles 2, 6, 7, 11, 12 and 13);
 - 2.3.2 inclusion of sexual orientation and gender identity within the list of non-discrimination grounds protected under the Labour Law (Articles 6 and 7);

- 2.3.3 consultation on and introduction of legislation recognising the rights of same-sex couples, including parenting rights (Article 10);
- 2.3.4 improvement of the training of health professionals to increase their understanding of and sensitivity to the specific health needs of LGBTI people (Article 12);
- 2.3.5 broadening of the scope of the universal public health care system to include access to IVF for lesbian and bisexual women and sex reassignment surgery and hormone replacement therapy for transgender people (Article 12);
- 2.3.6 development and implementation of policies to address bullying and discrimination against LGBTI students in schools (Article 13); and
- 2.3.7 development and implementation of a training program for secondary school teachers to improve their knowledge about the sexual orientation and gender identity components of the sexual education curriculum (Article 13).

3. LEGAL AND SOCIAL CONTEXT IN MONGOLIA

Status of the ICESCR under Mongolian Law

- 3.1 Mongolia ratified the ICESCR in 1974, and has incorporated it into domestic law. The legal status of the ICESCR is confirmed by Article 3 of the Constitution of Mongolia (1992), which states, *"The international treaties to which Mongolia is a party shall become effective as national legislation upon the entry into force of the laws of on their ratification or accession."*

Constitution of Mongolia

- 3.2 Article 14 of the Constitution of Mongolia (1992) states that *"All persons lawfully residing within Mongolia are equal before the law and the courts"* and that *"No person may be discriminated on the basis of ethnic origin, language, race, age, sex, social origin or status, property, occupation or post, religion, opinion, or education. Everyone is a person before the law."* There is no explicit mention of sexual orientation and/or gender identity as protected grounds.

Summary of the Situation for LGBTI People in Mongolia

- 3.3 Homosexuality is not criminalised under Mongolian law. However, LGBTI Mongolians continue to experience a significant degree of discrimination and persecution.¹ Consequently, Mongolia's LGBTI community is predominantly closeted,² and hate crimes committed against the LGBTI population go largely unreported due to social stigma and fear of secondary victimisation by police.³ A notable threat to the LGBTI population is the rise of neo-Nazi groups and Mongolian nationalists committed to maintaining 'cultural purity'.⁴

¹ UNDP, USAID (2014), *"Being LGBT in Asia: Mongolia Country Report"*, p. 7.

² UNDP, USAID (2014), *"Being LGBT in Asia: Mongolia Country Report"*, p. 26.

³ The LGBT Centre (2010), *"The LGBT Centre Report on Torture and other Cruel, Inhuman or Degrading Treatment and Punishment of Lesbian, Gay, Bisexual and Transgender People in Mongolia"*, pp. 3-4.

⁴ Hayley Miller (23 June 2014), *"Mongolia Considers Anti-Discrimination Laws to Protect LGBT Citizens"*, Human Rights Campaign, at: <http://www.hrc.org/blog/entry/mongolia-considers-anti-discrimination-law-to-protect-lgbt-citizens>

- 3.4 According to the LGBT Centre, the first non-governmental organisation dedicated to promoting the rights of LGBTI people in Mongolia:

“LGBT people have been viciously targeted, beaten and raped; they've been kicked out of their homes and lost their jobs. Rampant discrimination has also forced people to seek asylum to escape constant threats to their lives.”⁵

- 3.5 Despite this, public awareness of the serious issues surrounding the LGBT population is low and *“there is very little published literature about diverse sexual orientation and gender identity issues in Mongolia”*.⁶

4. POSITIVE STEPS TAKEN BY MONGOLIA

- 4.1 The Mongolian Government should be commended for recent action in support of LGBTI rights, namely:

4.1.1 In 2009, the Mongolian Government registered the non-governmental organisation, the LGBT Centre. The organisation advocates for the rights of the LGBTI population in Mongolia. However, it should be noted that the application was rejected repeatedly, and registered only after more than 10 attempts were made. The Legal Entities Registration Agency initially stated that the name was *“not moral”*⁷ and *“has a meaning that conflicts with Mongolian customs and traditions and has the potential to set the wrong example for youth and adolescents”*.⁸

4.1.2 Since June 2009, transgender people have been able to change their sex on birth certificates or citizen identification cards with medical certification.⁹

4.1.3 In 2012, Mongolia passed the *Law on Prevention of Human Immunodeficiency Virus Infection and Acquired Immune Deficiency Syndrome* (which took effect on 15 January 2013). This law removed HIV-related restrictions on entry, stay and residence in Mongolia.¹⁰

4.1.4 In 2013, the Parliamentary Standing Committee on Legal Affairs passed *Resolution No. 13 (2013)*, calling for the government to implement international

⁵ Pearly Jacob, (14 December 2010), *“Mongolia: LGBT Activists Cheered by Potential Gay Rights Gain”*, at: <http://www.eurasianet.org/node/62573>

⁶ USAID (22 October 2014), *“Mongolian LGBT people face social stigma and violence despite policy changes: Comprehensive UN-USAID country report”*, at: <http://www.usaid.gov/asia-regional/press-releases/oct-22-2014-mongolian-lgbt-people-face-social-stigma-and-violence>

⁷ International Gay & Lesbian Human Rights Commission (20 July 2009), *“Mongolia: Register LGBT Centre”*, at: <http://iglhrc.org/content/mongolia-register-lgbt-centre>

⁸ Human Rights Watch (9 July 2009), *“Mongolia Rebuffs Lesbian, Gay, Bisexual and Transgender Organization”*, at: <http://www.hrw.org/news/2009/07/09/mongolia-rebuffs-lesbian-gay-bisexual-and-transgender-organization>

⁹ Darren Wee (28 October 2014) *“Mongolia gays face stigma and violence despite policy changes”*, *Gay Star News*, accessed 9 February 2015, at: <http://www.gaystarnews.com/article/mongolia-gays-face-stigma-and-violence-despite-policy-changes281014#sthash.xx1ROkW3.dpuf>

¹⁰ UNAIDS Press Statement (31 January 2013) *“UNAIDS applauds Mongolia for removing restrictions on entry, stay and residence for people living with HIV”*, at: <http://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2013/january/20130131psmongolia>

recommendations relating to LGBT rights made by the UN Human Rights Council and the Committee Against Torture.¹¹

4.1.5 In November 2013, the Ministry of Health adopted a new Code of Ethics in which non-discrimination was defined to include appearance, health status, sexual orientation/gender identity, and belonging to a particular population group.¹²

4.1.6 In 2014, the Mongolian Government announced a proposal to enact anti-discrimination legislation to protect the LGBTI population. This included language to protect against crimes of hate and bigotry.¹³

5. ARTICLE 2 (GENERAL PROHIBITION OF DISCRIMINATION)

Relevant Articles of the ICESCR

5.1 Article 2(2) of the ICESCR obligates Mongolia to ensure that all of the substantive rights contained within the ICESCR are exercised “*without discrimination of any kind as to ... sex ... or other status*”. The Committee has confirmed that this non-discrimination guarantee applies to discrimination on the basis of both sexual orientation and gender identity.¹⁴

Relevant Mongolian Laws and Policies

5.2 Article 14 of the Constitution of Mongolia states that “*no person may be discriminated on the basis of ... sex, social origin or status.*” However, the Constitution makes no specific mention of sexual orientation or gender identity.

5.3 Mongolia also currently lacks any laws specifically addressing discrimination on the basis of sexual orientation or gender identity, although the government has announced that draft legislation is in development.¹⁵

5.4 As will be discussed in greater detail in the rest of this report, the lack of anti-discrimination laws prevents LGBTI people from fully exercising their economic, social and cultural rights without distinction on the basis of sexual orientation and gender identity. It is therefore crucial that any anti-discrimination legislation developed by the Mongolian Government and passed by the Parliament applies broadly to all areas of public life, including employment, health care, education, housing and the provision of goods and services.

Recommendations

5.5 We urge the Committee to include within its concluding observations a **recommendation** that the Government of Mongolia expedite the enactment of legislation that prohibits

¹¹ UNDP, USAID (2014), “*Being LGBT in Asia: Mongolia Country Report*”, p.17; United States Department of State (2013), “*Mongolia 2013 Human Rights Report*”, p.28

¹² 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

¹³ Hayley Miller (23 June 2014), “*Mongolia Considers Anti-Discrimination Laws to Protect LGBT Citizens*”, Human Rights Campaign, at <http://www.hrc.org/blog/entry/mongolia-considers-anti-discrimination-law-to-protect-lgbt-citizens>

¹⁴ Committee on Economic, Social and Cultural Rights, “*General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (Art. 2 para. 2)*”, adopted in the Committee’s 42nd session, Geneva, 4-22 May 2009, UN Economic and Social Council, E/C.12/GC/20, 10 June 2009, at 10, ¶ 32.

¹⁵ Hayley Miller (23 June 2014), “*Mongolia Considers Anti-Discrimination Laws to Protect LGBT Citizens*”, Human Rights Campaign, at <http://www.hrc.org/blog/entry/mongolia-considers-anti-discrimination-law-to-protect-lgbt-citizens>

discrimination on the basis of sexual orientation and gender identity in all areas of public life, including employment, housing, health care and education.

6. ARTICLE 6 (RIGHT TO WORK) AND ARTICLE 7 (RIGHT TO ENJOYMENT OF JUST AND FAVOURABLE CONDITIONS OF WORK)

Relevant Articles of the ICESCR

- 6.1 Article 6 of the ICESCR recognises the right to work, which includes the right not to be deprived of work unfairly.¹⁶ Article 7 of the ICESCR mandates just and favourable working conditions, including fair remuneration, safe and healthy working conditions and equal opportunity for promotion.
- 6.2 These rights must be enjoyed without discrimination as to sexual orientation and gender identity by virtue of the operation of Article 2(2) of the ICESCR.¹⁷

Relevant Mongolian Laws and Policies

- 6.3 Article 7(2) of the Labour Law (1999) states that “*the establishment of discrimination, limitation, or privilege based on nationality, race, sex, social origin or status, wealth, religion, or point of view is prohibited.*” However, no reference is made to discrimination based on sexual orientation or gender identity, either in the Labour Law or in any other Mongolian legislation.
- 6.4 The Labour Law is currently in a process of revision. While the draft revised Labour Law that was released in 2014 includes “sexual orientation” as one of the protected grounds, it does not include “gender identity”.¹⁸ Moreover, it is unclear whether the revised Labour Law will actually be enacted with these provisions in place.

Mongolia’s Failure to Comply with Articles 6 and 7 of the ICESCR

- 6.5 The absence of a specific prohibition on sexual orientation and gender identity discrimination within the current Labour Law leaves 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.
- 6.6 Many LGBTI Mongolians who are open about their sexual orientation or gender identity at work regularly face discrimination.¹⁹ In a 2013 survey of LGBTI persons conducted by the National Human Rights Commission of Mongolia, **78.3%** said that Mongolia does not provide an environment conducive to living and working safely.²⁰ Significantly, only **3.3%** of respondents stated that they had never been discriminated against in the workplace.

¹⁶ Committee on Economic, Social and Cultural Rights, “*General Comment No. 18: Article 6 of the International Covenant on Economic, Social and Cultural Rights*”, adopted in the Committee’s 35th session, Geneva, 7-25 November 2005, UN Economic and Social Council, E/C.12/GC/18, 6 February 2005, at 3, ¶ 4.

¹⁷ Committee on Economic, Social and Cultural Rights, “*General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (Art. 2 para. 2)*”, adopted in the Committee’s 42nd session, Geneva, 4-22 May 2009, UN Economic and Social Council, E/C.12/GC/20, 10 June 2009, at 10, ¶ 32.

¹⁸ International Labour Organization (2014), “*Mongolia – Direct Request (CEACR)*”, adopted 2014, published 104th ILC session (2015), available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3183392.

¹⁹ United States Department of State (2013), “*Mongolia 2013 Human Rights Report*”, p. 28.

²⁰ National Human Rights Commission of Mongolia (2013), “*12th Report on Human Rights and Freedoms in Mongolia*”, p.53.

- 6.7 Consequently, many LGBTI Mongolians choose not to disclose their sexual orientation or gender identity at work. In the same 2013 survey, **81.7%** of LGBTI respondents stated that they hid their identities in the workplace.²¹ This results in high level of anxiety and stress in the workplace, which not only impacts negatively on job performance but also has adverse psychological implications (affecting also the right to the highest attainable standards of mental health under Article 12 of the ICESCR).²² Moreover, the fact that LGBTI persons feel the need to hide their sexual orientation or gender identity breaches their right to just and favourable working conditions without discrimination on the basis of sexual orientation and gender identity (Article 7 read together with Article 2(2) of the ICESCR).
- 6.8 Performance issues combined with the difficulty in obtaining and retaining a job is reflected in a difference in unemployment rates between LGBTI and non-LGBTI persons: **10.4%** of LGBTI persons were unemployed in 2013, compared to the overall rate of 7.8% in the same year.²³
- 6.9 Those LGBTI persons who choose to disclose their identities, or whose identity is involuntarily disclosed at work by others, risk facing harassment, bullying, victimisation and termination from their employment. By way of example, a lesbian woman's experience demonstrates how the unwanted revelation of her sexual orientation led to her losing her job:

*"I had a good working relationship with my boss and my colleagues, and always had positive feedback. Then one day, about six months after starting there, my boss called me in. She looked up at me like she was disgusted and said my services were no longer needed. I was very upset as I could not understand why I was being fired. I had done nothing wrong. Then I realised someone had told her about my sexuality, a fact that was confirmed a little while later when the same organisation treated my partner, who had done some work for them, with derision and contempt."*²⁴

- 6.10 Social stigma and the inability to obtain and retain employment has also led to many transgender Mongolians to resort to sex work (hustling). This has fostered the erroneous public belief that transgender women voluntarily choose to engage in, and enjoy, sex work. As one transgender woman explains in relation to another transgender friend:

*"Because of discrimination she has to hustle. People don't understand it; they think she does it because she likes it. And because we are the few, the transgender people, we have to stick together to support one another, but they think that we are hustling in a group."*²⁵

Recommendations

- 6.11 We urge the Committee to include within its concluding observations a **recommendation** that both sexual orientation and gender identity be added to the list of non-discrimination grounds protected under the Labour Law.

²¹ National Human Rights Commission of Mongolia (2013), *"12th Report on Human Rights and Freedoms in Mongolia"*, p.53.

²² UNDP, USAID (2014), *"Being LGBT in Asia: Mongolia Country Report"*, p.26.

²³ UNDP, USAID (2014), *"Being LGBT in Asia: Mongolia Country Report"*, p.25.

²⁴ Anaraa Nyamdorj and Robyn Garner (2008), *"The Status of Lesbian and Bisexual Women and Transgendered Persons in Mongolia: Shadow Report for the 42nd CEDAW Committee Session"*, p.12.

²⁵ Lai, Y., Nergui, D.N., & Delegchoimbol, A. (2013), *"Desk Review on the Legal and Policy Environment of Sexual Minorities in Mongolia"*, Ulaanbaatar: UNAIDS, as cited in UNDP, USAID (2014), *"Being LGBT in Asia: Mongolia Country Report"*, p.27.

7. ARTICLE 10 (PROTECTION AND ASSISTANCE TO THE FAMILY)

Relevant Articles of the ICESCR

- 7.1 Article 10(1) of the ICESCR recognises that, “*The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children.*”
- 7.2 The scope and application of Article 10(1) is informed by the non-discrimination principle in Article 2(2) of the ICESCR, which requires that protection and assistance to the family be granted without distinction as to sexual orientation and gender identity. As argued by Paula Gerber, Kristine Tay and Adiva Sifris, “*Article 10 and Article 2 read in tandem deliver a strong case for the ICESCR providing broad and overarching protection of same-sex families and children*”.²⁶
- 7.3 Further, Article 10(3) of the ICESCR stipulates that, “*Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions*”. When read together with Article 2(2), this means that the children of same-sex parents should not be subject to any discrimination due to their parentage, including discrimination that arises from non-recognition of their parents.

Relevant Mongolian Laws & Policies

- 7.4 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) 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.
- 7.5 Article 3.1.3 of the Family Law of Mongolia defines “spouses” in gender-specific terms, as “*husband and wife who are connected by marriage bonds and have equal rights and obligations*”.

Mongolia's Failure to Comply with Article 10 of the ICESCR

- 7.6 The LGBT Centre has stated that “*no family should be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its family members*”.²⁷ However, Mongolian LGBTI families continue to face discrimination both due to the non-recognition of same-sex couples and, in particular, the lack of family rights provided to such couples.
- 7.7 Mongolia’s failure 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.²⁸ This not only prevents them from realising their right to have their families protected under Article 10, but also affects a range of other social and economic rights, such as the right to health under Article 12.

²⁶ Paula Gerber, Kristine Tay and Adiva Sifris (2014), ‘Marriage: A Human Right for All?’, 36 *Sydney Law Review* 643, p. 657.

²⁷ LGBT Centre (2012) “*Survey: Implementation of the rights of sexual minority*”, as cited in National Human Rights Commission of Mongolia (2013), “*12th Report on Human Rights and Freedoms in Mongolia*”, p.50.

²⁸ UNDP, USAID (2014), “*Being LGBT in Asia: Mongolia Country Report*”, p.33.

- 7.8 For example, the non-recognition of same-sex couples results in same-sex partners being denied hospital visitation rights if their partner is in intensive care.²⁹ Similarly, same-sex partners are not able to make medical decision on each other's behalf.³⁰ In practice, it is very common for parents and other family members to ignore and overrule a same-sex partner's wishes, both in a medical context and in relation to estate and inheritance disputes.³¹
- 7.9 Moreover, Mongolia does not recognise intersex persons for the purposes of marriage. As one member of the intersex community explains:
- "Other human beings and us are the same. However, we cannot get married to each other like ordinary people under this law...I am not allowed to get married since my gender is not defined."*³²
- 7.10 In Mongolia, same-sex couples are unable to legally adopt. They are also unable to access other parenting-related rights: for example, the female partner of a woman who gives birth through IVF is not recognised as a co-parent even though she may play an equal role in raising the child as the biological mother.
- 7.11 The inability of the LGBTI community to adopt has led some people circumventing the adoption system. As Naaram, a member of the transgender community, relates about her adoptive son, *"I took care of him since he was a baby, but because gay people can't legally adopt in Mongolia, his official guardians are my sister and her husband."*³³ This creates accountability issues if, for example, an LGBTI caregiver dies or if the official guardians of the adoptive child die.
- 7.12 Many children of same-sex partners – whether adoptive or the biological child of one partner – also face bullying and harassment, especially at school, due to the sexual orientation or gender identity of their parents.³⁴ The failure of the Government and of school authorities to take measures to address such bullying not only constitutes a violation of the right to education under Article 13 – discussed in section 10 below – but also a violation of Article 10(3), which clearly states that special protection and assistance should be given to all children *"without any discrimination for reasons of parentage"*.

Recommendations

- 7.13 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.

²⁹ Yingqi Lai, Dorjkhand Nergui & Altanchimeg Delegchoimbol (2013), *"Desk Review on the Legal and Policy Environment of Sexual Minorities in Mongolia"*, UNAIDS, p.17.

³⁰ Yingqi Lai, Dorjkhand Nergui & Altanchimeg Delegchoimbol (2013), *"Desk Review on the Legal and Policy Environment of Sexual Minorities in Mongolia"*, UNAIDS, p.17.

³¹ Yingqi Lai, Dorjkhand Nergui & Altanchimeg Delegchoimbol (2013), *"Desk Review on the Legal and Policy Environment of Sexual Minorities in Mongolia"*, UNAIDS, p.17.

³² Yingqi Lai, Dorjkhand Nergui & Altanchimeg Delegchoimbol (2013), *"Desk Review on the Legal and Policy Environment of Sexual Minorities in Mongolia"*, UNAIDS, p.9.

³³ Alvaro Laiz (2014), *"The Secret Lives of Transgender Mongolians"*, CNN, at: <http://edition.cnn.com/2014/04/08/asia/gallery/the-secret-lives-of-transgender-mongolians/>

³⁴ UNDP, USAID (2014), *"Being LGBT in Asia: Mongolia Country Report"*, p.28.

8. ARTICLE 11 (RIGHT TO AN ADEQUATE STANDARD OF LIVING)

Relevant Articles of the ICESCR

8.1 Article 11(1) of the ICESCR provides for the right of everyone to an adequate standard of living, including housing (among other things) and the continuous improvement of living conditions.

8.2 According to the Committee's General Comment No. 4, enjoyment of the right to adequate housing must not be subject to any form of discrimination, in accordance with Article 2(2) of the ICESCR.³⁵ The Committee has also pointed out that the right to housing should not be interpreted in a narrow, technical manner, but instead includes "*the right to live somewhere in security, peace and dignity*".³⁶

Mongolia's Failure to Comply with Article 11 of the ICESCR

8.3 For the LGBTI community in Mongolia, and particularly for lesbian, bisexual and transgender (LBT) women, finding safe living conditions, free from fear of eviction, is a continuous problem.

8.4 Anecdotal evidence suggests that LBT women are discriminated against in the housing sector and are denied housing or evicted if it is suspected they are part of the LBT community or are cohabiting with their partners.³⁷ Some comments from Mongolian LBT women illuminating this discrimination include:

*"If I live with a woman, society would be very puzzled. My family would be, her family would be. It's very difficult to live in Mongolia as a lesbian couple."*³⁸

*"We can't be ourselves even in our own home. We have to watch what we say in case our neighbours overhear us. We have to hide all photos of ourselves as a couple and all our lesbian literature whenever the landlady comes around. We have to make up a spare bed to look as if one of us sleeps in it. We rarely have our lesbians friends come around in case people in the building become suspicious. It is a precarious existence, and we always live in fear that someone will find out."*³⁹

8.5 Another lesbian woman said she and her partner were evicted from an apartment in Ulaanbaatar when the landlord let himself into the apartment early one morning and found the two of them sleeping together in one bed.⁴⁰

³⁵ Committee on Economic, Social and Cultural Rights, "*General Comment No 4: The Right to Adequate Housing (Article 11(1) of the Covenant)*", adopted in the Committee's 6th session, 13 December 1991, E/1992/23, at ¶ 6.

³⁶ Committee on Economic, Social and Cultural Rights, "*General Comment No 4: The Right to Adequate Housing (Article 11(1) of the Covenant)*", adopted in the Committee's 6th session, 13 December 1991, E/1992/23, at ¶ 7.

³⁷ Anaraa Nyamdorj and Robyn Garner (2008), "*The Status of Lesbian and Bisexual Women and Transgendered Persons in Mongolia: Shadow Report for the 42nd CEDAW Committee Session*", p.14.

³⁸ Anaraa Nyamdorj and Robyn Garner (2008), "*The Status of Lesbian and Bisexual Women and Transgendered Persons in Mongolia: Shadow Report for the 42nd CEDAW Committee Session*", p.14.

³⁹ Anaraa Nyamdorj and Robyn Garner (2008), "*The Status of Lesbian and Bisexual Women and Transgendered Persons in Mongolia: Shadow Report for the 42nd CEDAW Committee Session*", p.14.

⁴⁰ Anaraa Nyamdorj and Robyn Garner (2008), "*The Status of Lesbian and Bisexual Women and Transgendered Persons in Mongolia: Shadow Report for the 42nd CEDAW Committee Session*", p.14.

- 8.6 The deeply rooted prejudice against LGBTI people, and particularly fear of their relationship and/or sexual orientation and gender identity being discovered by their neighbours and landlords, prevents LGBTI people from exercising their right to live in security, peace and dignity under Article 11(1), as interpreted by the Committee in General Comment No. 4.⁴¹

Recommendations

- 8.7 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, specifically including housing.

9. ARTICLE 12 (RIGHT TO HIGHEST ATTAINABLE STANDARD OF PHYSICAL AND MENTAL HEALTH)

Relevant Articles of the ICESCR

- 9.1 Article 12(1) of the ICESCR recognises the right of everyone to enjoy the highest attainable standard of physical and mental health.

Relevant Mongolian Laws & Policies

- 9.2 Under Mongolia's health legislation, every citizen has the right to certain primary medical aid and health services, including aid for diseases and illnesses (physical and mental) which require long term rehabilitation,⁴² and treatment of a person who is sick as a result of widespread dangerous contagious diseases,⁴³ free of charge irrespective of whether they are covered by social or health insurance.⁴⁴
- 9.3 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.⁴⁵

Mongolia's Failure to Comply with Article 12 of the ICESCR

- 9.4 Mongolia's healthcare system is vastly underdeveloped,⁴⁶ particularly with regard to meeting the medical health and care needs of LGBTI individuals. This has resulted in a mistrust of the healthcare system, which is further exacerbated by the fear ingrained in many LGBTI individuals stemming from a history of social persecution.
- 9.5 LGBTI people face three particular barriers in exercising their right to the highest attainable standards of health under Article 12: discrimination in accessing health care, a high level of

⁴¹ Committee on Economic, Social and Cultural Rights, "General Comment No 4: The Right to Adequate Housing (Article 11(1) of the Covenant)", adopted in the Committee's 6th session, 13 December 1991, E/1992/23, at ¶ 7.

⁴² Health Act of 1998, Article 28'1.

⁴³ Health Act of 1998, Article 28'1.

⁴⁴ Health Act of 1998, Article 28'1.

⁴⁵ 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

⁴⁶ WHO and Ministry of Health (2012), "Health Service Delivery Profile Mongolia 2012", WPRO, at: http://www.wpro.who.int/health_services/service_delivery_profile_mongolia.pdf; Asia Pacific Observatory on Health Systems and Policies (2013), "Mongolia Health System Review", WPRO, at: http://www.wpro.who.int/asia_pacific_observatory/hits/series/Mongolia_Health_Systems_Review2013.pdf

mental illness caused by social stigma and discrimination and, for transgender people, barriers accessing hormone replacement therapy and sex reassignment surgery.

(a) *Discrimination in accessing health care*

9.6 Discrimination is common at all levels of Mongolia's health care system and is largely due to a lack of necessary training in matters relating to sexual orientation and gender identity.⁴⁷ A study carried out by the National Human Rights Commission of Mongolia found that negative attitudes towards LGBTI people hindered access to appropriate health care: **70%** of respondents had hidden their sexual orientation or gender identity from health care providers, while 10% claimed that accessing health care was "*very challenging*".⁴⁸

9.7 One gay respondent to the survey noted the barriers to accessing health care in rural environments:

*"Because of fear of bumping into somebody I know, it is difficult to receive medical services in rural areas with a small population. Usually I go to the city to undergo medical tests, but sometimes I cannot afford the transport cost."*⁴⁹

(b) *Mental health*

9.8 The National Center of Mental Health (NCMH) in Mongolia provides some mental health services to the LGBTI community, being a community which suffers a high rate of depression and anxiety.⁵⁰ A main source of difficulty in meeting the needs of these individuals is a low staff-to-patient ratio, which often means individuals continue to suffer from mental health conditions without access to adequate medical attention. The LGBT Centre also notes that there is a lack of counselling services available for LGBTI people in Mongolia.⁵¹

9.9 Moreover, LGBTI people suffer from a disproportionate rate of mental health issues, as a result of a high degree of social stigma, exclusion and discrimination. Suicide is also a significant problem, particularly among LGBTI youth, who face a high level of violence and discrimination from their families as well as in the education environment.⁵²

9.10 According to a 2012 study of men who have sex with men, a significant majority of participants reported experiencing depressive symptoms in the two years prior to the survey. Importantly, a majority of those affected did not consult a health professional, instead seeking support from friends and other members of the LGBTI community.⁵³ This indicates that significant barriers remain for LGBTI people to access mental health services, whether this be due to fear of further discrimination and stigma, lack of sensitivity towards LGBTI issues among mental health professionals or a lack of resources in the mental health sector.

⁴⁷ UNDP, USAID (2014), *"Being LGBT in Asia: Mongolia Country Report"*, p.30-31.

⁴⁸ UNDP, USAID (2014), *"Being LGBT in Asia: Mongolia Country Report"*, p.30.

⁴⁹ UNDP, USAID (2014), *"Being LGBT in Asia: Mongolia Country Report"*, p.30.

⁵⁰ Margaux Maxwell and Mathilde Michaud (1 August 2014), *"Mongolia's medical community open to providing care for transgender individuals"*, *UB Post*, at: <http://ubpost.mongolnews.mn/?p=10992>

⁵¹ LGBT Centre (2015), *"Report on Mongolia – Twenty Second Round of the Universal Periodic Review"*, p. 2.

⁵² LGBT Centre (2015), *"Report on Mongolia – Twenty Second Round of the Universal Periodic Review"*, p. 2.

⁵³ NCA, UNAIDS, JHSPH. (2012). *A Cross-Sectional Assessment of HIV Risk Status, Access to Services, And Human Rights Contexts Among Men Who Have Sex With Men (MSM)*. Ulaanbaatar: UNDP; cited in UNDP, USAID (2014), *"Being LGBT in Asia: Mongolia Country Report"*, p.30.

(c) *Access to hormone replacement therapy and sex reassignment surgery*

- 9.11 Many providers within the Mongolian medical community claim that they are willing to offer health services relating to transitioning for transgender people.⁵⁴ Some facilities in Mongolia are capable of offering both sex reassignment surgery and hormone replacement therapy. Nevertheless, some transgender individuals have noted poor quality services and unsupportive staff attitudes toward them. There has been at least one report of a transgender woman being advised by an unwelcoming doctor to “*become a man again*”.⁵⁵
- 9.12 A significant barrier for the Mongolian transgender community is the price of hormone replacement therapy, as this medication is not subsidised by medical insurance. Although it is possible for transgender individuals to change their gender on official documents, there is no access to hormone replacement medication through the public health care system and many transgender individuals are required to make the purchases themselves.⁵⁶ This makes it considerably more difficult to control variability of the types of hormones used, which can endanger the health of the individual using the medication.

Recommendations

- 9.13 We urge the Committee to include in its concluding observations **recommendations** that:
- 9.13.1 the Government improve the training of health professionals to increase their understanding of and sensitivity to the specific health needs of LGBTI people; and
- 9.13.2 the Government broaden the scope of the universal public health care system to include access to IVF for lesbian and bisexual women and sex reassignment surgery and hormone replacement therapy for transgender people.

10. ARTICLE 13 (RIGHT TO EDUCATION)

Relevant Articles of the ICESCR

- 10.1 Article 13(1) of the ICESCR recognises “*the right of everyone to education*”, where education “*shall be directed to the full development of the human personality and the sense of its dignity*”. The Committee has confirmed that State parties are under an obligation to “*avoid measures that hinder or prevent the enjoyment of the right to education*”.⁵⁷
- 10.2 Article 2(2) of the ICESCR requires that the right to education in Article 13 be exercised without discrimination of any kind, including on the basis of sexual orientation or gender identity.⁵⁸

⁵⁴ Margaux Maxwell and Mathilde Michaud (1 August 2014), “*Mongolia’s medical community open to providing care for transgender individuals*”, *UB Post*, at: <http://ubpost.mongolnews.mn/?p=10992>

⁵⁵ Margaux Maxwell and Mathilde Michaud (1 August 2014), “*Mongolia’s medical community open to providing care for transgender individuals*”, *UB Post*, at: <http://ubpost.mongolnews.mn/?p=10992>

⁵⁶ Margaux Maxwell and Mathilde Michaud (1 August 2014), “*Mongolia’s medical community open to providing care for transgender individuals*”, *UB Post*, at: <http://ubpost.mongolnews.mn/?p=10992>

⁵⁷ Committee on Economic, Social and Cultural Rights, “*General Comment No. 13, The Right to Education (art. 13)*”, adopted in the Committee’s 21st session, 15 November - 3 December 1999, UN Economic and Social Council, E/C.12/1999/10, 8 December 1999, at 10, ¶ 47.

⁵⁸ Committee on Economic, Social and Cultural Rights, “*General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (art. 2 para. 2)*”, adopted in the Committee’s 42nd session, Geneva, 4-22 May 2009, UN Economic and Social Council, E/C.12/GC/20, 10 June 2009, at 10, ¶ 32.

Relevant Mongolian Laws & Policies

- 10.3 Sexual education is included in the national secondary school curriculum in Mongolia. Since 1998, the sexual education curriculum in Grade 9 includes issues relating to sexual identity and orientation. Mongolia was the first country in Asia to include discussions of sexual orientation and gender identity in its national curriculum.⁵⁹

Mongolia's Failure to Comply with Article 13 of the ICESCR

- 10.4 While no laws or policies specifically prevent LGBTI persons from accessing education, many LGBTI Mongolians leave the education system early due to discrimination and bullying, thereby preventing them from practically realising their right to education.
- 10.5 Although the sexual education curriculum includes components relating to sexual orientation and gender identity, these topics are not always discussed in practice. A survey of LGBTI students conducted in 2013 found that often teachers ignored the sexual orientation and gender identity component of the sexual education curriculum, often because they lacked any knowledge about the topic themselves. Only **10%** of students in the survey confirmed that they had been taught about sexual orientation and gender identity in school.⁶⁰
- 10.6 Given that sexual orientation and gender identity have been included in the sexual education curriculum for over 15 years, the survey data suggests that greater focus needs to be placed on teacher training and capacity-building to allow the sexual education curriculum to be effectively implemented in schools.
- 10.7 Moreover, intolerance of LGBTI persons is widespread in the education environment, resulting in LGBTI students being harassed and discriminated against by peers, and even sometimes by teachers. As one former student recounts:

"It was common for school children to be called, 'Hey girl. Hey gay.' It was nothing unless they caught me and punched in my stomach. When a teacher says, 'So girly,' my classmates laughed...I missed classes because of these insults by others. There were many cases of other gay boys who left school."⁶¹

- 10.8 As a result of discrimination, LGBTI students often become detached from others and lose interest in their studies and in learning generally, resulting in a high dropout rate for LGBTI students in secondary school, particularly transgender girls.⁶² In serious cases, students can also develop depression and experience suicidal thoughts.⁶³ Aside from the impact this has on their mental health (which constitutes a violation of their rights under Article 12), the exclusion that LGBTI students face in the education system prevents them from enjoying their right to education in a dignified and non-discriminatory manner.

Recommendations

- 10.9 We urge the Committee to include in its concluding observations **recommendations** that:

⁵⁹ UNDP, USAID (2014), *"Being LGBT in Asia: Mongolia Country Report"*, p.13.

⁶⁰ National Human Rights Commission of Mongolia (2013), *"12th Report on Human Rights and Freedoms in Mongolia"*, p.57.

⁶¹ LGBT Centre (2012), *"Survey on Implementation of the Rights of Sexual Minorities"*, cited in UNDP, USAID (2014), *"Being LGBT in Asia: Mongolia Country Report"*, p.31.

⁶² UNDP, USAID (2014), *"Being LGBT in Asia: Mongolia Country Report"*, p.28.

⁶³ UNDP, USAID (2014), *"Being LGBT in Asia: Mongolia Country Report"*, p.28.

- 10.9.1 the Government develop and implement policies to address bullying and discrimination against LGBTI students in schools; and
- 10.9.2 the Government develop and implement a training program for secondary school teachers to improve their knowledge about the sexual orientation and gender identity components of the sexual education curriculum.

11. COMBINED AND CUMULATIVE EFFECT OF ICESCR VIOLATIONS

- 11.1 The combined and cumulative effects of Mongolia's failure to comply with the ICESCR in respect of its LGBTI community has led to, and continues to lead to, LGBTI people:
 - 11.1.1 being unable to find and retain employment, and being unable to reveal their identity to their work colleagues;
 - 11.1.2 being unable to enjoy the social and legal benefits of being in a recognised relationship, including rights such as hospital visitation and adoption;
 - 11.1.3 feeling isolated from the rest of society and feeling like second-class citizens, leading to mental health issues;
 - 11.1.4 being harassed and assaulted by other members of society;
 - 11.1.5 being evicted from housing and otherwise deprived of the right to live in security, peace and dignity;
 - 11.1.6 being unable to access affordable healthcare services, preventing them from fully expressing their sexual orientation and gender identity and exposing them to higher risks of STIs; and
 - 11.1.7 being unable to access education without fear of discrimination and harassment, affecting their progression and retention through the education system.

12. CONCLUSIONS AND RECOMMENDATIONS

- 12.1 The Mongolian Government has taken several positive steps towards recognising and upholding LGBTI rights, including moves to introduce anti-discrimination legislation which is inclusive of sexual orientation and gender identity. However, Mongolia is still failing to adequately protect its LGBTI population from violations of economic, social and cultural rights on a number of counts, constituting violations of Articles 2, 6, 7, 10, 11, 12, and 13 of the ICESCR.
- 12.2 Therefore, we urge the Committee to include in its concluding observations the following **recommendations**:
 - 12.2.1 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, including employment, housing, health care and education;
 - 12.2.2 that both sexual orientation and gender identity be added to the list of non-discrimination grounds protected under the Labour Law;
 - 12.2.3 that the Government consult on and introduce legislation recognising the rights of same-sex couples, including parenting rights;

- 12.2.4 that the Government improve the training of health professionals to increase their understanding of and sensitivity to the specific health needs of LGBTI people;
- 12.2.5 that the Government broaden the scope of the universal public health care system to include access to IVF for lesbian and bisexual women and sex reassignment surgery and hormone replacement therapy for transgender people.
- 12.2.6 that the Government develop and implement policies to address bullying and discrimination against LGBTI students in schools; and
- 12.2.7 that the Government develop and implement a training program for secondary school teachers to improve their knowledge about the sexual orientation and gender identity components of the sexual education curriculum.