

Mongolian Minorities' Report – Ninth Round of the Universal Periodic Review (2010)

1. This report is jointly submitted by a national working group of non-governmental organisations representing minority issues: ethnic minorities (Kazakhs and Dukha), sexuality minorities, people living with HIV/AIDS, and sex workers. Those NGOs are the Arular Association of Kazakh Women, the Itgel Foundation, the Mongolian LGBT Centre and the National AIDS Foundation.
2. **Summary:** This report documents the widespread societal and institutional discrimination against identified and recognised minority groups within Mongolian society, which are herein categorised as ethnic minorities (Kazakhs and Dukha), sexuality minorities, people living with HIV/AIDS and sex workers. While each minority sub-group is distinct in its particular area of societal representation, there is commonality among them in terms of a lack of acceptance within the broader society, a lack of recognition of each sub-group's rights and basic freedoms, ongoing systematic discrimination and human rights violations, a lack of institutional and/or legislative protections, a lack of political will to implement existing legal protection frameworks, and a lack of redress mechanisms or a lack of access to redress mechanisms.

ETHNIC MINORITIES:

3. Though largely an ethnically homogenous nation, with 80-86% of the population estimated to be of Khalkh Mongol origin, Mongolia is home to more than 10 ethnic minorities that have historically resided within the current state boundaries. The ethnic minorities included in this submission are the Kazakh and Dukha (Tsaatan). Though native-born members of these groups enjoy citizenship rights and associated protections afforded them under the law, Mongolia's socio-political and legal context does not effectively ensure the preservation of ways of life and the overall well-being of ethnic minorities. They lack adequate protection against human rights injustices and remain culturally, linguistically, economically, and politically marginalised, and disadvantaged as compared with their ethnic majority counterparts in Mongolia.

Discrimination and human rights issues:

4. The Government of Mongolia homogenises ethnic minorities and projects an ascribed cultural identity on them that is reminiscent of socialist-era nationalist rhetoric. They are underrepresented or, in the case of the Dukha, are entirely absent from the policymaking sphere. This means that public policy fails to effectively understand and respond to the interests of ethnic minorities, and falls short of protecting their human rights and freedoms. In addition, poorly designed or implemented initiatives aimed at benefiting ethnic minorities in reality infringe upon the wellbeing of these groups.
5. The National Programme on Implementation of Human Rights, Section 2.4.3.5, which asserts that "The State shall ensure the right of ethnic minorities to receive education in their mother tongue," is executed in a manner that leaves non-Mongolian-speaking minorities disadvantaged. The lack of sufficiently trained minority-language educators, the shortage of minority-language textbooks and resources, and the absence of an effective minority-centred education policy hinder educational achievement among non-Mongolian speaking minorities. This is a shortcoming in assuring basic rights to education. The Public Broadcasting Law of Mongolia includes a section on the necessity of editorial programs targeting ethnic minority populations, but implementation of this law is insufficient. There are no print periodicals or regular media broadcasts in minority languages such as Kazakh. Access to news and information is significant in that poor access directly correlates with limited participation in policymaking and governance.

6. Mongolia is not a signatory to the International Labour Organization's Convention 169 (ILO 169), which recognises the status of "Indigenous and Tribal Peoples." As such, ethnic minorities who fully qualify under international guidelines as Indigenous or Tribal groups are provided no special rights or protections. This is particularly applicable to the Dukha reindeer-herding minority, whose subsistence reliance on hunted wild game for food is threatened by aggressive hunting laws that make no concessions for subsistence use of natural resources by minority groups. Ethnic minorities' land access and ownership rights are not adequately protected, which infringes upon their "right to own property, alone, as well as in association with others," as stated in Article 17 in the Universal Declaration of Human Rights (UDHR). Mongolia's ethnic minorities risk statelessness. Documented cases of Kazakh individuals becoming stateless as a result of moving between Mongolia and Kazakhstan in the early 1990s indicate inadequate protection of Article 13 (1) and (2) of the UDHR, which state, respectively, that: "Everyone has the right to freedom of movement and residence within the borders of each state; Everyone has the right to leave any country, including his own, and to return to his country", and Article 15 (1), which states: "Everyone has the right to a nationality."

Recommendations:

7. *It is strongly recommended that local, regional and national government bodies develop mechanisms for ensuring the participation of ethnic minorities in the policymaking process. This includes the introduction of quotas for soum, aimag and national khurals that reserve seats for ethnic minorities. Advisory networks, or systems that allow minority groups to nominate policy liaisons, should also be implemented at all levels of policymaking.*
8. *It is strongly recommended that the Government of Mongolia revise its implementation of education in minority languages, and ensure that the delivery of non-Mongolian language education adheres to the same standards and performance requirements as Mongolian language education.*
9. *It is strongly recommended that the Government of Mongolia develop specific standards for compliance with the Public Broadcasting Law, such as ensuring that a minimum number of minority-language publications and media broadcasts are supported through State funding on a permanent basis. Public documents and information, particularly pertaining to policy, should be translated and made available to ethnic minorities in their native tongue.*
10. *It is strongly recommended that the Government of Mongolia ratify ILO Convention 169 that recognises the special circumstances and entitlements of Indigenous and Tribal groups, and should award qualifying groups such rights and concessions as the privileged use of natural resources, particularly those on which groups have an historical, subsistence dependence.*
11. *It is strongly recommended that the Government of Mongolia adopt pro-ethnic-minority land tenure policy in consultation with minority groups to ensure that customary land use and access is ensured and that changing land-leasing arrangements do not infringe upon access to land.*
12. *It is strongly recommended that the Government of Mongolia immediately address issues of statelessness to ensure that ethnic minorities are not left without the protection of citizenship rights or the legal status necessary to pursue education, participation in government, or legal participation in society at large.*

SEXUALITY MINORITIES¹

13. Discrimination and human rights abuses in Mongolia against sexuality minorities - comprising lesbian, gay, bisexual and transgender (LGBT) persons – are endemic in the public, private and non-governmental sectors and encompass the police and the judiciary, health-care services, education, the housing sector and the media. So prolific is the level of prejudice that few LGBT

¹ For detailed information, please refer to the separate UPR submission on sexuality minorities' human rights compiled by the Mongolian LGBT Centre NGO and the Sexual Rights Initiative for the Ninth Round of the Universal Periodic Review (2010).

persons have escaped some degree of harassment and/or violence.² While Mongolia professes a commitment to its international obligations to uphold human rights for all, it frames human rights discourse in a heteronormative, exclusionary and narrow manner. Of particular concern is the Government's failure to provide an adequate legal and institutional framework, and its denial of LGBT persons' right to life, liberty and security of persons; the right to freedom of association and peaceful assembly; the right to work; the right to education and freedom of information, the right to an adequate standard of living, the right to enjoyment of the highest attainable standard of healthcare, and the right to marry and found a family.³

Recommendations:

14. *The Government of Mongolia must enact an anti-discrimination law that explicitly reflects non-discrimination based on sexual orientation and gender identity/expression and establish a mechanism for monitoring the implementation of the anti-discrimination law.*
15. *Specific attention is called to marriage equality, whereby a same-sex marriage that is legally recognised and registered elsewhere is afforded the same status of recognition 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. The Government of Mongolia must recognise same-sex marriages that have been registered by competent legal authorities outside its borders and provide the same legal and civil protections to such marriages.*
16. *It is strongly recommended that Mongolia enacts anti-hate crime law to protect minorities from hate crimes⁴, ensure privacy and confidentiality of information, emphasise education and conciliation, and provide for speedy and effective criminal, administrative and civil remedies.*
17. *The Government of Mongolia must end its surveillance of LGBT persons 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.*
18. *The Government of Mongolia must provide continued training for the law enforcement and judicial sectors on the prevalence of SGBV 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.*
19. *The Government of Mongolia must 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.*
20. *The Government of Mongolia must 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.*
21. *The Government of Mongolia must 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.*
22. *The Government of Mongolia must review the secondary education and teacher training curricula in order to mainstream human rights, with particular attention paid to the inclusion of sexuality minorities.*
23. *The Government of Mongolia must introduce universal non-discrimination policy 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.*

² 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. 6,

http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/Coalition_Mongolian_LGBT_Rights_Activists_Mongolia41.pdf

³ See the separate UPR submission compiled by the Mongolian LGBT Centre NGO and the Sexual Rights Initiative (2010).

⁴ Hate crimes are offenses motivated by hatred against a victim based on his or her race, religion, sexual orientation, ethnicity, or national origin (US Department of Justice (1997) *A policymaker's guide to hate crimes*, p. 18).

24. *The Government of Mongolia must 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.*
25. *The Government of Mongolia, and specifically the Ministry of Health, must 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.*

PEOPLE LIVING WITH HIV/AIDS

26. As of January 2010, there have been 62 reported cases of HIV/AIDS in Mongolia since the first case was reported in 1992. Nine of those people have died of AIDS-related complications, another nine have progressed from being HIV positive to developing AIDS, and 44 are HIV positive.⁵ Human rights violations against PLWHIV have been reported since the first HIV case was confirmed. Mongolia enacted the Law on HIV/AIDS Prevention in 1993.

Discrimination and human rights violations against PLWHIV:

27. PLWHIV are subject to discrimination and a range of human rights violations. They are routinely blamed for contracting HIV/AIDS and are told they deserve it. In terms of employment, pre-vocation HIV testing is mandatory, which violates the rights of HIV-positive people to freely choose their employment. At present, 27% of HIV-positive people are employed, 20% run private businesses and the rest are unemployed. The law adopted in the 1990s is not relevant to the current situation and does not address the reality of the current HIV/AIDS situation in Mongolia. A number of HIV/AIDS law provisions conflict with the human rights principle of non-discrimination as well as other domestic laws. These include:
 28. Non-discrimination on “health status”, particularly as it pertains to PLWHIV, is not referred to in Article 14.2 of the Constitution.
 29. The confidentiality of an HIV-positive person’s status or identity is not upheld. According to Article 26.1.5 of the Health Law, “health status confidentiality includes all information about diseases except defects in an individual’s body parts or organs and certain infectious diseases that pose a particular threat to the public”. However, it is unclear whether HIV/AIDS is an infectious disease that poses a particular threat to the public. Article 11.1.3 of the Law on HIV/AIDS Prevention states “when accessing healthcare services, [people with HIV/AIDS] shall inform the medical and health organisation about their HIV or AIDS status”.
 30. Article 11.1.7 of the Law on HIV/AIDS Prevention states “if a person is tested positive for the Human Immunodeficiency Virus Infection or Acquired Immune Deficiency Syndrome, he or she shall immediately inform his wife or her husband, or a live-in partner about the disease.” This contradicts the Law on Confidentiality, which states “an individual shall protect one’s own secrets.”⁶

Recommendations:

31. *It is strongly recommended that the Government of Mongolia enact legal protections through an amendment to the Labour Law on non-discrimination in the workplace based on HIV status in order to ensure employment security for PLWHIV.*
32. *It is strongly recommended that the Government of Mongolia enacts an anti-discrimination law that explicitly reflects non-discrimination based on HIV/AIDS status and establishes a mechanism for monitoring the implementation of the anti-discrimination law.*
33. *It is strongly recommended that the Government of Mongolia amends the Health Law to ensure the protection of the confidentiality of PLWHIV.*

⁵ Report by Prof. Ch. Urtnasan, Head of the Information Dissemination Department, National Centre for Communicable Diseases.

⁶ See <http://www.mn-nhrc.org/>

34. *It is strongly recommended that the Government of Mongolia harmonises the Law on HIV/AIDS Prevention with the Law on Confidentiality to ensure the right to privacy in relation to HIV/AIDS status.*

SEX WORKERS

35. One of the formerly hidden social issues that emerged in the wake of Mongolia's transition to democratisation was the issue of sex work. The number of sex workers is rapidly increasing, although there is no data currently available on how many people are engaged in the sex industry.
36. The majority of female sex workers cite underlying socio-economic problems as the reason for taking up sex work: 88.1% said it was a result of poverty; 70.6% because of unemployment; and 60.6% because of a lack of a profession and/or training, insufficient income and divorce.⁷

Discrimination and human rights abuses:

37. In Mongolia, violence against women emerged as a human rights issue in the 1990s. Violence against women is a serious issue that impacts on women's equality, and their peace and development. It endangers their lives and prevents them from enjoying their fundamental basic freedoms. Sex work is prohibited in the Law on Combating Prostitution and Pornography, and there are widespread negative social attitudes towards sex workers. The risk of discrimination and other human rights abuses forces sex workers to live hidden lives. Research has found that:
- a. In focus group discussions, sex workers told of being verbally and physically abused by clients, which at times had led to deaths, and of being trafficked for forced sex work.
 - b. Sex workers were not only fined and detained by police, but also suffered physical and sexual violence in detention.
 - c. The psycho-social impacts of sex work can be seen in women losing confidence in their futures, and through guilt, shame and depression.
 - d. Discussions with sex workers and the specialist organisations that work with them revealed how the prevalent social and cultural negativity led to the dehumanisation of sex workers, to sex workers becoming recruiters, and to sex workers using other women and girls for sexual exploitation, prostitution and trafficking.⁸

Recommendations:

38. *In line with Article 23 (1) of the Universal Declaration of Human Rights, in which "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment", and Articles 14 (2) and 16 (4) of the Constitution of Mongolia, which affirms non-discrimination based on occupation and the free choice of employment, it is strongly recommended that the Government of Mongolia decriminalises sex work when it is the free choice of employment by legally aged persons, and ensures just and favourable conditions for sex workers in its relevant laws and regulations.⁹*
39. *It is strongly recommended that the Government of Mongolia impose penalties on the clients of sex workers, who create an enabling environment for prostitution.*
40. *In light of the fact that sex workers are not formally employed and lack the education, information and knowledge to protect their rights, it is strongly recommended that initiatives be undertaken that inform sex workers of their rights and help protect those rights.*
41. *Because female sex workers lack other sources of income and are usually not included in livelihood and household income-generation projects, and because they generally lack the necessary collateral to take out loans to start their own businesses, it is strongly recommended that assistance be provided to them in relation to developing alternate forms of income.*

⁷ Summary of the report: "High risk and vulnerability of HIV/AIDS [in Mongolia]", 2007-2008.

⁸ Summary of the report: "High risk and vulnerability of HIV/AIDS [in Mongolia]", 2007-2008.

⁹ Human Rights and HIV/AIDS conference recommendations, January 2007, p.2;

<http://mongoldyke.jimdo.com/app/download/267614903/4b80df3c/7081fbc3cda630785f3df079d80d0f2171f42078/recommendations+mongolian.pdf>