



# LGBTQIQ+ Rights in Mongolia

# Domestic Laws:

- The Constitution of Mongolia
- Family Law
- Criminal Code (old+new)
- Labor Law (old+new)
- Civil Registration Law (old+new)
- Military Service Act

# The Constitution of Mongolia



- ▶ Article 16 (11) of the Mongolian Constitution defines marriage as being "based on the equality and mutual consent of a man and a woman who have reached the age determined by law."

# Family Law

## 6.1 Man and woman who reached the age of 18.

## 6.2. Man shall have one wife and woman shall have one husband.

- An individual filed a motion with the Constitutional Court claiming this article discriminates certain citizens and prevents them from being legally married, hence unconstitutional. Constitutional Court dismissed the case citing this is not a constitutional case, + not in line with the traditions of Mongolia
- 3<sup>rd</sup> cycle of UPR in late 2020, Luxembourg and Denmark recommended: Consider giving legal recognition to same-sex couples to ensure that they are protected by law.
- Mongolia did not accept the recommendation citing such legislation would be against the Constitution.
- However, there are other ways to legally recognize same-sex relationship such as civil union, domestic partnership, recognition of foreign marriage license.
- New draft of the Family Law: The Working Group dismissed the suggestion of same-sex marriage & civil union

# Criminal Code (new)

- ▶ 14.1 Criminalizes discrimination based on sexual orientation and gender identity.
- However such article is poorly enforced. Lack of proper training and understanding by police officers, prosecutors and judges.
- Case from 2019, Judge dismissed the case on the ground that there is no proof that the victim's rights were restricted by the discriminative actions of the perpetrator. No court precedent so far.

# Criminal Code (new & old)

- ▶ Old Criminal Code: Only woman can be a victim of rape (heavy punishment – up to 15 years of imprisonment).
- ▶ If the victim is male then prosecuted under different article (satisfying one's sexual desire in unethical ways) – light punishment- (imprisonment between 2-5 years).
- ▶ Under the New Criminal Code: Person of any gender can be a victim.

# Labor Law (new & old)

- ▶ Before 2022 under the Old Labor Law, no explicit ban on discrimination based on SOGIESC. Termination of employment is possible only under certain circumstances (SOGIESC is not one of them), however, in reality people were fired due to their SOGIESC.
- ▶ New Labor Law from 2022 bans discrimination based on SOGIESC.

# Civil Registration Law (old)



- Allowed transgender people to change their legal gender on birth certificates or citizen identification cards (if received gender reassignment surgery or if naturally one gender prevails)



# Civil Registration Law (new-since 2018)

- ▶ Citizen who is 18 or above should provide certain documents, including:
- ▶ “document issued by a hospital proving that the citizen’s sex is changed”;
- ▶ “Official decision by the competent authority confirming such citizen’s marriage is terminated”- another example of state policy to not recognize same-sex marriage.
- ▶ Both old and new laws do not explicitly require surgical procedure, however there are cases where registration officer/office required it. Unclear.

# Military Service Act

- ▶ All men above 18 have to complete military service (military conscription/draft).
- ▶ Can be exempted due to health issues or family background etc... SOGIESC is not one of the conditions to be exempted, hence in theory LGBTIQ+ people are allowed to openly serve in the military. (unlike previous US policy where if one is found gay, it constitutes a ground to be dismissed)

# Other issues

- ▶ Religion: Buddhism & Shamanism. Shamanism recognizes transgender people – “Two spirited”.
- ▶ Comprehensive anti-discrimination law: Ministry of Justice did a “research” and claimed that it is not necessary as each individual laws have anti-discrimination articles in it.

Summary table	
Same-sex sexual activity legal	Yes
Equal age of consent (16)	Yes
Anti-discrimination laws in employment only	Yes
Anti-discrimination laws in the provision of goods and services	No
Anti-discrimination laws in all other areas	2017 (poorly enforced)
Hate crime laws include sexual orientation and gender identity	2017(poorly enforced)
Same-sex marriages	No (Constitutional ban since 1992)
Recognition of same-sex couples	No
Stepchild adoption by same-sex couples	No
Joint adoption by same-sex couples	No
LGBT people allowed to serve openly in the military	Yes???
Right to change legal gender	Yes
Commercial surrogacy for gay male couples	No
MSMs allowed to donate blood	No



Thank you for your attention