

MONGOLIA

1. Discrimination in the family

a) Overarching legal framework for marriage

The overarching, legislative framework for marriage in Mongolia guarantees a series of dispositions aimed at gender equality and mutual consent between heterosexual spouses who meet the minimum legal age of 18 year olds with respect to the Mongolian Civil Code and the Family Code of Mongolia. This framework is underpinned by the Mongolian Constitution, which establishes that women and men should enjoy equal protection before the law and may not be discriminated against based upon gender (Constitution of Mongolia, s. 14). Marriage is a registered act between consenting man and woman bound by spousal obligations and duties. The legal framework does not permit registration of homosexual partnerships or civil unions.

While men and women are legally protected from sex discrimination, women still largely face traditional, patriarchal stereotypes concerning their role in both the public and private sphere (CEDAW, 2014).

b) Child marriage

The legal age of marriage for both women and men is 18 years old in Mongolia (Mongolia: Family Law of 1999, s. 6). However, the code provides for a derogation to the minimum age requirement in the case that an applicant under the age of 18 has previously been commissioned the right of full legal capacity by the Court (Law of Mongolia Civil Code, s. 9.2). The civil code stipulates that a Court may consider Mongolian citizens that have reached the ages of 16-18 years old to have full civil legal capacity at the behest of parents, guardians or trustees (art. 15.2). As a result, if an underage applicant for marriage meets the requirements of gender equality and mutual consent, with the consent of parents and a Court, it is possible to derogate from the minimum age requirement for marriage (Mongolia: Family Law of 1999, s. 9.2). While legislation provides a right to child marriage, evidence suggests that this right is rarely exercised. While child marriage is prohibited under the Mongolian Law on the Protection of the Rights of the Child (article VII), the exception allowing a minor aged between 16 and 18 to marry does not meet international standards regarding minimum age requirements.

c) Household responsibilities

Household responsibilities, including childcare responsibilities and maintenance of the household, are equally shared by spouses (Mongolia: Family Law of 1999, s. 10). The right to freedom of choice in regard to professional life or participation in social life cannot be restricted by either a spouse or an unregistered partner with whom one is living (Law of Mongolia on Enforcement of the Law on Promotion of Gender Equality, art. 14.1). Research indicates the majority of Mongolian households are headed by men and, in practice; there is a much higher incidence of poverty for female-headed household earners (UNIFEM, 2001). The 2015 Shadow Report on the Implementation of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in Mongolia

underlines the de facto discrimination perpetuated by the government against both women and girls. While Mongolian legislation assures equality within the family sphere, the report suggests that the stereotype of women in reproductive roles has largely been perpetuated due to Mongolia's population growth policy (Shadow Report on the Implementation of the UN Convention on the Elimination on All forms of Discrimination against Women in Mongolia). As a result, there is evidence to suggest the continued existence of continued discrimination within the family sphere in respect to household responsibilities.

d) Divorce

Divorce is legal under the Family law of Mongolia. The Law on the Promotion of Gender Equality guarantees women and men equal rights in voluntarily divorcing (art. 14.2). However, neither of the spouses may dissolve the marriage if the wife is pregnant or a child is under one year old (Mongolia: Family Law of 1999, s. 12.2). Divorce does not negate the dispositions regarding equal childcare responsibilities to be shared equally between former spouses (Law on Protection of Child Right's, article XII.2). Mongolian Family Law underlines that spouses may reach a custody agreement or a judge will determine a custody agreement for the best interest of the child or children in question (Mongolia: Family Law of 1999, s. 14). Mongolian law dictates that spouses are required to maintain one another through payments of maintenance, which may continue in the form of alimony in the case of divorce (Mongolia: Family Law of 1999, s. 37). Customary practice dictates that women typically have custody of children following a divorce. While common property is supposed to be equally divided between spouses in the case of divorce, there is evidence to suggest that male spouses often receive the majority of immovable assets due to the frequent registration of property to the head of the household (United States Department of State, 2016).

As a result of the restrictions concerning divorce if the wife is either pregnant or has a child under one year of age, it appears that CEDAW reports indicate concerns regarding women that are considered married by law, whom have been deserted or are single heads-of-households (63rd Session of the Committee on the Elimination of Discrimination against Women, List of issues and questions in relation to the combined eighth and ninth periodic reports of Mongolia).

e) Inheritance

Mongolian legislation guarantees equal inheritance rights for both men and women (Law of Mongolia Civil Code art. 520.1). Spouses and children irrespective of sex are lawful successors to the inheritance following the death of a testator (art. 520).

More

The subject of human trafficking in Mongolia, particularly of women and children, has been of particular concern as an act of gender-based violence (CEDAW, 2014). While the previous National Action Plan addressed the sexual exploitation of women and children, the most recent National Action Plan includes a number of updated measures to combat a variety of activities associated with trafficking including labour exploitation, forced marriage, and human organ trafficking. The action plan will assess budgetary needs as well as determine implementation mechanisms for a five-year period from 2015 to 2020 (Convention against Torture).

2. Restricted Physical integrity

f) Violence against women

Violence against women has been a recurrent issue that has recently been addressed in Mongolia's 2011 Law on Promotion of Gender Equality. The law includes the broader definition of gender-based violence, which Mongolia seeks to actively eliminate through the introduction of policies aimed at the protection of the victim.

Mongolia has recognized the recommendations of a number of UN treaty bodies on the issue of violence against women and has accordingly adjusted its Criminal Code in recent years. As a result, the most recent Criminal Code provides a broader definition of sexual violence underlining "that if a person used force to have sexual intercourse or other actions of this nature and this act was done against the will of the victim by threatening to use force or by taking advantage of the mental illness, inebriety, influence of drugs, temporary unconsciousness and other illnesses, or by exploiting through the use of own financial position, work position and other advantageous positions, then this person shall be imprisoned for a duration from one to five years." Additionally, the newest dispositions address the crimes of sexual exploitation and sexual harassment (Convention Against Torture).

While Mongolia continues to address violence against women, gender-based violence remains a serious issue, including domestic violence, sexual harassment, and trafficking in persons (CEDAW, 2014).

g) Domestic violence

Mongolia's most recent efforts to combat domestic violence have culminated in Parliament's passage of the Law Combating Domestic Violence (LCDV) on the 22 of December 2016. The Law came into effect the 1st of February 2017 and is in the process of implementing a number of operational changes aimed at effective prevention of domestic violence, prosecution of violations, and recourse for victims. Additionally, the Ministries of Justice and Internal Affairs, Health, Labour and Social Protection as well as the National Committee on Gender Equality, the National Police Agency, and the National Statistical Office in partnership with the Swiss Agency for Development and Cooperation in Mongolia and the UNFPA. The government of Mongolia has committed to investing USD 452,000 in the implementation of the newest Action Plan directed towards the elimination of gender-based and domestic violence (UNFPA, 2017).

Despite legislative protections, domestic violence has consistently remained an issue within Mongolia's private sphere. According to 2013 Police statistics in Mongolia, the majority of domestic violence is perpetrated against women and children (CEDAW, 2014).

h) Rape

Rape perpetrated by either sex against a man or woman is criminalized under article 126 of the 1999 Criminal Code. The definition of rape requires the presence of sexual intercourse as well as physical violence or the threat thereof. Moreover, the code imposes sanctions of 5 to 10 years in prison when the crime is committed involving a minor, repeated offenses, degrading treatment, torture, or severe bodily injury. The same crimes committed by a recidivist, rape of a child under the age of 14 years old,

or rape involving death or grave bodily harm as determined by a judge carry a minimum sentence of 15 years up to 25 years or the death penalty (Criminal Code of Mongolia, art. 126). While the death penalty is included in the 1999 Criminal Code, it has been infrequently employed due to a moratorium, and has subsequently been abolished by the newest Criminal Code (Convention Against Torture).

There is no derogation in the Criminal Code which indicates that perpetrator of rape may escape prosecution by marrying the victim. Likewise, there is no evidence to suggest the existence of “Romeo and Juliet” laws, which acts as a derogation to statutory rape laws when two minors engage in consensual, sexual intercourse under the age of 18 years old.

i) Sexual harassment

A disposition establishing the criminalization of sexual harassment has been included in the new Criminal Code of Mongolia under article 12.4. There is no further information regarding the application of this article in non-workplace violations of sexual harassment (Convention Against Torture). Before its criminalisation, sexual harassment represented a violation of gender discrimination and a judge could impose administrative sanctions. An act of direct discrimination based upon the sex of an individual may incur a fine of ₮40000 to 50000, while a public official may incur between ₮60000 to 100000, and a media organisation may incur ₮200000 to 250000 (State of Mongolia, art. 26). This disposition may be applied if the violation does not constitute a criminal offense. There is no further information regarding sanctions within the most recent Criminal Code.

j) Female genital mutilation

There is no evidence to suggest the practice of FGM/FGC in Mongolia (UNICEF, 2016), and there is no law addressing the practice within its penal code.

k) Abortion

There appears to exist no restriction to a women’s access to abortion. The mental or physical health of the woman, rape, incest, and foetal inviability are all justifications for the procedure of a legal abortion. Both the Mongolian Criminal Code and the Law of Mongolia on Enforcement of the Law On Promotion of Gender Equality provide protection to women’s right to bodily integrity. If it is proven that a woman has been forced into an abortion, the violating party will be punished with 251 to 400 hours of forced labour, incarceration up to 6 months, or imprisonment of up to 2 years. Likewise, an abortion performed in non-medical conditions or by a non-medical professional is punished with 251 to 400 hours of forced labour, incarceration of up to 6 months, or imprisonment of up to 5 years. Repeated violations of these dispositions carry the sanction of imprisonment up to 8 years with the loss of license to practice in specified positions (Criminal Code of Mongolia, s. 127). Likewise, an individual who insists or coerces a woman to abort a pregnancy is susceptible to a fine of ₮50000. The same infraction committed by an official carries a fine of ₮100000 (Law of Mongolia on Enforcement of the Law on Promotion of Gender Equality, s. 26.1.5).

According to the state of Mongolia noted in CEDAW reports, abortion rates remain high due to the lack of accessibility concerning modern birth contraceptive methods as well as family planning services (63rd Session of the Committee on the Elimination of Discrimination against Women, List of issues and questions in relation to the combined eighth and ninth periodic reports of Mongolia).

Mongolian individuals who identify as LGBTI regularly incur discrimination and violence within and outside the home. Until the passage of the amended Criminal Code in 2016, there was no law that prohibited discrimination based upon gender identity or sexual orientation (United States Department of State, 2016). Following recommendations from a number of UN Treaty bodies as well as the National Human Rights Commission of Mongolia, the most recent Criminal Code identifies discrimination as a result of sexual orientation or gender identity carries a criminal offense. The sanctions include a fine of 450 to 5400 units, home arrest up to 1 year, and imprisonment up to year at the discretion of the judge (Convention Against Torture).

3. Restricted Access to productive and financial resources

a) Secure access to land and assets

Mongolian Civil Code protects the right to equal access to land and assets. The Constitution guarantees equal rights to “fair acquisition, possession, ownership and inheritance of movable and immovable property” (art. 16.3). This right is further bolstered by articles 14 and 16, which assure that women may not be discriminated on the basis of sex, and enjoy the same rights in the political, economic, social, and cultural spheres. Likewise, under Mongolian Family Law, spouses exercise the same rights concerning the disposal of common movable and immovable property accrued in marriage (art. 10.2).

Despite legislation, practice indicates that women appear to incur discrimination with regard to land ownership in Mongolia. Following the privatisation of state-ownership in Mongolia, most immovable and movable assets were registered to the head of the household, which were men in a majority of cases. Additionally, when women were the head of households, the distribution of assets appears to have been discriminatory (FAO, 2017). Because of the unequal distribution of assets and property, women often require the consent of the husband who is the head of the household to apply for a loan or credit using the property as collateral. Joint ownership practices are uncommon despite the guarantees of the Mongolian Civil Code and Constitution (Khan et al., 2013). As a result, Mongolia has made active efforts to underline the importance of equal rights to immovable and movable property with the passage of the 2011 legislation on Gender Equality (Law of Mongolia on Enforcement of the Law on Promotion of Gender Equality).

b) Secure access to formal financial resources

Mongolian law guarantees equal access to participation in the economic sphere, including but not limited to equal access and rights to property as collateral, budget allocations, and financial instruments critical to wealth management and growth (Law of Mongolia on Enforcement of the Law on Promotion of Gender Equality, s. 9.1-9.2). Historically, women’s capacity to access credit has been limited, largely due to the privatisation of state-ownership in Mongolia: the majority of assets were registered to the head of the household, which were majority male. As a result, women’s access to financial instruments required the signature of the spouse in order to use the property as collateral (Khan et al., 2013).

c) Workplace rights

Women are guaranteed equal rights in employment and labour relations (Law of Mongolia on Enforcement of the Law on Promotion of Gender Equality, s. 11.1). As a result of outdated legislation concerning workplace rights, Mongolia mended its Labour Law in 2008, eliminating outdated dispositions, which excluded women from participating in certain professions deemed unfit for them (Khan et al., 2013). In addition to the aforementioned shifts, the passage of the 2011 Law on Promotion of Gender Equality has underlined Mongolia's commitment to equality both in the workplace and in positions within governmental bodies.

However, traditional and customary practices have largely dictated women's social and economic participation in the labour market. Mongolian women tend to participate less in the labour market due to historical discriminatory practices, including practices encouraging women to pursue unpaid positions within the family sphere. This phenomenon is more evident in rural, Mongolian communities. When women do enter the labour market, customary practice dictates the existence of a division between jobs that are believed to be inaccessible to women, such as mining or construction. Likewise, self-employment positions are male-dominant (Khan et al., 2013).

Restricted Civil liberties

a) Citizenship rights

All groups of women in Mongolia are guaranteed equal rights and access to nationality and citizenship services (Law of Mongolia on Citizenship, s. 3). Mongolian citizens derive citizenship from parental lineage and are registered upon birth. While in the majority of cases registration was enacted immediately, there is some evidence to suggest that some children were not always registered in rural areas due to a lack of resources. As a result, these families are typically denied essential public services such as child welfare benefits (United States Department of State, 2016).

b) Voting

Mongolian women and men have equal rights to participate in state affairs including through the indirect election of (Constitution of Mongolia, art. 3). There is insufficient evidence to suggest the existence of customary or traditional practices which discourage women from voting in elections.

c) Political voice

In 2011, Mongolia reaffirmed women's right to equal access to political participation with the Law on Promotion of Gender Equality. The law prohibits discrimination against women from participating in political parties, labour unions, and any other political associations. Additionally, the law establishes a quota requiring the representation of women in a central or local political body to be no lower than 25%. Political organisations are required to submit a report every two years to the National Committee on Gender Equality illustrating compliance to the newest quota requirements (Law of Mongolia on Enforcement of the Law on Promotion of Gender Equality, s. 8). Despite Mongolia's efforts to encourage women's socio-political participation, women often have difficulty financing electoral campaigns due to the majority of property held by spouses is registered to the male head of household (United States Department of State, 2016).

Within the government, Mongolia has expressed equal concern over the lack of political participation at the state and local level as well as the national level. Their concern is to reduce gender disparities within public service and to increase the presence of women in decision-making positions. The law requires the installation of quotas for positions at all levels of decision-making, including appointed civil servants (Law of Mongolia on Enforcement of the Law on Promotion of Gender Equality, s. 10).

d) Access to justice

Mongolian law protects the right of all citizens irrespective of sex to appeal to the Court system to adjudicate a perceived violation of his or her rights. This includes the right to bring a civil claim against another Mongolian for compensation of damages (Constitution of Mongolia, s. 16.14). All citizens of Mongolia are equal before the law and before the Court (s. 14). There is, however, evidence to suggest that women in Mongolia lack sufficient access to justice and legal services. The most recent National Action Plan on Gender-based and domestic violence is implementing greater training of service providers, particularly within the areas of justice, health, and police to better address the needs of women (UNFPA).

CEDAW (2014), Consideration of reports submitted by State parties under article 18 of the Convention, Eighth and Ninth periodic reports of State parties due in 2014, 3 December 2014, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsgOTxO5cLIZ0CwAvhyns%2byLTmgva7X1c8MI9sn4zNTkpm2yIghmqIWI7wOHgS%2bllhcsFhgNmhVHYXHwQJHsBV1LTAofJ1GejXfx6W7RC%2f5lx> , [last accessed: 5 October 2017].

CEDAW (2015), Shadow Report on the Implementation of the UN Convention on the Elimination on All forms of Discrimination against Women (CEDAW) in Mongolia, 19 May 2015, available at: http://webcache.googleusercontent.com/search?q=cache:cIVeWL-y_FAJ:tbinternet.ohchr.org/Treaties/CEDAW/Shared%2520Documents/MNG/INT_CEDAW_NGO_MNG_23100_E.pdf+%cd=1&hl=en&ct=clnk&gl=us , [last accessed: 1 July 2017].

CEDAW (2015), 63rd Session of the Committee on the Elimination of Discrimination against Women, List of issues and questions in relation to the combined eighth and ninth periodic reports of Mongolia, Addendum, Replies of Mongolia, 27 November 2015, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/392/36/PDF/N1539236.pdf?OpenElement> [last accessed: 5 October 2017].

Constitution of Mongolia (1992), UNESCO, available at: <http://www.unesco.org/education/edurights/media/docs/6a6a23469e136afaa4860bf5869f6f8f659c6688.pdf> [last accessed 1 July 2017].

Convention Against Torture (CAT) (2016), 58TH Session of the United Nations Committee against Torture, Consideration of the Second National Report of Mongolia on Implementation of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Opening Statement by Mr. G. Erdenbat, CAT, Geneva, Switzerland, available at: http://webcache.googleusercontent.com/search?q=cache:bhzKqBmaCE4J:tbinternet.ohchr.org/Treaties/CAT/Shared%2520Documents/MNG/INT_CAT_STA_MNG_24737_E.docx+%cd=1&hl=en&ct=clnk&gl=fr , [last accessed 2 July 2017].

Criminal Code of Mongolia (2002), UNODC, available at: https://www.unodc.org/res/cld/document/mng/2001/criminal_code_of_mongolia_html/Mongolia_Criminal_Code_2002.pdf [last accessed 1 July 2017].

FAO (2017), Gender and Land Rights Database, Food and Agriculture Organisation of the United Nations, available at: http://www.fao.org/gender-landrights-database/country-profiles/countries-list/land-tenure-and-related-institutions/en/?country_iso3=MNG [last accessed: 1 July 2017]

Khan, Tehmina; Brink, Rogier Van Den; Aslam, Monazza (2013) 'Mongolia - Gender disparities in labor markets and policy suggestions', Washington DC, available at: <http://documents.worldbank.org/curated/en/840791468060543071/Mongolia-Gender-disparities-in-labor-markets-and-policy-suggestions> , [last accessed: 1 July 2017].

Law of Mongolia Civil Code (2002), ILO, available at:
<http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/45607/83813/F1625063101/MNG45607.pdf>
[last accessed 1 July 2017].

Law of Mongolia on Citizenship (as amended on 7 December 2000) (Mongolia), 5 June 1995, available at: <http://www.refworld.org/docid/4af7dec62.html> [1 July 2017].

Law of Mongolia on Enforcement of the Law on Promotion of Gender Equality (2011), Ulaanbaatar, 2 February 2011, available at:
http://webcache.googleusercontent.com/search?q=cache:VZX2nwo4wn8J:www.legislationline.org/download/action/download/id/4518/file/Mongolia_law_gender_equality_2011_en.pdf+%&cd=2&hl=en&ct=clnk&gl=fr [last accessed 1 July 2017].

Law on the Protection of the Rights of the Child (1996), ILO, available at:
<http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/78391/83815/F205588245/MNG78391.pdf> [last accessed 1 July 2017].

Mongolia: Family Law of 1999 (Mongolia), 1 August 1999, available at:
<http://www.refworld.org/docid/3ed91a1c2.html> [accessed 1 July 2017].

UNFPA (2017), Factsheet on Combating Gender-based Violence in Mongolia, available at:
https://www.eda.admin.ch/content/dam/countries/countries-content/mongolia/en/GBV_Factsheet_EN.pdf [last accessed 1 July 2017].

UNICEF (2016), 'State of the World's Children Report 2016', UNICEF (2016), available at: https://www.unicef.org/publications/files/UNICEF_SOWC_2016.pdf [last accessed: 1 July 2017].

UNIFEM (2001), 'Women in Mongolia: Mapping Progress under Transition', available at:
<http://www.refworld.org/publisher,UNIFEM,,MNG,,,0.html>, [last accessed: 1 July 2017].

United States Department of State, *2016 Country Reports on Human Rights Practices - Mongolia*, 3 March 2017, available at: <http://www.refworld.org/docid/58ec89f9a.html> [accessed 2 July 2017].