



The LGBT Centre Report on Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment of Lesbian, Gay, Bisexual, Transgender and Intersex People in Mongolia

**For the 58th session of the UN Committee against Torture (CAT),
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The LGBT Centre is the first and only non-governmental, non-profit and non-partisan organisation working on the wide range of issues pertaining to the rights of LGBTI people in Mongolia. The LGBT Centre wishes to draw the attention of the esteemed members of the UN Committee against Torture to the cases of torture and discrimination which are tantamount to persecution against the members of the LGBTI community in Mongolia. Through this submission, the LGBT Centre seeks international experts' recommendations on several issues related to the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment in Mongolia. Since the session 45 of the CAT, the Government of Mongolia has fulfilled a recommendation to include a hate crimes and hate speech regulation within its Criminal Code, with the protected grounds including, *inter alia*, sexual orientation and gender identity on 3 December 2015. However, the new Criminal Code doesn't come into force till 1 September, with many cases of torture, cruel, inhuman or degrading punishment being documented and worked on by the LGBT Centre. It is gravely worrisome that none of the cases, especially from 2016, were adequately investigated by the criminal justice system in Mongolia, pointing to the continued extreme discrimination in Mongolia by state agents against LGBTI people.

Article 1

1. The LGBT Centre wishes to highlight that the definition of torture and other cruel, inhumane and degrading treatment or punishment fully consistent with the Article 1 of the Convention is absent in the Constitution of Mongolia, the Criminal Code of Mongolia and the Criminal Procedures Code of Mongolia. All three laws expressly prohibit torture without defining what acts or omissions fall under such an act.
2. The LGBT Centre draws on the international human rights law contained in the Yogyakarta Principles in regard to non-discrimination on the basis of sexual orientation or gender identity. Furthermore, the LGBT Centre draws on the 2011, 2014 and 2016 resolutions by the Human Rights Council on ending discrimination and violence against LGBTI people. Discrimination against LGBTI people in Mongolia on the basis of sexual orientation and gender identity has been well documented by the LGBT Centre, with assistance provided to survivors.
3. No LGBTI person has escaped some form of violence and discrimination when their sexual orientation or gender identity became known, leading to a situation where LGBTI people are compelled to hide their sexual orientation and gender identity for fear of being targeted for extreme violence and discrimination. Extreme forms of discrimination tantamount to persecution against LGBTI persons are acts falling under the purview of torture as defined in the Article 1 of the CAT, such as verbal and physical assault, extreme beating, burning by

cigarettes, even murder of LGBTI people – all done with the view of imposing heteronormativity and stereotyped gender norms upon LGBT people and delegitimising same-sex relationships or diverse gender identities and their expressions. They are also acts and omissions that are codified as hate crimes by international jurisprudence.

4. The new Criminal Code passed on 3 December 2015 historically includes a definition of “a crime of discrimination”, passed pursuant to the international bodies’ recommendations, including the CAT recommendations from 2010, the UPR recommendations from 2010 and 2015, the CCPR recommendations from 2011, with protected grounds including sexual orientation and gender identity, *inter alia*. However, the Constitution has not yet been amended with a view to prohibit discrimination based on sexual orientation or gender identity and expression. Furthermore, there is no broad-based anti-discrimination law in Mongolia.

5. Acts of discrimination and extreme forms of discrimination that are tantamount to persecution against LGBTI people in Mongolia, often committed by state agents, are based on a lack of public education and societal awareness that sexual orientation or gender identity form an integral and intrinsic part of people’s identity, personhood and autonomy.

Cases illustrating persecution and torture based on sexual orientation, gender identity and sexual characteristics documented by the LGBT Centre between November 2010 and June 2016:

6. An openly living LGBT rights activist, transsexual man N.A., was denied the right to seek justice and redress for the violation of his bodily integrity after he was attacked at the pub he ran at 11:40 pm on 25 February 2012 by E. G., a former boyfriend of his sister who knew N. A. before his transition. E. G. had punched N. A. in the face saying “So they say you are handsome guy, are you? Since when are you a man?”, inflicting a concussion and a fractured orbital bone. He filed the complaint with the Chingeltei district police. The case was first instance adjudicated on 4 September 2012 by the Chingeltei district Criminal Court, where E. G. being found guilty, but was not given a sentence due to the Prosecutor’s Office losing the medical conclusion on the seriousness of the suffered injuries by the victim as well as due to the time that had elapsed since the first instance report filing to adjudication (first time criminal offenders are not given a sentence if more than six months had passed since the incident that results in minor, not serious injuries), which was tantamount to dismissal of the case.

7. E. S, and E. M. openly living transgender women, were picked up by the Chingeltei police patrol car at around 11:10pm on 27 March 2014 from the vicinity of the Golomt Bank branch number 1, taken into custody and charged with the prostitution. Having spent the night in the lock-up, the two women were making statements to the police officer on the following morning of 28 March 2014, when a television station crew was ushered in by a police colonel Jenisguli, and the women were filmed by the television cameras as prostitutes. Although the detained women were not yet adjudicated, they were profiled and labelled as prostitutes because of their gender identity and expression, and were filmed by TV8 television crew at the behest of a police personnel. The LGBT Centre’s immediate intervention with the TV8 station ensured that footage was not shown that day, however the trans women were followed by this television crew upon their release and were filmed later and broadcast, endangering their lives and well-being at the extremely harmful behest of the police personnel.

8. O., an openly living gay man was found deceased in a hotel room sometime in early March in 2014 in the territory of the 1st khoroo of Bayangol district, Ulaanbaatar. Prior to being found deceased, O. had filed a complaint of being raped in December 2013, later withdrawing the complaint unbeknown to the LGBT Centre. Later he filed another complaint of being raped in late January 2014. When the case was transferred by the police to the Sukhbaatar District State Prosecutor’s Office, he was verbally derided by State Prosecutor Tsengelmaa for being gay and for working in a bathhouse. During the initial stages of investigation, O. expressed his fear to the Legal Programme Manager of the LGBT Centre about possibly being persecuted by the perpetrators for filing the first instance report and soon thereafter he was no longer reachable

by phone or in person prior to being discovered deceased in early March. The police did not release any details in relation to his death and circumstances around his death to the LGBT Centre, and closed the case as a suicide despite the indications that this may have been a murder. The victim had accessed the state protection when he became a human trafficking victim in Thailand in early 2013 through the trafficking victim protection program implemented by the Human Security Research Center NGO. The Human Security Research Center NGO officers who were aware of his rape case from the beginning are also of the opinion that the victim was in all probability murdered as a result of reporting the rape to the police. The criminal investigation was launched in December 2013 as a result of the rape allegations by the victim, however, the victim withdrew the case after he was verbally derided by the Sukhbaatar District State Prosecutor. Upon the discovery of the deceased victim, the police closed the case immediately as a suicide despite the circumstantial evidence that the victim may very well have been targeted for murder due to his multiple vulnerabilities (earlier rape complaints as well as the fact of being trafficked in 2013 to Thailand).

9. An openly living LGBT rights activist, transsexual man N.A. was physically picked up two police officers and shoved into a patrol car while his arms were twisted and his head held down, and taken to the premises of the Chingeltei district police department on 19 October 2014. He was picked up during the police raid of the club under a pretext that the club was selling alcohol after 12am (the Metropolitan Administrative resolution of 2011 prohibits sale of alcoholic drinks after 12am, but only Hanzo got raided every other day for selling alcohol because it was widely known to be the only LGBT club in the city serving LGBTI people) and had shut down the music, which N.A. asked to put back on in the presence of the police officers. He was held in the cell of the Chingeltei district police premises from 1am to 3pm for 14 hours without access to toilet or drinking water, and without warm blanket despite the sub-zero temperature in the premises as all windows were kept open throughout the night. At 8am, he was given a paper to sign that stated that he was held in the sober tank due to his unruly behaviour and obstruction of police work in Hanzo. He refused to sign the paper as the paper contained wrong and false information, and handed it back to the police officer, at which time he was dragged out of the cell by the police officer in question who verbally assaulted him saying “Who do you think you are, you, a homo freak from Hanzo?”, tackled N.A. and kicked him to the ground, whereby the police officer twisted the victim’s right arm, hurting his right shoulder to the point of sobbing by the victim. After that attack by the police officer, all other police officers on duty kept coming by the cell one by one until his release at 3pm, looking at him in turns and threatening “We will book you for 72 hours, no one will miss you”; “We will arrest you for 14 days, who do you think you are?”, etc. N.A. has a high visibility as a human rights activist, appearing regularly and openly in various television interviews on LGBTI rights since 2009, and on radio shows since 2000. The victim chose not to report the attack by the police because he was threatened verbally by all police officers on duty that day and because the police could easily come after him in retaliation as they had taken down his domicile address.

10. A trans woman, Na., was denied the right to seek justice and redress for her bodily and psychological torture after she was beaten up and her hair shaved by the attackers because of her gender identity. She suffered from this attack on her personhood, dignity and body on 14 March 2016. The Centre documented the case and assisted her in filing the case with the Chingeltei district police department, however, her case was dismissed by the Chingeltei Prosecutor’s Office on 6 May 2016 despite the fact that the police never completed the investigation (the police didn’t interrogate the perpetrators, didn’t obtain material evidence from the CCTV camera location where the victim was attacked).

11. A trans woman, E., was denied the right to seek justice and redress for her bodily and psychological torture after she was beaten up, burnt by a cigarette and threatened to be sold as a prostitute by a certain individual because of her gender identity. She had suffered from this attack on her personhood and body on 19 March 2016. The Centre had documented the case and assisted her in filing the case with the Chingeltei police department, however, her case was dismissed by the Chingeltei Prosecutor’s Office on 25 April 2016 despite the fact that the police

never completed the investigation (the police didn't interrogate the perpetrators, didn't obtain material evidence from the CCTV camera location where the victim was attacked).

12. A trans woman, No., was denied the right to seek justice and redress for her bodily and psychological torture after she was abducted by two certain individuals, taken out of the city and beaten up badly on 31 March 2016. The Centre had documented the case and assisted her in filing the case with the Chingeltei police department, however, her case was dismissed by the Chingeltei Prosecutor's Office on 19 April 2016 despite the fact that the police never completed the investigation (the police didn't interrogate the perpetrators, didn't obtain material evidence from the CCTV camera locations where the victim was attacked).

13. A trans woman, B., was attacked physically, punched in the face and tackled to the ground on 6 May 2016 by the Takhar Agency personnel on the premises of the Bayanzurkh district court. She was getting out of a taxi outside the Bayanzurkh district court, when she was verbally derided by the nearby standing Takhar personnel, "What are you? Are you a man or a woman?" When she retorted, "It's none of your business", one of the officers came and kicked her back into the taxi. When she started shouting, the officer said, "She must be drunk, we will teach you to insult officers" and he punched her and took her into the basement of the Bayanzurkh district court. She was held there and taunted for about an hour by three Takhar officers. She didn't lodge a complaint as she's fearful of retaliation as the Takhar personnel took her domicile address.

14. An intersex minor born in 2010, was prescribed a wrong medical treatment since the age of 2 that has led to the extensive internal organs' damage and endocrine system failure. The medical personnel of the public hospital did not inform the parents of the exact nature of the child's intersex condition as they were not confident themselves since no chromosomal testing is available in Mongolia. The child was treated for 4 years with strong steroids without clear diagnosis that has led to the internal organs' damage and endocrine system failure. The medical personnel also keep on advising the parents to surgically remove "the extra" part. The uninformed and harmful practice by medical personnel constitute a grave violation of the child's and the parents' right to agency, to choice and to information. The wrongfully prescribed treatment in this case is seen as torture given the child's age.

Recommendations on the Article 1:

15. Widespread negative attitudes and societal discrimination form the foundations upon which both State (police, prosecutors, Takhar agency personnel, medical personnel) and non-State agents (private individuals) appear to justify their acts or omissions that are tantamount to persecution, torture and other cruel, inhumane and degrading treatment and punishment against LGBTI people. Therefore the Government of Mongolia must ensure effective realisation of the right to equality and non-discrimination of all people, regardless of sexual orientation or gender identity. To that end, the Government of Mongolia must pass a broad-based anti-discrimination legislation that not only prohibits, but also specifies mechanisms of seeking redress when such crimes occur, and that would mandate a broad education and awareness-raising activities for the State agents most likely to engage in acts tantamount to torture.

16. The Government of Mongolia must ensure that such acts of torture and hate crimes are clearly defined in the laws of Mongolia consistent with the Article 1 of the CAT. To that end, the Government of Mongolia must amend the Criminal Code of Mongolia and Criminal Procedures Code of Mongolia to include a definition of torture and hate crimes and ensure punishment that takes into consideration their grave nature.

17. In order to prevent such crimes from occurring, the Government of Mongolia must take all appropriate action, including programmes of education and training, with a view to achieving the elimination of prejudicial or discriminatory attitudes or behaviours which are related to the

idea of the inferiority or the superiority of any sexual orientation, gender identity or gender expression, or sexual characteristics.

Articles 4, 5, 12:

18. The LGBT Centre wishes to highlight that the existing legal provisions pertaining to the actors committing torture are defined as officials acting in official capacity only, and do not specify that such acts may be perpetrated by non-State actors and private persons as is contained in Articles 4 and 5 of the CAT.

19. The LGBT Centre wishes to highlight that due to the incomplete definition of torture agents, the Government of Mongolia had failed to investigate the latest torture case documented by the LGBT Centre of three transgender women despite the fact that there were sufficient grounds to believe that an act of torture has been committed. It is in contravention to Article 12 of the CAT.

Recommendation on the Articles 4, 5 and 12:

20. The Government of Mongolia must review and amend the Criminal Code of Mongolia and the Criminal Procedures Code of Mongolia to ensure that torture agents are defined to be both State and non-State actors, and that any such public allegations by victims are taken seriously and promptly investigated.