



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

**For the 45th session of the UN Committee against Torture (CAT),
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The LGBT Centre is the first non-governmental organisation working on the LGBT rights in Mongolia. It was founded in February 2007; however it was only able to obtain official registration on 16 December, 2009. The registration of the NGO was first denied by the officer in charge of NGO matters at the Mongolian Ministry of Justice and Home Affairs, who refused to accept the NGO registration application in March 2007 stating that there was a need to obtain linguistic definitions for the words “lesbian”, “gay”, “bisexual” and “transgender” from the Linguistics Institute of the Mongolian Academy of Sciences. The LGBT Centre reapplied again for registration in April 2009 when the NGO registration jurisdiction was shifted to the State Registration Agency under the Ministry of Justice and Home Affairs. After many verbal registration refusals, the State Registration Agency issued an official written refusal on 23 June, 2009, stating *“The name ‘Lesbian, gay, bisexual and transgender centre’ has a meaning that conflicts with Mongolian customs and traditions and has the potential to set a wrong example for youth and adolescents.”*¹ The registration of the NGO was made possible only following the intervention of the President’s Advisor on Human Rights and Civil Participation in November 2009.

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 is tantamount to persecution against the members of the LGBT 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.

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. Furthermore, none of the legal acts proscribe torture that may arise due to “any reason based on discrimination of any kind”.
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, a recent statement made on 17 September, 2010, by Ms Navi Pillai, the High Commissioner for Human Rights, on behalf of Mr Ban Ki-moon, the Secretary General of the UN, said that no traditions may be invoked to justify any

¹ See Human Rights Watch news: Mongolia Rebuffs Lesbian, Gay, Bisexual and Transgender Organization at [<http://www.hrw.org/en/news/2009/07/09/mongolia-rebuffs-lesbian-gay-bisexual-and-transgender-organization>]. For the full text of the refusal letter, see the LGBT Centre website: Local News, accessed at [<http://lgbtcentre.mn/en/news/local-news/188-registrationrelated.html>]

discrimination against LGBT people or criminalisation of LGBT identities, and that both States and the UN bodies have a responsibility to ensure an end to such discrimination. Discrimination against LGBT people in Mongolia on the basis of sexual orientation and gender identity has been well documented by the LGBT Centre. No LGBT person has escaped some form of violence and discrimination when their sexual orientation or gender identity became known, leading to a situation where LGBT people are compelled to hide or suppress their sexual orientation and gender identity for fear of being targeted for extreme violence and discrimination. Extreme forms of discrimination tantamount to persecution against LGBT persons are acts falling under the purview of torture as defined in the Article 1 of the CAT, such as verbal and physical assault, rape and gang rape, extreme beating resulting in broken limbs and extensive tissue damage, and domestic violence against young LGBT people by their parents and siblings – 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.

3. There is no Constitutional provision prohibiting discrimination based on sexual orientation or gender identity and expression. There is no broad-based anti-discrimination law in Mongolia. There is no hate crime-related legislation in Mongolia, and hate crime is not codified in any of the existing criminal laws.
4. Furthermore, such acts of discrimination and extreme forms of discrimination that are tantamount to persecution against LGBT people in Mongolia 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 hate crimes, extreme discrimination tantamount to persecution and torture based on sexual orientation or gender identity²:

5. Tumur, a well-known pop singer from the '60s and '70s and rumoured to be gay, was found beheaded in his apartment in the early '90s.
6. An openly lesbian young woman, B., who was homeless and undertook sex work as a means of survival, was found dead in the Tuul River outside Ulaanbaatar in autumn of 2001. She had stab wounds and there were signs of strangulation.
7. Three transgender women were abducted by members of the Dayar Mongol³ ultra-nationalist movement off the streets in daylight on 6 October, 2009, and were taken to a cemetery outside Ulaanbaatar where they were severely beaten and gang-raped for being "a disgrace to Mongolian manhood".⁴ The ultra-nationalists then warned the victims that they certainly would be killed if they were seen again in their female clothes. One of the transgender women was 15-years-old at the time. One of the victims gave testimony about the incident to the LGBT Centre, which was used in a documentary made by the LGBT Centre in 2010 entitled "The Lies of Liberty"⁵, in which she stated that her attackers belonged to the Dayar Mongol movement and described some of the acts committed by them. The documentary was publicly screened on 8 March, 2010, after which Dayar Mongol ordered that she and other victims be found and killed. Two of the transgender women fled Mongolia in April 2010 and were granted asylum outside the country. The victims did not report the incident to the police at the time as they believed that police would not protect them

2 Unless otherwise specified, all case studies were documented by the LGBT Centre members throughout the years.

3 For more information on the ultra-nationalism in Mongolia, see The Guardian article from 2 August 2010: Mongolian neo-Nazis: Anti-Chinese sentiments fuel rise of ultra-nationalism,

[<http://www.guardian.co.uk/world/2010/aug/02/mongolia-far-right>]; see the BBC article from 5 September 2010: Discontent fuels Mongolia's far right groups, accessed at [<http://www.bbc.co.uk/news/world-asia-pacific-11141472>]

4 See Fridae article from 8 July 2010: Mongolia's LGBTs face hate crimes and discrimination, accessed at [<http://www.fridae.com/newsfeatures/2010/07/08/10121.mongolias-lgbts-face-hate-crimes-and-discrimination>]

5 See the shorter version of the documentary film at [<http://vimeo.com/15146153>]

as they had been detained a number of times in 2009 without warrant under suspicion of being sex workers, derided with such taunts as “Aren’t you ashamed to be men and be wearing women’s clothes?”, and made fun of when the police were told that they were transgender women.

8. Following a gay party in April 2009, a young gay male was abducted from outside the party venue by four men. They drove him to Tuv province, gang-raped him and left him in the countryside. Injured and traumatised, he walked back to the city on foot. He did not report the incident to the police for fear of secondary victimisation by police.
9. 15-year-old transgender girl N. was gang-raped at home by three male friends of her parents in March 2003 because she was “so much like a girl”. She did not report the incident to her parents or to the police as the attackers threatened to kill her parents if she told anyone.
10. 24-year-old lesbian woman M. was attacked and beaten by a man and a woman outside a gay party venue on 31 July, 2010, for being a lesbian. She did not report the incident to the police for the fear of secondary victimisation by police.
11. M. was also hit in the face many times by her father and kicked numerous times. In one attack, she was knocked to the ground by the force of the blows. In 2008, when she was 22-years-old, she fled her home when her sister told her father that she was a lesbian.
12. 21-year-old transgender woman Ch. was assaulted a number of times throughout 2009 by pedestrians who threw rocks at her and two of her transgender friends. On one occasion, people passing by in a car threw a Pepsi at them that had been can cut in half and that contained urine and mud, all the while shouting transphobic slurs.
13. 24-year-old lesbian A. was abducted by two men in March 2001 after the funeral of her girlfriend S., who had committed suicide at the age of 20 because of her inability to reconcile her sexual orientation with her upbringing. A. was taken in a car to a remote suburb of Ulaanbaatar, her right hand was stabbed through with a broken beer bottle and she was violently raped. A. did not report the incident to the police for fear of secondary victimisation by police.
14. 19-year-old gay male B. was one of the founders of the Tivilan NGO that existed from March 1999 to early 2001. The NGO was set up to protect the rights of gay men. When a newspaper article exposed him as one of the founders of Tivilan and revealed that he was gay the following month in April 1999, B. was confronted and beaten up by one of his older brothers on the grounds that he was gay and was one of the founders of an NGO working for gay men. During the beating, B.’s leg was broken in one place. B. did not report the incident to the police for fear of secondary victimisation by police and to avoid further family conflict.
15. 24-year-old gay male P. was severely beaten with a wooden club in April 2005 by his maternal uncle as his uncle had heard rumours that P. was living in Beijing with his foreign boyfriend. His injuries consisted of massive tissue damage all around his torso and thighs. He managed to escape from his uncle, but he did not report the incident to the police for the fear of secondary victimisation by police.
16. Over the course of two years, a gay man was repeatedly beaten by the family members of his boyfriend. He had two teeth knocked out and suffered a broken arm and a stab wound. He did not report the crimes to police because members of his boyfriend’s family were in the police force. He left Mongolia and was granted asylum in the USA.
17. A lesbian was beaten and held in jail without warrant because her girlfriend’s brother was a policeman and had found out about their relationship. She fled from her countryside home to Ulaanbaatar, however her girlfriend’s brother continued to

harass her. She left Mongolia and was granted asylum in the USA on 15 March, 2005.⁶

18. A young lesbian woman was expelled from school after being found to be in a lesbian relationship. She and her girlfriend were violently assaulted and raped, and she was denied employment because of her sexual orientation. She was granted asylum in Australia.⁷

Recommendations on Article 1:

19. Widespread negative attitudes and societal discrimination form the foundations upon which both State and non-State actors appear to justify their acts or omissions that are tantamount to persecution, torture and other cruel, inhumane and degrading treatment and punishment against LGBT 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 broad-based anti-discrimination legislation that prohibits, and is aimed at eliminating, discrimination in the public and private spheres that includes sexual orientation and gender identity as protected grounds.
20. 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 and international jurisprudence on hate crimes. 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.
21. 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 or gender identity or gender expression.

Articles 4, 5, 12:

22. 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.
23. 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 Articles 4, 5 and 12:

24. 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 allegations⁸ by victims are taken seriously and promptly investigated.

⁶ National Center for Lesbian Rights, Issues and Cases: Case docket: In re to Shinegerel, accessed at [http://www.nclrights.org/site/PageServer?pagename=issue_caseDocket_shinegerel_mongolia]

⁷ Refugee Review Tribunal, 25 January 2005 accessed at [<http://www.asylumlaw.org/docs/sexualminorities/Mongolia050305.pdf>]

⁸ One of the victims of the transphobic attack has a blog, on which she wrote about the attack and the threats she received later from members of the Dayar Mongol movement. Furthermore, numerous news articles appeared in daily newspapers and other media. One article showed two pictures side by side of one of the victims: one in her transgender female identity and another in her biological male identity, which ensured that she may be recognised as both a woman

Article 13

25. Due to the failure by the State to initiate an investigation into the torture allegation involving three transgender women, the State could also be considered to have failed to ensure protection to the victims as no investigation and prosecution were undertaken that would have ensured punishment of the perpetrators of these heinous acts, including incarceration, that would have prevented further attacks on transgender people. Furthermore, the Criminal Procedures Code of Mongolia does not have provisions that ensure protection to witnesses bearing evidence or victims of crimes who testify or file complaints.

Recommendation on Article 13:

26. The Government of Mongolia must review and amend its criminal procedures legislation to ensure full witness and victim protection, including the stage where such protection is of a preventive nature.