*The LGBT Centre Report on the Human Rights Situation of the Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) People in Mongolia*

*For the 118thsession of the UN Human Rights Committee (CCPR)*

The LGBT Centre is the first non-governmental organisation working on the LGBT rightsin Mongolia. 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. Since the session 101 of the Human Rights Committee, the Government of Mongolia has fulfilled a recommendation to include a hate crimes and hate speech regulation within its Criminal Code, with protected grounds including, inter alia, sexual orientation and gender identity on 3 December 2015. This landmark Criminal Law has put Mongolia as a leader in relation to equal protection of all regardless of sexual orientation and gender identity in Asia. However, the criminal justice framework alone is not sufficient to address and eliminate social attitudes and prejudices against LGBTI people. The LGBT Centre wishes to draw the attention of the esteemed members of the Human Rights Committee to cases of widespread and institutionalised discrimination on the basis of sexual orientation and gender identity, tantamount to persecution, against the members of the LGBTI community in Mongolia.

*Articles 2 and 26*

In its precedent-setting communication to the Government of Australia in 1994, the Human Rights Committee included sexual orientation within the broader understanding of “sex”. However, to date the Government of Mongolia has not enshrined this principle in its Constitution so as to allow for the concept of “sex” to be inclusive of non-discrimination in relation to sexual orientation and gender identity. There is yet no Constitutional amendment prohibiting discrimination on the basis of sexual orientation or gender identity and expression despite the two cycles of UPR recommendations as well as treaty bodies’ recommendations to implement the same in order to provide full and equal protection to all. There is yet no broad-based anti-discrimination law in Mongolia despite the two cycles of UPR recommendations as well as treaty bodies’ recommendations to amend the Constitution and/or pass a stand-alone anti-discrimination legislation to provide full, equal and effective protection to all regardless of sexual orientation or gender identity.

Due to the absence of a broad-based non-discrimination regulation including on the basis of sexual orientation and gender identity, many cases are being documented and worked on by the LGBT Centre:

N. O., an openly living transman, was physically attacked by the mother of his girlfriend, B. Ts., with a knife at around 9:30pm on 18 May 2011 at his girlfriend’s home. In July 2010, B. Ts. found out about the relationship between her daughter and N. O. and categorically forbade them to meet. During the attack, B.Ts. maintained that N. O. was an abomination and that he had corrupted their daughter. The case was registered at the Bayanzurkh district police, however, at the bequest of his girlfriend N. O. withdrew the complaint despite the fact that the girlfriend’s parents continued to threaten him on a daily basis and forbade their daughter to meet him.

S. Ch., a transwoman, and E. B., a gay male, were attacked on 31 May 2011 morning at 5am while asleep in the Cosmos Hotel room. The attackers had observed the couple at the hotel bar and followed them, breaking down the door to their room and punching both the victims on their heads to the point of breaking E.B.’s nose, multiple cuts and a concussion on S. Ch. Although the victims reported the case to the Bayanzurkh district police, their case was not tried because the police failed to identify and find the perpetrators.

N. A., an openly living transsexual man, was attacked at the pub he ran at 11:40pm 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 Ulaanbaatar city 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 victims 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).

A. O., an open gay man, was found dead sometime in early March in the territory of 1st khoroo of Bayangol district, Ulaanbaatar. A. O. had filed a complaint of being raped in December 2013 on the territory of Sukhbaatar district, Ulaanbaatar. A. O. later withdrew the complaint, however, he filed another similar complaint of being raped in late January 2014. He was verbally derided by the Sukhbaatar district Prosecutor’s Office personnel (“How can you be raped if you are a man yourself?”, “Why should you work in a sauna? Because you work in a sauna, you were raped.”) The police didn’t release any details of his death to the LGBT Centre, and has closed the case as a suicide despite the indications that this may have been a murder.

E. S, and E. M. openly living transwomen, 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. On the morning of 28 March 2014, the two women were making statements 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 automatically labelled as prostitutes, and were filmed by TV8 television crew at the behest of a police personnel. Although the footage was not shown, the transwomen were followed by this television crew upon their release and were filmed and broadcast, endangering their lives and well-being.

U. and S. are a lesbian couple living together. The older brother of S. had denied S. her share of the inherited from parents’ property, saying that if she were to start living “normally”, he would immediately buy her an apartment and a car. They were attacked in their home by the younger sister of S. in March 2015, with damages to both their bodies as well as their property.

A. Z., an openly living gay man and owner of the only LGBT club in Mongolia, was attacked at his business around 3am on 1 June 2014 by 5 customers who refused to leave the club after the closing time and who attacked the owner when asked to leave. They had broken A. Z.’s nose and given him a concussion. When A. Z. went to the Chingeltei district police immediately following the incident to register his complaint, the police officers on duty refused to register his complaint, maintaining alcohol intoxication as a reason to not register the case. Two days later, the first instance report was filed.

From August 2014, the LGBT Centre approached a number of state-budget funded cultural spaces and organisations in Ulaanbaatar city to utilise their space and organise public cultural events such as a visual art works exhibition and a film festival to promote the non-discrimination and equality for all through the Equality and Pride Days’ framework. Despite the Government and Parliamentary resolutions that are geared toward implementing the human rights of LGBT persons, the Centre was denied access directly and indirectly.

*Recommendation for the Articles 2 and 26:We urge the Committee to recommend to the Government of Mongolia to recognise that widespread negative attitudes and societal discrimination form the foundations upon which both State and non-State actors appear to justify their acts or omissions, which are tantamount to discrimination, persecution, torture and other cruel, inhumane and degrading treatment and punishment of LGBT people. Therefore, we urge the Committee to include concluding observations of passinga broad-based anti-discrimination legislation that prohibits, and is aimed at eliminating, discrimination in the public and privatespheres that includes sexual orientation and gender identity as protected grounds. The Government of Mongolia must also amend the Constitution of Mongolia to include sexual orientation and gender identity as protected grounds with corresponding administrative, budgetary mechanisms and capacities to ensure wide public education on equality and non-discrimination, with specific trainings to be undertaken together with specialised human rights civil society organisations such as the LGBT Centre for civil servants in education, healthcare and law enforcement sectors.*

*Article 7*

The LGBT Centre wishes to highlight that the broad interpretation of Article 7 under the International Covenant on Civil and Political Rights 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 acts of torture by private actors is not included. Furthermore, none of the legal acts proscribe torture that may arise due to “any reason based on discrimination of any kind”.

Discrimination against LGBTI people in Mongolia on the basis of sexual orientation and gender identity has been well documented by the LGBT Centre. No LGBTI person has escaped some form of violence and discrimination when their sexual orientation or gender identity became known, leading to the situation where LGBTI 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 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 LGBTI people by their parents and siblings – all done with the view of imposing heteronormativity and stereotyped gender norms upon LGBTI people and delegitimising same-sex relationships or diverse gender identities and their expressions.

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.

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.

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).

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.

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).

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).

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. he 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).

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.

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.

*Recommendation on Article 7:We urge the Committee to include the following points on Article 7: 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 allegationsby victims are taken seriously and promptly investigated.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 elimination of prejudicial or discriminatory attitudes and behaviours which are related to the idea of the inferiority or the superiority of any sexual orientation or gender identity or expression.*

*Articles 21 and 22*

The LGBT Centre, a non-governmental, non-profit and non-partisan organisation, organised the annual Equality & Pride Days to promote non-discrimination and acceptance for all regardless of sexual orientation and gender identity or expression from 28 August 2015 to 6 September 2015 for the third time since its inception in 2013. The arts, culture and human rights-oriented social events aimed at educating the broader public on issues of sexual orientation and gender identity and expression to negate the unscientific views and misinformation around LGBTI people in Mongolia included public events such as Voices for Equality public concert, Equality Walk, Arts-4-Rights exhibition, Beyond the Blue Sky Queer Film Festival, spanning over ten days. The Government of Mongolia through its local municipal and district governments and institutions such as the police had impeded the freedom of association and assembly, the freedom to promote human rights as well as actively breached the right to be free from discrimination by obstructing the access to the Chinggis Square, a public space, for the opening concert of the Equality & Pride Days on 28 August, and by obstructing entry and forced physical removal of the walkers for equality on 29 August from the Chinggis Square, acts clearly seen as discriminatory due to the fact that these events were being organised by the LGBT Centre for defending human rights of LGBTI people, thus, the government acts seen as clearly discriminating against people on the basis of real or perceived sexual orientation and gender identity. The Centre filed a petition with the first instance Administrative Court on 25 September 2015 to obtain a ruling on the discriminatory and unlawful acts on the part of the government bodies during the Equality & Pride Days, and the first instance hearing took place on 10 December, with the judge of the first instance Administrative Court maintaining that both the Metropolitan Government bodies and the police acted in accordance with the laws, regardless of the fact that the bodies were found to be in breach of the Law on Holding Public Gatherings and Protests, for which no punishment was accorded to the concerned bodies. The fact that the government bodies did not respond within the legally prescribed timeframe of 3 working days led to the LGBT Centre being informed by the Sukhbaatar district governor’s office on 27 August that the Equality Walk should not take place on 29 August as planned, although the Centre filed a request to register these events on 5 August 2015. The appeal court hearing took place on 17 March 2016, with the first instance court decision maintained.

Both instance judges maintained that the Centre should’ve gone to the Administrative court at the time, and no loss of time or inconvenience caused by the unlawful acts of the government bodies was taken into consideration in the adjudication by the lower courts. Furthermore, as the present litigation process shows, contestation of the Sukhbaatar district governor’s decision that forbade the Equality Walk would’ve taken months to resolve, which goes against the very principles of international law governing the freedom of association and peaceful assembly, that any rules regarding registration of such public events be speedy and unbureaucratic, especially when these assemblies are proven to be peaceful and not harmful to the public security or health in any way. The LGBT Centre regrets the fact that the Government of Mongolia continues to infringe upon the freedom of expression, freedom of association and peaceful assembly of LGBTI people in Mongolia despite the UN Human Rights Committee recommendation of March 2011 that it no longer interfere with the freedom of association of LGBTI people following the LGBT Centre’s fight for an official registration as an NGO between March 2007 to December 2009. The LGBT Centre is appealing the case to the High Court both on procedural (the photographic and video evidence of the police forcing the walkers out were lost by the first instance court) as well as substantive (rigid interpretation of the right to remedy provided under the Law on Holding Public Gatherings and Protests without analysing the broader picture of systemic and institutionalised discrimination the state agents are continuing to engage in against LGBTI people) shortcomings of the lower courts’ decisions with a view to obtain the still-absent in Mongolia’s jurisprudence interpretation on discrimination and gender.

*Article 23*

Mongolia does not recognise same-sex unions, either in the form of marriage or any other legal structure (such as registered partnerships or cohabitation rights). Article 16(11) of the Constitution states, “Men and women enjoy equal rights in political, economic, social and cultural fields as well as in marriage. Marriage is based on the equality and mutual consent of the spouses who have reached the age determined by law.” This neither prohibits nor mandates the recognition of same-sex marriage. Article 3.1.3 of the Family Law of Mongolia defines “spouses” in gender-specific terms, as“husband and wife who are connected by marriage bonds and have equal rights and obligations”.

Mongolia's failure to comply with Article 23 of the ICCPR. Mongolian LGBTI families continue to face discrimination both due to the non-recognition of same-sex couples and, in particular, the lack of family rights provided to such couples. Mongolia’s failure legally recognise same-sexrelationships results in same-sex couples not being able to access the rights, benefits andprivileges that married opposite-sex couples are entitled to. This not only prevents them from realising their right to have their families protected under Article 23, but also affects a range of other civil, social and economic rights. Same-sexpartners are not able to make medical decision on each other’s behalf. In practice, it is very common for parents and other family members to ignore and overrule a same-sex partner’s wishes, both in a medical context and in relation to estate and inheritance disputes.

In Mongolia, same-sex couples are unable to legally adopt. They are also unable to access other parenting-related rights: for example, the female partner of a woman who gives birth through IVF is not recognised as a co-parent even though she may play an equal role in raising the child as the biological mother.Many children of same-sex partners – whether adoptive or thebiological child of one partner – also face bullying and harassment, especially at school,due tothe sexual orientation or genderidentity of their parents.

*Recommendation on Article 23: We urge the Committee to include in its concluding observations a recommendation that the Government introduce an amendment to the Constitution and Family Law recognising the rights of same-sex couples, including parenting rights.*