

Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report-

Universal Periodic Review:

MONGOLIA

I. BACKGROUND INFORMATION AND CURRENT CONDITIONS

Mongolia is not a party to the *1951 Convention Relating to the Status of Refugees* and its *1967 Protocol* (hereinafter jointly referred to as the 1951 Convention). However, Mongolia has been moving towards accession to the 1951 Convention through conducting the Cabinet deliberations that resulted in affirmation to accession, followed by the Government's recommendation for review by the National Security Council on 27 April 2009. The National Security Council will deliberate on implications for the national security and subsequently transfer the matter to the Parliament of Mongolia.

In terms of the existing legal and institutional frameworks to ensure the right to asylum in Mongolia, the Constitution of Mongolia promulgated in 1992, affirms in its Article 18(4) "Foreign citizens or stateless persons persecuted for their beliefs, or political or other activities and who are pursuing justice, may be granted asylum in Mongolia on the basis of their well-founded requests." Furthermore, the Law on the Status of Foreign Citizens 2010 states in its Article 7.3.3 that foreign nationals shall have "the right to seek political asylum"

Although Mongolia is not a party to the 1951 Convention, the Government of Mongolia has, in general, respected the *non-refoulement* principle as part of customary international law and has made continued commitments to ensure the right to asylum for asylum-seekers and refugees on its territory. In the absence of an asylum system administered and managed by the Government of Mongolia, UNHCR remains in charge of documenting, registering, establishing and conducting refugee status determination procedures for asylum-seekers in Mongolia. UNHCR also provides living and accommodation assistance to refugees and asylum-seekers with specific needs. As of August 2014, Mongolia hosts three refugees and seven asylum-seekers. UNHCR supports a few of these families with assistance as needed.

Mongolia is neither a party to the *1954 Convention Relating to the Status of Stateless Persons*, nor to the *1961 Convention on the Reduction of Statelessness* (hereinafter jointly referred to as the Statelessness Conventions). There are different estimates on the number of stateless persons in Mongolia; some sources estimate several tens of thousands of persons, while official statistics count very few stateless persons on the territory of Mongolia. Mongolia is a party to the *International Covenant on Civil and Political Rights* that affirms the right to acquire a nationality of every child in its Article 24 (3), reaffirmed in the Article 7 (1) of the *Convention on the Rights of the Child*, to which Mongolia is also a party.

The issue of statelessness became a visible problem in regard to one specific ethnic minority, the Kazakhs. Many thousands of ethnic Kazakh Mongolians moved to Kazakhstan in the early 1990s and some either returned or expressed their desire to return to Mongolia in the late 1990s or early 2000s. However, many ethnic Kazakh who were Mongolian nationals renounced their Mongolian nationality in order to acquire Kazakh nationality but were subsequently unable to do so and were left stateless. Many of those individuals are reported to have returned to Mongolia.

In January 2012, the government passed a law on combating human trafficking, which provides for coordination among agencies on human trafficking and clearly prohibits all forms of trafficking in persons under a single, comprehensive law. Mongolia however continues to be a source and destination country for men, women, and children who are subjected to forced labor, and is a source country for women and children subjected to sex trafficking. Mongolian men, women, and children are subjected to forced labor and women and children are subjected to forced prostitution abroad, including in China, Hong Kong, India, Indonesia, South Korea, Malaysia, the Philippines, Macau, and Singapore. China was the primary source of repatriated Mongolian trafficking victims in 2013.¹

II. ACHIEVEMENTS AND BEST PRACTICES

The Government of Mongolia has been pursuing a humanitarian policy in regard to asylum-seekers and refugees in Mongolia and is allowing their temporary stay until a durable solution is found for them. In order to formalize the *non-refoulement* principle as a binding obligation of the Government, as well as to ensure the appropriate management and protection of asylum-seekers and refugees under the care of UNHCR, the Office has facilitated a milestone event by concluding a Memorandum of Understanding (MoU) on Cooperation with the Government of Mongolia (Ministry of Justice and Home Affairs, Ministry of Foreign Affairs and Trade and the Office of Immigration, Naturalisation and Foreign Citizens) on 26 May 2007.

In 2013, two workshops on international refugee protection were held with a variety of government interlocutors, including officials from the Ministry of Foreign Affairs, the Mongolian Immigration Agency (MIA), Border Management Agency, Central Intelligence Agency, Ministry of Justice, National Human Rights Commission and advisors to parliamentarians.

In 2001, the Government of Mongolia established legal regulations, procedures and a specialized agency, the Office of Immigration, Naturalization and Foreign Citizens, which is in charge of immigration and naturalization issues.

The Constitution of Mongolia affirms in its Article 15(2) “Deprivation of Mongolian citizenship, exile and extradition of Mongolian citizens is prohibited.” Furthermore, the Mongolian Law on Nationality contains a number of provisions that help to prevent statelessness. It provides that in cases of a child born to parents where one of them is a

¹ United States Department of State, *2014 Trafficking in Persons Report - Mongolia*, 20 June 2014, available at <http://www.state.gov/documents/organization/226847.pdf>

Mongolian national, regardless of sex, and the other is a foreign national² or a stateless person³, the child automatically becomes a citizen of Mongolia. The law also contains a safeguard so that foundlings acquire Mongolian nationality.⁴

In 2013, the Mongolia Immigration Agency (MIA) reported that 220 ethnic Kazakhs have acquired a nationality (Mongolian or Kazakhstan) through bi-lateral cooperation between the two governments.

III. CHALLENGES, CONSTRAINTS AND RECOMMENDATIONS

Issue 1: Exercise of the right to asylum

As Mongolia is not a State party to the 1951 Convention, bilateral obligations of the State appear to override the customary international law obligations regarding the *non-refoulement* of asylum-seekers and refugees. Unless and until the 1951 Convention is acceded to, there are insufficient safeguards against *refoulement* as demonstrated in the case of two asylum-seekers who were deported in May 2014 despite repeated demarches by UNHCR. The existing bilateral obligations of Mongolia need to be framed within the broader international law, with the precedence of and adherence to the international law given its due recognition. The Committee Against Torture has urged Mongolia to “*consider acceding to the 1951 Convention relating to the Status of Refugees*” and to “*provide training to all law enforcement and immigration officials in international refugee and human rights law, emphasizing the principle of non-refoulement, and ensure that appeals to courts against deportation orders have a suspensive effect.*”⁵

Recommendations

UNHCR recommends that Mongolia:

- Accede to the 1951 Convention Relating to the Status of Refugees; and
- Formulate and enact national asylum legislation in cooperation with UNHCR to protect asylum-seekers and refugees on the territory of Mongolia.

Issue 2: Realisation of the right to nationality and the prevention of statelessness

According to the Mongolian Law on Nationality, stateless children born on the territory of Mongolia to stateless parents may become citizens of Mongolia upon reaching the age of 16 years.⁶ However, this safeguard does not encompass cases where foreign national parents cannot confer nationality on their children, leaving a potential for statelessness arising

² Section 7 (2), the Mongolian Law on Nationality, 1995, stipulates “A child born on the territory of Mongolia from parents either one of whom is a Mongolian citizen and another is a foreign citizen, shall be considered as a Mongolian citizen. In case, when a child is born on the territory of a foreign country, his or her citizenship shall be determined on the basis of a written agreement between the parents.”

³ Section 7 (3), the Mongolian Law on Nationality, 1995, stipulates “A child born when one of parents was a Mongolian citizen and the other was a stateless person shall be Mongolian citizen irrespective of place of birth.”

⁴ Section 7 (4), the Mongolian Law on Nationality, 1995, stipulates “A child who is within the territory of Mongolia whose parents are not identified shall be Mongolian citizen.”

⁵ Committee against Torture, Forty- fifth session, 1-19 November 2010, Para 13, available at:

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsrfB%2fPrX25aFzSwKEXpO1QguNUB%2fJLWRp7XznIVzqUfuvnDpJjm8fij1eESbtgRF0hOrtJTJ8cLWvezBNoyx7oJRiu3Ltuel1ZWO5L1oYzY%2b>

⁶ Section 7 (5), the Mongolian Law on Nationality, 1995, stipulates “A child who born from stateless parents permanently residing in the territory of Mongolia may have Mongolian citizenship, after reaching the age of 16, if he or she will to do so.”

particularly for the children of asylum-seekers or refugees who cannot acquire the nationality of their parents when they cannot meet the requirement to register with the consular authorities of their parents' State of nationality.

Due to the fact that Mongolia does not allow dual nationality,⁷ a foreign citizen desiring to acquire Mongolian nationality is required to renounce first his/her present nationality, so as to ensure that Mongolian nationality is not enjoyed along with a second nationality. This legal framework can lead to statelessness where the person does not acquire Mongolian nationality after having renounced their previous nationality. Additionally, the process for applying and acquiring Mongolian nationality takes a long time.

The Special Rapporteur on Extreme Poverty and Human Rights has recommended that Mongolia “*accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness*” and “*undertake a comprehensive review of national legislation and policies for the purpose of preventing and reducing statelessness; resolve the issue of statelessness, in cooperation with the Office of the United Nations High Commissioner for Refugees (UNHCR), through improved registration of persons who previously held Mongolian nationality and expedite procedures for (re-)acquisition of Mongolian nationality.*”⁸ The Human Rights Committee on Civil and Political Rights has recommended that Mongolia “*should conduct a thorough analysis of its legal framework to identify the provisions that lead to statelessness, and implement immediate reforms to guarantee the right of all persons to receive a nationality, including for stateless children who were born on the territory of Mongolia to stateless parents. The State party should ensure respect for the six-month legal deadline for the finalization of this procedure.*”⁹

Recommendations

UNHCR recommends that Mongolia:

- Undertake a thorough analysis of its legal framework to identify the provisions that lead to statelessness, and implement immediate reforms to guarantee the right of all persons to acquire a nationality, including providing safeguards to prevent statelessness occurring amongst children;
- Resolve the issue of statelessness on its territory in cooperation with UNHCR through improved and expedited systems of registration, including to those who previously held Mongolian nationality, and expedite procedures for (re-)acquisition of nationality; and
- Accede to the Statelessness Conventions.

Issue 3: Prevention of trafficking

Challenges remain in implementing the 2012 anti-trafficking law, including with regard to investigation, prosecution and protection of victims. Implementation has been further hampered by a lack of adequate allocation of State resources. The Human Rights Committee on Civil and Political Rights has recommended that Mongolia “*should take all the necessary*

⁷ Section 4 (1), the Mongolian Law on Nationality, 1995, stipulates “Mongolian citizens shall not be allowed to hold citizenship of more than one foreign nation at the same time.”

⁸ Report of the Special Rapporteur on Extreme Poverty and Human Rights, May 2013, paragraph 97, available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-36-Add2_en.pdf

⁹ Human Rights Committee, 101st session, New York, 14 March-1 April 2011, paragraph 26, Available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsuf%2bluEXvpntMfW3oTXRoDuDzkCn7TRgd61BjmMkVfr%2fgQyGqWhteWM6hwZ7%2bE3%2bagH2Gv30wMijWtEYoeNpdnOsjkKhmsgW4q91xBocfgg>

*measures to guarantee that all cases of human trafficking are investigated, prosecuted and, if resulting in convictions, adequately sanctioned”, “should also implement mechanisms to protect witnesses and victims during all stages of the judicial process” and that “State resources should be allocated for the establishment and running of shelters for victims of trafficking”.*¹⁰

The Special Rapporteur on Extreme Poverty and Human Rights has recommended that Mongolia should “*implement the comprehensive anti-trafficking law adopted in January 2012, and further strengthen the law enforcement and judicial system as a means of addressing impunity and preventing the incidence of trafficking and domestic violence as well as the sexual abuse of women and girls*”.¹¹

Recommendations

UNHCR recommends that Mongolia:

- Ensure proper investigation, prosecution and adequate sanctions in all cases of human trafficking, including through training of government officials including law enforcement and the judiciary;
- Allocate resources to provide for the adequate protection of victims and witnesses, including through the establishment and running of safe shelters; and
- Establish within the regulations a referral mechanism for victims of trafficking who may be in need of international protection.

**Human Rights Liaison Unit
Division of International Protection
UNHCR
September 2014**

¹⁰ Human Rights Committee, 101st session, New York, 14 March-1 April 2011, paragraph 21, Available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsuf%2bluEXvpntMfW3oTXRoDuDzkCn7TRgd61BjmMkVfr%2fgQyGqWhteWM6hwZ7%2bE3%2bagH2Gv30wMijWtEYoeNpdnOsjkKhmsgW4q91xBocfgg>

¹¹ Report of the Special Rapporteur on Extreme Poverty and Human Rights, May 2013, paragraph 97, available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-36-Add2_en.pdf

Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies and Special Procedures' Reports

- Universal Periodic Review:

MONGOLIA

We would like to bring your attention to the following excerpts from UN Treaty Monitoring Bodies' Concluding Observations and Recommendations and from UN Special Procedures mandate holders' reports relating to issues of interest and persons of concern to UNHCR with regards to Mongolia.

I. Treaty Bodies

Human Rights Committee on Civil and Political Rights

[Concluding observations \(2011\) CCPR/C/MNG/CO/5, 101st Session](#)

2 May 2011

The Concluding Observations contain the following paragraphs with observations and recommendations of particular interest to UNHCR and our persons of concern:

21. While welcoming the progress made through the adoption of legislation against human trafficking, the Committee is concerned about its enforcement as well as the difficulties victims and witnesses experience in receiving access to legal advice, effective protection and shelters, and adequate compensation and rehabilitation. The Committee is also concerned about the gaps in the criminal prosecution of human trafficking, including in cases that allegedly involve law-enforcement officials in trafficking and forced prostitution of minors. The Committee regrets that a high proportion of cases of trafficking are dismissed by the courts, and that article 124 of the Criminal Code (on inducement to engage in prostitution and organization of prostitution) is applied to the majority of prosecuted cases instead of article 113 (on the sale and purchase of human beings), resulting in the application of lighter sanctions (art. 8).

The State party should take all the necessary measures to guarantee that all cases of human trafficking are investigated, prosecuted and, if resulting in convictions, adequately sanctioned. The State party should also implement mechanisms to protect witnesses and victims during all stages of the judicial process. State resources should be allocated for the establishment and running of shelters for victims of trafficking.

26. While welcoming the possibility for children of stateless persons to apply for citizenship in their late teenage years, and the six-month legal deadline in which the authorities are supposed to attend any request to acquire Mongolian nationality, the Committee is concerned about allegations according to which, in practice, the process takes between nine and 13

years. The Committee is also concerned about persons who became stateless as a result of the legal obligation for individuals to renounce their nationality upon application for another nationality, including ethnic Kazakhs who renounced their Mongolian nationality, but subsequently failed to acquire the Kazakh nationality they applied for and became stateless (arts. 24, 26).

The State party should conduct a thorough analysis of its legal framework to identify the provisions that lead to statelessness, and implement immediate reforms to guarantee the right of all persons to receive a nationality, including for stateless children who were born on the territory of Mongolia to stateless parents. The State party should ensure respect for the six-month legal deadline for the finalization of this procedure.

Committee against Torture

[Concluding observations \(2011\) CAT/C/MNG/CO/1, 45th Session](#)

20 January 2011

The Concluding Observations contain the following paragraphs with observations and recommendations of particular interest to UNHCR and our persons of concern:

Non-refoulement obligations

13. The Committee is concerned that from 2000 to 2008, Mongolian authorities implemented deportation decisions for 3,713 citizens from 11 countries. The Committee is also concerned that no deportation order was suspended or not implemented because the person to be deported was under the threat of being tortured in the country of destination. The Committee is concerned further that in October 2009, an asylum-seeker and his family were deported to China against their will before a final decision on the asylum claim was made. (art. 3)

The State party should take all legislative, judicial and administrative measures to comply with its obligations under article 3 of the Convention. When determining its non-refoulement obligation, the State party should assess the merits of each individual case. The State party should introduce amendments in its legislation that deal with forced deportations of foreign citizens. The State party should consider acceding to the 1951 Convention Relating to the Status of Refugees (adopted by the UN General Assembly on 28 July 1951) and its 1967 Protocol. The State party should provide training to all law enforcement and immigration officials in international refugee and human rights law, emphasizing the principle of non-refoulement and ensure that appeals to courts against deportation orders have a suspensive effect.

Discrimination and violence against vulnerable groups

25. The Committee is concerned:

a) About reports that there is no comprehensive domestic law against discrimination and that hate crimes and speech is not an offence under the law. The Committee is also concerned

at reports that vulnerable groups such as lesbian, gay, bisexual and transgender (LGBT) persons are subjected to violence and sexual abuse, both in public and domestic settings, owing to widespread negative social attitudes. The Committee welcomes the official registration of the LGBT Centre and notes with appreciation the indication by the State party of the need for a public awareness-raising campaign regarding LGBT persons ;

b) About reports concerning the discrimination against persons with HIV/AIDS, especially with regard to housing and pre-screening prior to employment;

c) That, while taking note of the enactment in 2002 of the new Civil Code which stipulates that non-citizens have the same rights as citizens in civil and legal matters, some foreigners may be subjected to organized violence based on ethnic origin. (arts. 2 and 16)

The State party should establish a comprehensive legal framework to combat discrimination, including hate crimes and speech. The State party should take measures to bring perpetrators of such crimes to justice. The State party should ensure the protection of vulnerable groups such as sexual minorities, persons living with HIV/AIDS, and some foreigners. The State party should establish effective policing, enforcement and complaints mechanisms with a view to ensuring prompt, thorough and impartial investigations into allegations of attacks against persons on the basis of their sexual orientation or gender identity in line with the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity. The State party should adopt legislation to combat violence caused by organizations which promote and incite racial, ethnic and other forms of discrimination.

Data collection

27. The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement, security, military and prison personnel, as well as on death row prisoners, ill-treatment of migrant workers, trafficking in humans and domestic and sexual violence.

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions of persons guilty of torture and ill-treatment, ill-treatment of migrant workers, death row prisoners, trafficking in humans and domestic and sexual violence, disaggregated by age, sex, ethnicity and type of crime, as well as on means for redress, including compensation and rehabilitation, provided to the victims.

29. The Committee recommends that the State party consider making the declarations envisaged under articles 21 and 22 of the Convention.

II. Special Procedures

Special Report on extreme poverty

Human Rights Council, 23rd Session

[A/HRC/23/36, 30 May 2013](#)

In the report on her mission to Mongolia, the SR noted the poor access of non-Mongolian speaking minorities to basic education and the gaps in legislation that have led to statelessness for certain ethnic groups. The SR called for sustainable investment in children's rights, gender equality in employment, overall employment generation, and improvement in the effectiveness of poverty reduction measures. She recommended that the Government accede to the *1954 and 1961 Statelessness Conventions* and undertake a comprehensive review of national legislation and policies for the purpose of preventing and reducing statelessness, as well as resolve the issue of statelessness through improved registration of persons who previously held Mongolian nationality and expedite procedures for (re-)acquisition of Mongolian nationality.

D. Herders and nomads

45. Mineral exploration resulting from the recent mining boom is also forcing herders and nomadic communities to move to more remote regions of the country, thus limiting their access to basic health care, education and social welfare services. The Special Rapporteur concurs with the recommendations made by the Working Group on the issue of human rights and transnational corporations and other business enterprises, following their recent visit to the country, that adequate access to health care and social services in all soums and adequate infrastructure planning prior to the start-up of mining operations should be guaranteed by the State (A/HRC/23/32/Add.1).

46. While commending the adoption of the State Policy on Herders (2009) and the subsequent establishment of the National Programme to Combat Desertification (2010), the Special Rapporteur is concerned by reports that many of these policies have not been implemented, leaving herders and nomadic communities vulnerable to the perils of environmental change and resulting poverty. She therefore urges the Government to implement the relevant policies to improve the living conditions of herders and to establish mechanisms to allow for skills-based training, particularly for young herders, as a means of ensuring alternative employment, should it become necessary.

51. In addition, the Special Rapporteur was informed that gaps in legislation have led to statelessness for certain ethnic groups, in particular those belonging to the Kazakh minority. This is mainly due to the fact that Mongolia does not allow dual nationality and a foreign citizen wishing to acquire Mongolian nationality is required to renounce his or her foreign

nationality first. Many Kazakhs who have done just that, have faced obstacles re-acquiring Mongolian nationality, mainly due to the fact that the initial bilateral nationality verification process between Mongolia and Kazakhstan is often delayed. Additionally, many stateless persons do not approach the authorities to restore or acquire Mongolian nationality, because they fear the stigma of being identified as stateless.

F. Internal migrants

52. Rural to urban migration increased considerably over the last decade as people move to the cities in search of better living standards, employment opportunities, children's education and health care. In 2010, approximately 45 per cent of the population was living in Ulaanbaatar alone. This phenomenon is placing substantial socioeconomic constraints on the Government, due mainly to the fluctuating nature of the migrant population, which remains largely unregistered.

53. Despite the improvements achieved through the introduction of an integrated civil registry database, the Special Rapporteur was informed that rural migrants continue to face problems obtaining residency identification in a simple and timely manner, thus preventing them from securing land, employment, accessing legal aid, education for their children, health care and other Government services. Combined with the lack of necessary skills to obtain work, families in these conditions struggle to provide their children with nutritional food, warm clothing and are often unable to meet the basic costs of providing uniforms and materials for school.

VIII. Conclusion and recommendations

(g) Implement the comprehensive anti-trafficking law adopted in January 2012, and further strengthen the law enforcement and judicial system as a means of addressing impunity and preventing the incidence of trafficking and domestic violence as well as the sexual abuse of women and girls;

(j) Expand the national programme on the prevention of human trafficking with a view to dealing with all violations of the provisions of the Palermo Protocol, in line with the recommendations of the Committee on the Rights of the Child;

(v) Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness and undertake a comprehensive review of national legislation and policies for the purpose of preventing and reducing statelessness; resolve the issue of statelessness, in cooperation with the Office of the United Nations High Commissioner for Refugees (UNHCR), through improved registration of persons who previously held Mongolian nationality and expedite procedures for (re-)acquisition of Mongolian nationality;

Herders and nomads

(w) Establish mechanisms to allow for skills-based training, particularly for young herders, as a means of ensuring alternative employment if necessary.

(x) Ensure adequate access to quality basic services such as health care, education, water and sanitation in all soums; undertake comprehensive studies to assess the current level of access by this sector of the population and design concrete measures to improve it;

Internal migrants

(y) Improve the registration procedure for rural migrants to peri-urban settlements, ensuring that no one is prevented from accessing basic services because of a protracted registration process;

(z) Develop awareness raising campaigns to inform migrants of their rights and to assist them in adapting to a new and unfamiliar environment;

(aa) Ensure that local authorities are allocated with the necessary resources to enable them to provide basic services to migrants arriving in urban areas;