



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

THE RIGHT TO ASYLUM

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 states in its article 6 (1) and (2) "Foreign citizens who are the subject of political persecution in another country for holding ideas, which are appreciated in Mongolia, may be granted the right to residence and State protection", "Any decision to grant residence status to a foreign citizen to whom paragraph 1 of this article applies shall be made, by the President of Mongolia."

Although Mongolia is not a party to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, 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 and establishing refugee status eligibility for asylum-seekers in Mongolia. UNHCR also provides living and accommodation assistance to refugees and eligible asylum-seekers.

In order to assist the Government to establish a fair and accessible asylum administration and management system, UNHCR is working with the Government to promote and advocate for the accession to the 1951 Convention and, to that end, it established a Liaison Office in

Mongolia in 2002. The main functions of the Liaison Office are to facilitate Mongolia's accession to the international refugee instruments as well as to provide direct assistance to the persons of concern to UNHCR. Its main partners are the Ministry of Foreign Affairs and Trade, the Ministry of Justice and Home Affairs, the Office of Immigration, Naturalisation and Foreign Citizens, the General Intelligence Agency and the Border Troops of Mongolia.

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 formalise 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.

The MoU is the main *modus operandi* for all concerned parties governing the documentation, residence permit issuance, refugee status determination and assistance to asylum-seekers and refugees and the identification of durable solutions for them. In order to ensure the MoU remains a fully operational and living document, UNHCR is cooperating with the concerned government parties to improve the procedures under the MoU, pending the accession to the international refugee instruments.

UNHCR has availed the cooperation from the Government in ensuring the right to asylum is respected and ensured through, *inter alia*, facilitating a study tour in 2009 for the working level and mid-management level government agencies directly dealing with refugees to New Zealand to familiarize themselves with a good example of a functioning asylum mechanism, building the capacity of key government partners in asylum management and refugee law through sending them to the International Institute of Humanitarian Law, and other trainings done by UNHCR e-Centre in the region, and conducting on-the-ground protection trainings to personnel involved in dealing with persons of concern to UNHCR.

III. Challenges and Constraints

Due to the non-signatory status of Mongolia to the 1951 Convention, bilateral obligations of the State appear to override the customary and crucial 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 an asylum-seeker who was deported in October 2009 before the final decision on his asylum claim was made. 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.

IV. Recommendations

- To fulfil its international obligation by implementing the treaty bodies' continued recommendations in regard to the accession to the 1951 Convention, as highlighted twice by the Convention on the Rights of the Child Committee in 2005 (CRC/C/15/Add.264) and 2010 (CRC/C/MNG/CO/3-4) and once by the Committee on Elimination of Racial Discrimination in 2006 (CERD/C/MNG/CO/18).

- To formulate and enact its national asylum legislation in cooperation with UNHCR to protect asylum-seekers and refugees on the territory of Mongolia.

THE RIGHT TO A NATIONALITY

I. Background and Current Conditions

The right to a nationality is an inalienable right of all human beings. Mongolia is not a party to the 1954 Convention Relating to the Status of Stateless Persons, nor to the 1961 Convention on the Reduction of Statelessness. There are different estimates on the number of stateless persons in Mongolia; some quoting 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 Mongolians 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.

II. Achievement and Best Practices

In 2001, the Government of Mongolia established legal regulations, procedures and a specialised agency, the Office of Immigration, Naturalisation and Foreign Citizens, which is in charge of immigration and naturalisation 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 Mongolian national, regardless of sex, and the other is a foreign national¹ or a stateless person,² the child automatically becomes a citizen of Mongolia. The law also contains a safeguard so that foundlings acquire Mongolian nationality.³

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

¹ Section 7 (2), the Mongolian Law on Nationality, 1995, stipulates “Where a mother or a father is a Mongolian national and the other parent is a foreign national, and the child is born on the territory of Mongolia, the child will be a Mongolian national. If their child is born on the territory of another country, the nationality of their child will be determined on the basis of a written agreement between the parents.”

² Section 7 (3), the Mongolian Law on Nationality, 1995, stipulates “Where a mother or a father is a Mongolian national and the other parent is a stateless person, regardless of where the child is born, the child will be a Mongolian national.”

³ Section 7 (4), the Mongolian Law on Nationality, 1995.

years.⁴ However, as the law requires permanent residency this right is not guaranteed in the case of children born to to asylum-seeking and refugee parents. Furthermore, this safeguard does not encompass cases where foreign national parents cannot confer nationality on their children, leaving some children stateless.

III. Challenges and Constraints

Due to the fact that Mongolia does not allow dual nationality,⁵ a foreign citizen desiring to acquire Mongolian nationality⁶ 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.

The process for applying and acquiring Mongolian nationality takes a long time. On average, only 30 persons per year acquire Mongolian nationality. Meanwhile, stateless persons are unable to enjoy their most fundamental rights such as the right to education, to healthcare and to an adequate standard of living. The problem is more acute when involving infants or young stateless children.

Furthermore, the statelessness survey conducted by the Sociological Education Centre and the Kazakh Development Association in early 2010 revealed that in some cases people were unaware that they no longer had Mongolian nationality, or that even if they knew, they had no information or access to information as to how to restore their nationality, since all information in Mongolia is in the Mongolian language, whereas this specific ethnic minority's mother tongue is not Mongolian and, therefore, they are unable to access that information in their language. Many stateless persons fear the stigma of being identified as stateless and, therefore, do not approach the authorities to restore or acquire Mongolian nationality.

IV. Recommendations

- To implement the treaty bodies' recommendation in regard to the accession to the 1954 Convention relating to the Status of Stateless Persons and to the 1961 Convention on the Reduction of Statelessness.
- To undertake a comprehensive review of national legislation and policies for the purpose of preventing and reducing statelessness.
- To resolve the issue of statelessness on its territory in cooperation with UNHCR through improved systems of registration to those who previously held Mongolian nationality, and to expedite procedures for (re-)acquisition of nationality.

⁴ Section 7 (5), the Mongolian Law on Nationality, 1995.

⁵ Section 4 (1), the Mongolian Law on Nationality, 1995, stipulates "A citizen of Mongolia is forbidden to be a citizen of another country simultaneously."

⁶ Section 4 (2), the Mongolian Law on Nationality, 1995, stipulates "A foreign citizen desiring to acquire the Mongolian nationality, is required to have renounced her or his present nationality. If laws of the country where the person originates from are formulated in a way that a person will automatically lose their nationality upon acquiring a nationality of another country, she or he is not required to have first renounced their nationality, but is required to supply a relevant agency's certification of the country's law."

- To conduct information and awareness-raising nationwide campaigns on citizenship and citizenship rights to enable stateless persons to come forward and identify themselves and access solutions to their plight.
- To make the information on acquiring Mongolian nationality as accessible as possible through providing information in both, the Mongolian and Kazakh languages, since the majority of the stateless persons in Mongolia are ethnic Kazakhs.

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