

# OPERATIONAL GUIDANCE NOTE

## MONGOLIA

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## 1. **Introduction**

- 1.1** This document evaluates the general, political and human rights situation in Mongolia and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseowners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** This guidance must also be read in conjunction with any COI Service Mongolia Country of Origin Information at:
- [http://www.homeoffice.gov.uk/rds/country\\_reports.html](http://www.homeoffice.gov.uk/rds/country_reports.html)
- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instructions on Article 8 ECHR. If, following consideration, a claim is to be refused, caseowners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.
- 1.4** With effect from 2 December 2005 Mongolia is a country listed in section 94 of the Nationality Immigration and Asylum Act 2002. If, following consideration, a claim made on or after 2 December 2005 by someone who is entitled to reside in Mongolia is refused, caseowners should certify it as clearly unfounded unless satisfied that it is not. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail. Guidance on whether certain types of claim are likely to be clearly unfounded is set out below.

## Source documents

1.5 A full list of source documents cited in footnotes is at the end of this note.

## 2. Country assessment

- 2.1 Mongolia is a republic with a parliamentary government and a directly elected president. Power is shared between the President, the Parliament, the Prime Minister's ten-member cabinet and the Supreme Court. Only the Parliament has legislative power. The President and parliamentary members are elected directly by the people at two different elections. The Prime Minister is nominated from the party with the largest number of seats in Parliament.<sup>1</sup>
- 2.2 The Constitution provides citizens with the right to change their government peacefully, and citizens have exercised this right in practice through periodic, free, and fair elections held on the basis of universal suffrage. However, the campaign and balloting process in the 2004 national parliamentary election was widely considered marred by violations and irregularities. Minor irregularities were also noted in the 2005 presidential election.<sup>2</sup>
- 2.3 The election resulted in the Mongolian Peoples Revolutionary Party (MPRP) and the Motherland Democracy Coalition (MDC) winning an equal share of the seats in Parliament. Subsequent talks between the MPRP and the MDC led to an agreement to form a government of national unity. Tsakhiagiin Elbegdorj was appointed Prime Minister and the new government was approved by Parliament and sworn in on 28 September 2004.<sup>3</sup>
- 2.4 On 11 January 2006, however, 10 ministers of the MPRP, who formed a majority in the cabinet (10 of 18), resigned in protest at the country's domestic political course. This ended the coalition government of the MPRP, Democratic Party and other smaller parties (previously known as the MDC). Prime Minister Tsakhiagiin Elbegdorj stepped down as Prime Minister and Parliament was dissolved. The MPRP subsequently gained agreement from other political parties to form a new coalition government, with Miyegombo Enbold as head.<sup>4</sup>
- 2.5 As reported in March 2005 by the United Nations (UN) Development Programme, Mongolia has had a comparatively successful transition to parliamentary democracy. Since the MPRP yielded its monopoly on power at the beginning of the past decade, a successful political transition process has taken place.<sup>5</sup>
- 2.6 The Constitution provides for an independent judiciary, and the Government generally respected this provision in practice during 2006. However, corruption and outside influence were problems. The judiciary consists of local courts, provincial courts, and the Supreme Court. According to law, all accused persons have the right to due process, legal defence, and a public trial. Closed proceedings are permitted in cases involving state secrets, rape cases involving minors, and other cases as provided by law. The Constitution provides that defendants are innocent until proven guilty; however, in 2006 there was a heavy reliance on confessions, many of which were coerced by police. Defendants may question witnesses and appeal decisions.<sup>6</sup>
- 2.7 The Government generally respected the human rights of its citizens during 2006, however, human rights problems were noted including police abuse of prisoners and detainees,

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<sup>1</sup> Home Office Country of Origin Information Key Documents: Mongolia, Australian Broadcasting Corporation (ABC) Radio Australia Country Profiles: Mongolia & The Foreign and Commonwealth Office (FCO) Country Profile 2006: Mongolia

<sup>2</sup> U.S. Department of State Country Report on Human Rights Practices (USSD) 2006 (Introduction & Section 3)

<sup>3</sup> COI Key Documents: Mongolia & FCO Country Profile 2006: Mongolia

<sup>4</sup> COI Key Documents: Mongolia & FCO Country Profile 2006: Mongolia

<sup>5</sup> United Nations (UN) Development Programme: Mongolia

<sup>6</sup> COI Key Documents: Mongolia & USSD 2006 (Sections 1 & 3)

arbitrary arrests, lengthy detention, corruption within the judicial system, and criminal defamation laws resulting in self-censorship by the press.<sup>7</sup>

- 2.8** Mongolia's human rights record is generally good, although there is continuing concern over the conditions in pre-trial detention centres. Mongolia established a Human Rights Commission in 2001 and is receiving substantial support from the United Nations (UN) Development Programme to develop human rights awareness. Mongolia has ratified all the UN Human Rights conventions, but its reporting record is less than perfect.<sup>8</sup>
- 2.9** The law prohibits the use of torture and other cruel, inhuman, or degrading treatment, however, in 2006 police occasionally beat prisoners and detainees, and the use of unnecessary force in the arrest process was common. The UN Special Rapporteur on Human Rights visited Mongolia in June 2005 at the invitation of the Mongolian Government and praised the 2005 public inquiry on torture being carried out by the National Human Rights Commission, and expressed strong support for its efforts aimed at eradicating torture. However, he also noted some points for concern centred on the treatment of abuses of detainees in police stations and pre-trial detention facilities. He also noted that the treatment of prisoners serving 30 year prison terms in 'isolation' was 'inhumane.'<sup>9</sup>

### **3. Main categories of claims**

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Mongolia. It also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instructions on Assessing the Claim).
- 3.3** If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** This guidance is **not** designed to cover issues of credibility. Caseowners will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the Asylum Instructions on Assessing the Claim)
- 3.5** All Asylum Instructions can be accessed via the IND website at:

<http://www.ind.homeoffice.gov.uk/documents/asylumpolicyinstructions/>

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<sup>7</sup> COI Key Documents: Mongolia, USSD 2006 (Introduction & Section 1) & Amnesty International (AI) Annual Report 2006: Mongolia

<sup>8</sup> COI Key Documents: Mongolia & FCO Country Profile 2006: Mongolia

<sup>9</sup> COI Key Documents: Mongolia, USSD 2006 (Section 1), UBPost 'UN rapporteur visits Mongolia to make assessment on torture' dated 16 June 2005 & AI Annual Report 2006: Mongolia

### 3.6 Minority ethnic groups

- 3.6.1** Many claimants will apply for asylum or make a human rights claim based on ill-treatment amounting to persecution at the hands of the Mongolian authorities or ordinary Mongolian citizens due to their ethnicity.
- 3.6.2** **Treatment.** The majority of the Mongolian population, between 85-95% are Mongol (mainly Khalkha), 5-7% are Turkic (mostly Kazakh), 4.6% are Tungusic and 3.4% are from other groups, including Chinese and Russian. About 4 million Mongols live outside Mongolia; about 3.4 million live in China, mainly in the Inner Mongolia Autonomous Region, and some 500,000 live in Russia, primarily in Buryatia and Kalmykia.<sup>10</sup>
- 3.6.3** Kazakhs, most of whom are Muslim, are the largest of the ethnic minorities, constituting approximately 4% of the population nationwide and 85% of the population of the western province, Bayan-Olgii. The Kazakhs' status as the majority ethnic group in Bayan-Olgii was established in the former Socialist period and continues in much the same circumstances. Kazakhs are able to operate Islamic schools for their children.<sup>11</sup>
- 3.6.4** There are no legal impediments to the participation of minorities in government and politics. The Constitution states that 'no person shall be discriminated against on the basis of ethnic origin, language; race, age, sex, social origin, or status' and the government generally enforced these provisions in practice during 2006.<sup>12</sup>
- 3.6.5** Inter-ethnic and inter-religious marriages frequently amount to the same thing as the Khalkha or Mongol peoples are overwhelmingly Buddhist and the Kazakhs predominantly Muslim. No laws prohibit such marriages, however, nationalistic sentiments within both groups discourage such marriages and partners to such a marriage would likely be stigmatised and in rare cases disowned by their families.<sup>13</sup>
- 3.6.6** In 2006, there were increasing numbers of Chinese workers in low-wage construction jobs, who often lived under sparse conditions, but generally enjoyed the same protection as other citizens.<sup>14</sup>
- 3.6.7** **Sufficiency of protection.** The Constitution states that 'no person shall be discriminated against on the basis of ethnic origin language or race and the Government generally enforced this provision in practice during 2006.'<sup>15</sup> Although there is some evidence that those in mixed marriages may suffer some discrimination mainly from within their own family, this does not amount to persecution or breach the threshold of article 3 ECHR. In general, as there is no evidence that the authorities or ordinary citizens discriminate or persecute ethnic minorities the issue of access to adequate State protection is not relevant.
- 3.6.8** **Internal relocation.** The law provides for freedom of movement and the Government generally respected this right in practice during 2006.<sup>16</sup> In general, it would not be unduly harsh for a claimant who fears persecution from within their family and/or local area to internally relocate to another area of Mongolia where they will not face any problems.

<sup>10</sup> COI Key Documents: Mongolia , U.S. Department of State: Bureau of East Asian and Pacific Affairs. Background Note: Mongolia & CIA World Factbook 2007: Mongolia

<sup>11</sup> U.S. Department of State International Religious Freedom Report (USIRFR) 2006: Mongolia (Section I)

<sup>12</sup> USSD 2006 (Sections 3 & 5)

<sup>13</sup> Canadian Immigration and Refugee Board (IRB). MNG31445.E Mongolia: Contemporary marriage customs, including information on customs in Ulan Bator, arranged marriages, child betrothals, common law relationships, inter-ethnic marriages between Khalkas and Kazakhs, inter-religious marriages between Muslims and Buddhists, 26 March 1999

<sup>14</sup> USSD 2006 (Section 6)

<sup>15</sup> USSD 2006 (Section 5)

<sup>16</sup> USSD 2006 (Section 2)

**3.6.9 Conclusion.** The Constitution prohibits discrimination on the basis of ethnic origin, language or race and the Mongolian authorities generally enforce these provisions in practice. In addition, there are no legal impediments to the participation of ethnic minorities in government and politics and immigrant Chinese workers enjoy the same rights as ordinary citizens. Although it is likely that there will be some societal or family discrimination against those in mixed marriages this does not amount to persecution or a breach of article 3 of the ECHR. In general, the ordinary Mongolian population do not discriminate against or persecute ethnic minorities. In addition, in most cases internal relocation will be an option. It is unlikely, therefore, that claimants in this category would qualify for asylum or Humanitarian Protection and such claims are likely to be clearly unfounded.

### 3.7 Organised crime and corruption

- 3.7.1** Some claimants will apply for asylum or make a human rights claim based on ill-treatment amounting to persecution at the hands of organised criminal gangs and/or corrupt officials, and will claim that the authorities are not able to offer sufficiency of protection.
- 3.7.2 Treatment.** On 29 April 2005, Mongolia signed the United Nations Convention Against Corruption becoming the 119th country to have signed the UN convention since its adoption on 31 October 2003.<sup>17</sup> Article 182 of the Mongolian Criminal Code lays down the penalties for membership of an organised group or criminal organisation. These penalties range from five to 20 years imprisonment.<sup>18</sup>
- 3.7.3** According to the Transparency International Corruption Perception Index 2006, Mongolia is in the bottom half of the table when it comes to its own citizen's perceptions of the level of corruption – it scored 2.8 out of ten (ten being zero perception of corruption).<sup>19</sup>
- 3.7.4** Corruption was perceived to be a growing problem at both lower and upper levels of government in 2006. Corruption was particularly severe in the police, the judiciary, customs, and other elements of government. In July 2006, parliament passed an anti-corruption law that included provisions for a new anti-corruption agency. The law went into force in November 2006 and in December 2006, parliament approved the president's nominee to head the new agency. Still, the State Secrets Law inhibits freedom of information and government transparency and accountability. In 2006, there were public calls to amend the law and implement the equivalent of a 'freedom of information act'.<sup>20</sup>
- 3.7.5** However, corruption has not reached the levels that are evident in many other countries with contexts and histories similar to that of Mongolia. Perhaps more importantly, there are a number of efforts underway to actively combat corruption, including:
- Government commitments to international anti-corruption regimes and protocols, such as the Anti-Corruption Plan of the Asian Development Bank/Organisation for Economic Co-operation and Development (ADB/OECD) and the United Nations Convention Against Corruption (see 3.7.2 above);
  - Development of a national programme for combating corruption and formation of a national council for co-ordinating this programme and a parliamentary anti-corruption working group;
  - Drafting of a new anti-corruption law that, in its current form calls for the formation of an independent anti-corruption body;
  - Short- and medium-term anti-corruption advocacy and 'watchdog' programmes initiated by civil society organisations, often with international donors.<sup>21</sup>
- 3.7.6 Sufficiency of protection.** The Government generally respected the independence of the judiciary in 2006, and the post-Communist reforms to the police have created a more

<sup>17</sup> UBPost 'Mongolia signs UN anti-corruption convention' dated 5 May 2005

<sup>18</sup> Criminal Code of Mongolia

<sup>19</sup> Transparency International: 2006 Corruption Perceptions Index

<sup>20</sup> USSD 2006 (Section 3)

<sup>21</sup> USAID Assessment of Corruption in Mongolia Final Report (page 2)

disciplined force. However, corruption within both the judiciary and police is still a problem.<sup>22</sup> While not endemic or pervasive, corruption within Mongolia may limit the effectiveness of any protection that the authorities are able or willing to offer.

- 3.7.7 Internal relocation.** The law provides for freedom of movement and in 2006 the Government generally respected this right in practice.<sup>23</sup> In general, it would not be unduly harsh for an applicant to internally relocate to another area of Mongolia where they would not be at risk from local organised criminal gangs or corrupt officials.
- 3.7.8 Conclusion.** Although corruption is a problem in Mongolia it is not endemic or pervasive and the authorities are attempting to tackle corruption before it becomes a major problem. There may be some cases where organised criminal gangs have connections and influence with the local police force or other State agents and therefore claimants may not be able to seek the protection of the authorities or be able to internally relocate to another area of Mongolia. However, in the majority of cases of low level criminal activity perpetrated by criminal gangs at a local level (i.e. street robbery/extortion) in which there is no links with the authorities, the claimant will be able to seek the protection of the authorities or internally relocate to another part of Mongolia. Therefore, it is unlikely that these cases will qualify for a grant of asylum or Humanitarian Protection and such claims are likely to be clearly unfounded.
- 3.8 Involvement with opposition political organisations**
- 3.8.1** Some claimants will apply for asylum or make a human rights claim based on ill-treatment amounting to persecution at the hands of Mongolian authorities due to their involvement in opposition political organisations or their support for such organisations in the press.
- 3.8.2 Treatment.** The Constitution provides citizens with the right to change their government peacefully, and citizens have exercised this right in practice through periodic, free, and fair elections held on the basis of universal suffrage. However, the campaign and balloting process in the 2004 national parliamentary election was widely considered marred by violations and irregularities. Minor irregularities were also noted in the 2005 presidential election.<sup>24</sup>
- 3.8.3** There are eighteen political parties in Mongolia, but the principal ones are the Mongolian People's Revolutionary Party (MPRP), the Mongolian Democratic Party (DP) and the Mongolian Civil Will and Republican Party (CWRP). To contest the June 2004 general election the CWRP, DP and the New Socialist Democratic Party formed the Motherland-Democracy Coalition (MDC).<sup>25</sup>
- 3.8.4** Mongolia's press is largely free but faces some government pressure. The Government has at times filed libel suits and launched tax audits against publications in the wake of critical articles. Libel charges are hard to defend against because Mongolian law places the burden on the defendant to prove the truth of the statement at issue. Mongolian professors and other teachers can generally write and lecture freely.<sup>26</sup>
- 3.8.5** The law provides for freedom of speech and of the press, and in 2006, the Government generally respected these rights in practice. However, government interference with licensing and indirect intimidation of the press, particularly the broadcast media, remained a concern. Amnesty International reported in 2005 that journalists exposing corruption and abuse of power and lawyers defending victims of torture were at risk of intimidation and

<sup>22</sup> USSD 2006 (Introduction, Section 1 & Section 2) & Freedom House - Freedom in the World Country Report 2006: Mongolia

<sup>23</sup> USSD 2006(Section 2)

<sup>24</sup> USSD 2006 (Introduction & Section 3)

<sup>25</sup> COI Key Documents: Mongolia & FCO Country Profile 2006: Mongolia

<sup>26</sup> Freedom House - Freedom in the World Country Report 2006: Mongolia & Globe International: Media Freedom, Mongolia Report (October 2005 - October 2006)

criminal charges because of their work. In April 2004, a journalist was ordered to be detained for three months in solitary confinement after being charged with libelling a Member of Parliament. However, a court ordered her release after 23 days in detention.<sup>27</sup>

- 3.8.6** The Constitution provides for freedom of assembly and association, and in 2006 the Government generally respected these rights in practice. In 2006, a variety of demonstrations took place on Sukhbaatar Square and at the nearby building housing parliament and the offices of the president and prime minister. Most of those staging the demonstrations had not filed applications for permits. Demonstrators frequently erected tents on the square and stayed for days. Police generally allowed such demonstrations to proceed unhindered but in some cases forcibly removed the protesters after demonstrators ignored police warnings to disperse. No serious injuries were reported as a result of these police actions.<sup>28</sup>
- 3.8.7** **Sufficiency of protection.** As this category of claimants' fear is of ill-treatment/persecution by the State authorities, they cannot apply to these authorities for protection.
- 3.8.8** **Internal relocation.** As this category of claimants fear is of ill-treatment/persecution by the State authorities, relocation to a different area of the country to escape this threat is not feasible.
- 3.8.9** **Conclusion.** Mongolia is a functioning multi-party democracy in which numerous political parties are able to contest elections. There is freedom of speech and freedom to assemble and protest and demonstrations do take place. Despite government attempts to use libel laws against some journalists, the press is generally free and is able to criticise the Government. On occasions some journalists and prominent human rights activists/lawyers have been detained by the authorities although most have subsequently been released. Considering the above it is unlikely that claimants in this category would qualify for asylum or Humanitarian Protection and such claims are likely to be clearly unfounded.
- 3.9** **Gay men**
- 3.9.1** Some claimants will apply for asylum or make a human rights claim based on ill-treatment amounting to persecution at the hands of the Mongolian authorities or ordinary citizens due to the fact they are gay.
- 3.9.2** **Treatment.** While Mongolia has no anti-sodomy or anti-gay laws per se, section 113 of the Penal Code prohibiting 'immoral gratification of sexual desires,' can be used against gay men.<sup>29</sup> Mongolia also lacks any specific human rights protection on the basis of sexual orientation and does not recognise same-sex relationships through a domestic partnership or civil union policy.<sup>30</sup>
- 3.9.3** However, although gay men in Mongolia may fear rejection from family and friends and some have reported getting into arguments with family, there are no organised hate groups in Mongolia.<sup>31</sup> In June 1999, Mongolia's first gay and lesbian's rights group, Tavilan or Destiny, was formed because of accusations of 'police harassment and improper sentencing procedures that violated civilian rights'. Tavilan opened a small office in central Ulaanbaatar to begin building an organisation to counter such problems. The group's aim has been to protect and promote the rights of gay and lesbian people in Mongolia. Members intend to create a social network, link with gay rights groups overseas and

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<sup>27</sup> USSD 2006 (Section 2), USSD 2004 (Section 2) & AI Report 2005: Mongolia

<sup>28</sup> USSD 2006 (Section 2)

<sup>29</sup> The International Lesbian and Gay Association (ILGA) World Legal Survey: Mongolia

<sup>30</sup> Canadian Immigration and Refugee Board (IRB). MNG42200.E Mongolia: Update to MNG31446.E of March 1999 on the current treatment of homosexuals by the authorities, 5 December 2003

<sup>31</sup> Canadian IRB MNG42200.E Mongolia: Update to MNG31446.E of March 1999 on the current treatment of homosexuals by the authorities, 5 December 2003

encourage better understanding amongst the general public.<sup>32</sup> In 2003, the Youth Center for Gay Men was formed and organises training about safe sex issues.<sup>33</sup>

**3.9.4** In February 2007, Foreign and Commonwealth Office (FCO) staff posted in Mongolia stated that gay men do not face discrimination from the wider public there. According to the FCO, the traditional nature of Mongolian society means that the issue of homosexuality is not openly debated, but there is no evidence that gay men or lesbians are treated differently to others.<sup>34</sup>

**3.9.5 *Sufficiency of protection.*** As there is no evidence that the authorities or ordinary citizens discriminate against or persecute gay men, the issue of access to adequate State protection is not relevant.

**3.9.6 *Internal relocation.*** The law provides for freedom of movement and in 2006 the Government generally respected this right in practice.<sup>35</sup> In general, it would not be unduly harsh for a claimant who fears persecution from their family or friends due to their sexuality to internally relocate to another area of Mongolia where they will not face any problems.

**3.9.7 *Conclusion.*** The Mongolian authorities do not discriminate against or persecute gay men and there are no hate or anti-gay groups/organisations. There may be pressure from family and friends to marry and have children, but this does not amount to persecution or a breach of Article 3 of the ECHR and in general the ordinary Mongolian population does not discriminate against or persecute gay men. However, there cannot be said to be an openly gay community in Mongolia and there is no evidence of national protection specifically in relation to gay men. Therefore, although it is unlikely that claimants in this category would qualify for asylum or Humanitarian Protection such claims are unlikely to be clearly unfounded.

### **3.10 Military service**

**3.10.1** Some claimants will apply for asylum or make a human rights claim based on ill-treatment amounting to persecution at the hands of the Mongolian authorities due to their refusal to perform military service.

**3.10.2 *Treatment.*** Military service is compulsory in Mongolia for all males aged 18 to 25 for a period of 12 months. Under the Criminal Code the act of desertion is punishable by up to two years imprisonment, rising to three years for an officer or sergeant (Articles 279.1 and 279.2). During wartime the punishment is five to seven years imprisonment. A system of alternative service is being introduced while a limited number of conscripts may buy themselves out of service all together.<sup>36</sup> (For information on prison conditions in Mongolia see section 3.12)

**3.10.3 *Sufficiency of protection.*** As this category of claimants' fear is of ill-treatment/persecution by the State authorities, they cannot apply to these authorities for protection.

**3.10.4 *Internal relocation.*** As this category of claimants' fear is of ill-treatment/persecution by the State authorities, relocation to a different area of the country to escape this threat is not feasible.

### **3.10.5 *Caselaw.***

**Sepet (FC) & Another (FC) [2003] UKHL 15** – The ground upon which the appellants claimed asylum was related to their liability, if returned to Turkey, to perform compulsory

<sup>32</sup> ILGA World Legal Survey: Mongolia

<sup>33</sup> Asian Aids/HIV Information Archive: Mongolia

<sup>34</sup> COI Service Country of Origin Information Request: Mongolia (Gay men) dated February 2007

<sup>35</sup> USSD 2006 (Section 2)

<sup>36</sup> CIA World Factbook 2007: Mongolia, Criminal Code of Mongolia & Europa publications, Regional Surveys of the World: The Far East and Australasia, 2005 (page 698)



military service on pain of imprisonment if they refused. The House of Lords in a unanimous judgement dismissed the appellants' appeals. The House of Lords found that there is no internationally recognised right to object to military service on grounds of conscience, so that a proper punishment for evading military service on such grounds is not persecution for a Convention reason.

- 3.10.6 Conclusion.** The House of Lords found in **Sepet (FC) & Another (FC) [2003] UKHL 15** (see above) that there is no internationally recognised right to object to military service on grounds of conscience and that a proper punishment for evading military service on such grounds is not persecution for a Convention reason.
- 3.10.7** Although the House of Lords judgment relates specifically to a Turkish case its conclusion can be applied to draft evaders from most countries. In addition, a civilian service alternative is being introduced in Mongolia for those that do not wish to perform military service. Therefore, it is unlikely that claimants in this category would qualify for asylum or Humanitarian Protection and such claims are likely to be clearly unfounded.
- 3.11 Religion**
- 3.11.1** Some claimants will apply for asylum or make a human rights claim based on ill-treatment amounting to persecution at the hands of the Mongolian authorities and/or the ordinary Mongolian population due to their religious beliefs.
- 3.11.2 Treatment.** The Constitution provides for freedom of religion, and the Government generally respected this right in practice during 2006, however, the law limits proselytizing, and some religious groups face bureaucratic harassment or are denied registration. The generally amicable relationship among religions in society contributed to religious freedom during 2006.<sup>37</sup>
- 3.11.3** Articles 142 and 143 of the Criminal Law of Mongolia lay down the penalties for the prevention, oppression and restriction of a citizen's religious rights. Penalties range from one to three months' imprisonment or a fine equal to five to 50 times the minimum salary.<sup>38</sup>
- 3.11.4** Religious groups must register with the Ministry of Justice and Home Affairs in order to legally function as an organisation and religious institutions must re-register annually. There were some reports in 2006 that the Government, in accordance with the law, used the registration process as a mechanism to limit the number of places of worship. All religious groups must register, but the length and documentation requirements of the process can discourage organisations from applying. Other applications can take years to win approval and some Christian groups have stated that local officials believed there were 'too many' churches. No churches were known to have been refused registration in Ulaanbaatar during 2006, however, it was previously alleged that government officials had stated that sixty Christian churches registered in the city were sufficient. During the registration process in Ulaanbaatar, in past years some groups have also reportedly encountered demands by mid-level city officials for money or charitable activities in their district. However, no such demands were reported in recent years.<sup>39</sup>
- 3.11.5** There were 357 registered places of worship in 2006, including 206 Buddhist, 127 Christian, 5 Baha'I and 5 Muslim. During 2006, 12 new Christian churches and 2 Buddhist temples were registered in Ulaanbaatar. The registration process is decentralised with several levels of bureaucracy. Registration in the capital may not be sufficient if a group intends to work in the countryside where local registration is also necessary.<sup>40</sup>

## **Buddhists**

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<sup>37</sup> USIRFR 2006: Mongolia

<sup>38</sup> Criminal Code of Mongolia

<sup>39</sup> USIRFR 2006: Mongolia (Section II)

<sup>40</sup> USIRFR 2006: Mongolia (Section II)

**3.11.6** Buddhism and the country's traditions are closely tied, and it appears likely that almost all ethnic Mongolians practise some form of Buddhism. Lamaist Buddhism of the Tibetan variety is the traditional and dominant religion. The Buddhist community is not homogeneous, and there are several competing schools, including a small group that believes that the sutras (books containing religious teachings) should be in the Mongolian language and that all members of the religious clergy should be citizens.<sup>41</sup>

**3.11.7** The majority Buddhist community reports no restrictions on its activity other than the ability to invite from India a Tibetan refugee whom both they and the present Dalai Lama acknowledge as the reincarnation of Mongolia's pre-revolutionary Buddhist king. Despite disapproval from the Chinese political authorities, however, the Buddhists have received formal visits by the Dalai Lama himself.<sup>42</sup>

### **Christians**

**3.11.8** There are a small number of Christians in Mongolia, including Roman Catholics, Russian Orthodox, and members of some Protestant denominations. The number of citizens who practice Christianity in the capital, Ulaanbaatar, is approximately 30,000, or 3 percent of the registered population of the city.<sup>43</sup>

**3.11.9** Unregistered Christian institutions are often able to function in practice, but potentially face difficulties with the authorities and are unable to sponsor foreign clergy for visas. During the registration process in Ulaanbaatar, in past years some Christian groups have reportedly encountered demands by mid-level city officials for money or charitable activities in their district. However, no such demands were reported in recent years.<sup>44</sup>

**3.11.10** The Catholic Church Mission in Mongolia is able to maintain a significant presence, especially considering the country's relatively small population. On 18 August 2003, the first Catholic bishop of Mongolia was named as Father Wenceslaw Padilla<sup>45</sup>

### **Shamanism**

**3.11.11** Mongolian Shamanism derives from worshipping nature. Shamanism is still practised especially in the northern region (Lake Huvsgul). There are no reliable statistics on the number of citizens who practice shamanism, but it was reported in 2003 that there are no restrictions on their mainly rural activities.<sup>46</sup>

**3.11.12 *Sufficiency of protection.*** As there is no evidence that the authorities or ordinary citizens discriminate against any religious organisation or persecute members of these groups, the issue of access to adequate State protection is not relevant.

**3.11.13 *Internal relocation.*** The law provides for freedom of movement and in 2006 the Government generally respected this right in practice.<sup>47</sup> In general, it would not be unduly harsh for a claimant who fears persecution from within their local area to internally relocate to another area of Mongolia where they will not face any problems.

**3.11.14 *Conclusion.*** There is freedom of religion in Mongolia and citizens of different faiths are able to worship without interference from the authorities, ordinary citizens or other religious groups. Although some unregistered religious organisations may face bureaucratic harassment and may have to pay corrupt local officials these problems do not amount to persecution or a breach of Article 3 of the ECHR. Therefore, it is unlikely that claimants in

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<sup>41</sup> USIRFR 2006 (Section I) & USIRFR 2005 (Section I)

<sup>42</sup> USIRFR 2006 (Introduction, Section I & Section II) & Forum 18 – Mongolia: Religious Freedom Survey, December 2003

<sup>43</sup> USIRFR 2006 (Section I)

<sup>44</sup> USIRFR 2006 (Section II)

<sup>45</sup> Worldwide Religious News '1<sup>st</sup> Bishop named for Mongolia' dated 18 August 2003

<sup>46</sup> USIRFR 2006 (Section I), Forum 18 – Mongolia: Religious Freedom Survey, December 2003 & Mongolian Embassy in India: Places of Interest

<sup>47</sup> USSD 2006 (Section 2)

this category would qualify for asylum or Humanitarian Protection and such claims are likely to be clearly unfounded.

### 3.12 Women who fear domestic violence

**3.12.1** Some female claimants will apply for asylum or make a human rights claim based on ill-treatment amounting to persecution at the hands of male family members.

**3.12.2 *Treatment.*** Domestic violence against women was a serious problem in Mongolia during 2006. Although there were no reliable statistics regarding the extent of domestic abuse, qualified observers believed that it affected as much as one-third of the female population. Virtually all of those who committed violent crimes in the home were men, and typically women were the victims. In recent years, domestic abuse became more violent, including increases in the number of murders.<sup>48</sup>

**3.12.3** Although rape is illegal there is no law specifically prohibiting spousal rape, and both remained a problem during 2006. There were 314 cases of rape reported to the authorities during 2006, down slightly from 320 cases in 2005. However, many rapes were not reported.<sup>49</sup>

**3.12.4** Domestic abuse, however, is illegal, and offenders can be prosecuted after formal charges have been filed. In 2005, a new comprehensive law specifically typesetting domestic violence came into effect and by August 2006, all 37 cases prosecuted under the law resulted in convictions. The law requires police to accept and file complaints, visit the site of the incidents, interrogate the offenders and witnesses, explain the law, impose administrative criminal penalties, bring victims to refuge, and transfer custody of the relatives if necessary. The law also outlines the role of social welfare organizations and NGOs and also provides for the following sanctions on offenders: expulsion from home or separate accommodations, prohibitions on the use of jointly owned property, prohibitions on meeting victims and on access to minors, compulsory training aimed at behaviour modification, and compulsory treatment for alcoholism.<sup>50</sup>

**3.12.5** In addition, there was increasing public and media discussion of domestic violence in 2006, including spousal and child abuse. However, the perception remained that domestic abuse was either a family issue or not a problem. In recent years, economic and societal changes have created new stresses on families, including loss of jobs, inflation, and lowered spending on social and educational programs. Some statistics showed that more than 60 percent of family abuse cases were related to alcohol abuse. The high rate of alcohol abuse contributed to increased instances of family abuse and abandonment and added to the number of single-parent families, most of which were headed by women. Women were hesitant to ask authorities to prosecute cases of domestic abuse because of likely long-term detention of spouses and the resulting loss of household income.<sup>51</sup>

**3.12.6** The Family Law details rights and responsibilities regarding alimony and parents' rights, and it is intended to bring about timely dispute settlement and ameliorate the causes of some domestic violence. In 2006, the National Centre against Violence operated branches in two districts of Ulaanbaatar and eight provinces. Four shelters for victims of domestic abuse exist in the country, largely funded by foreign charitable organisations.<sup>52</sup>

**3.12.7** The law provides men and women with equal rights in all areas. By law, women are to receive equal pay for equal work and have equal access to education. In 2006, women represented approximately half of the work force, and a significant number were the

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<sup>48</sup> USSD 2006 (Section 5) & Amnesty International (AI), Mongolia: Public budgets must finance more women's shelters

<sup>49</sup> USSD 2006(Section 5)

<sup>50</sup> USSD 2006 (Section 5) & AI, Mongolia: Public budgets must finance more women's shelters

<sup>51</sup> USSD 2005 (Section 5)

<sup>52</sup> USSD 2005 (Section 6) & AI, Mongolia: Public budgets must finance more women's shelters

primary wage earners for their families. The law prohibits women from working in certain occupations that require heavy labour or exposure to chemicals that could affect infant and maternal health, and the Government effectively enforced these provisions in 2006. During 2006, many women occupied mid-level positions in government and business, and many were involved in the creation and management of new trading and manufacturing businesses.<sup>53</sup>

**3.12.8** There was no separate government agency to oversee women's rights in 2006, however, there was a national council to co-ordinate policy and women's interests among ministries and NGOs, and the Ministry of Social Welfare and Labour had a Division for Women and Youth Issues. There were approximately 40 women's rights groups that concerned themselves with issues such as maternal and child health, domestic violence, and equal opportunity.<sup>54</sup>

**3.12.9 Sufficiency of protection.** As noted above, the law provides men and women with equal rights in all areas and domestic violence and rape are illegal. In 2005, a new law came into effect that specifically deals with domestic violence and requires the police to treat each case seriously. By August 2006, there were 37 prosecutions for domestic violence under this new law. In addition, the National Centre against Violence operated branches in two districts of Ulaanbaatar and in eight provinces in 2006 and there are four shelters specifically for victims of domestic abuse. In general, the authorities are able to and willing to provide protection to women who fear domestic violence.

**3.12.10 Internal relocation.** The law provides for freedom of movement and in 2006 the Government generally respected this right in practice.<sup>55</sup> Internal relocation to escape an invariably localised threat from a husband or other members of a family will not be unduly harsh.

**3.12.11 Conclusion.** Domestic violence against women is a serious problem in Mongolia with some reports suggesting a third of women experience some form of violence from male family members. The Government, however, has passed legislation that outlaws violence against women and by August 2006 37 prosecutions took place. In addition, there are a number of shelters for women who fear domestic violence. Mongolian women are considered to be equal under the law and are not excluded from any employment or occupation and there are over 40 NGOs who work to promote women's rights and campaign against discrimination and violence. Most claimants will be able to internally relocate to escape localised threats from members of their family. Considering the above, Mongolian women do not constitute a particular social group and therefore will not qualify for a grant of asylum under the refugee convention. In most cases a grant of asylum or Humanitarian Protection will not be appropriate and cases are likely to be clearly unfounded.

### **3.13 Prison conditions**

**3.13.1** Claimants may claim that they cannot return to Mongolia due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Mongolia are so poor as to amount to torture or inhuman treatment or punishment.

**3.13.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason, or in cases where for a Convention reason a prison sentence is extended above the norm, the claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.

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<sup>53</sup> USSD 2006 (Section 5)

<sup>54</sup> USSD 2006 (Section 5)

<sup>55</sup> USSD 2006 (Section 2)

**3.13.3 Consideration.** In general, conditions in pre-trial detention and prison facilities were poor by international standards during 2006. Insufficient food, heat, and medical care threatened the health and life of inmates. Overcrowding continued to be a problem. In December 2006, officials reported 698 detainees at the detention facility in Ulaanbaatar, a decline from the 866 there in 2005.<sup>56</sup>

**3.13.4** Outside of Ulaanbaatar, juveniles between the ages of 14 and 18 who were charged with crimes during 2006 were sometimes kept in the same detention centres as adult prisoners. Improvements in detention and prison conditions outside the capital were minimal during 2006. At least two domestic and six foreign nongovernmental organizations (NGOs) worked to improve conditions in prisons and detention centres by providing clothing, food, books, English-language instruction, and vocational training in computers and trades.<sup>57</sup>

#### **Pre-trial detention, prisoners serving 30 years and those on death row**

**3.13.5** Amnesty International reported that during 2005 prisoners held in police stations, pre-trial detention facilities and on death row were at risk of torture or ill-treatment in harsh living conditions. Those serving special 30-year 'isolation sentences' were subjected to extreme physical and mental suffering by being deliberately isolated from other prisoners and denied visits from families and lawyers. Human rights workers were denied access to prisoners on death row.<sup>58</sup>

#### **Ordinary prisons**

**3.13.6** Regarding ordinary prison conditions, Amnesty International has stated that in 2005 detention conditions remained harsh with prisoners typically suffering from overcrowding, a high incidence of tuberculosis, inadequate nutrition and extremes of hot and cold temperatures in cells.<sup>59</sup>

**3.13.7** Prison staff members, including guards, social workers, and medical staff, received human rights training in 2006. The Ministry of Justice and Home Affairs (MOJHA) Department for the Enforcement of Court Decisions monitored conditions in prisons and detention facilities, but new laws and procedures were not publicized widely. In 2006, the Government permitted prison visits by human rights monitors, foreign diplomats, and journalists.<sup>60</sup>

#### **3.13.8 Caselaw.**

**Ahmed v SSHD [2002] UKIAT06150, Date heard: 27 November 2002, Date notified: 21 January 2003** The IAT found after consideration of the evidence before them that, while prison conditions in Mongolia do not meet Western standards, they are not so unsatisfactory as to cross the threshold of breaching Article 3 of the European Convention on Human Rights.

**3.13.9 Conclusion.** There is a risk of ill-treatment or torture of those in pre-trial detention in Mongolia and conditions for prisoners facing special 30 year isolation sentences or those on death row are very severe and may in some cases be inhuman or degrading. Where individual claimants are able to demonstrate a real risk of ill-treatment or torture in pre-trial detention or of being sentenced to 30 years isolation or death on return to Mongolia and exclusion is not justified, a grant of Humanitarian Protection will be appropriate.

**3.13.10** In general, conditions for prisoners in ordinary prisons while poor are unlikely to reach the Article 3 threshold. Therefore, even where claimants can demonstrate a real risk of imprisonment on return to Mongolia a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely

<sup>56</sup> USSD 2006 (Section 1) & USSD 2005 (Section 1)

<sup>57</sup> USSD 2006 (Section 1)

<sup>58</sup> AI Annual Report 2006: Mongolia

<sup>59</sup> AI Annual Report 2006: Mongolia

<sup>60</sup> USSD 2006 (Section 1)

length of detention, the likely type of detention facility, and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate. Only where it cannot be argued that an individual will face treatment which reaches the Article 3 threshold should a claim of this kind be certified.

#### **4. Discretionary Leave**

**4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instructions on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.

**4.2** With particular reference to Mongolia the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and the Asylum Instructions on Article 8 ECHR.

#### **4.3 Minors claiming in their own right**

**4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place.

**4.3.2** Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

#### **4.4 Medical treatment**

**4.4.1** Claimants may claim they cannot return to Mongolia due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.

**4.4.2** According to the World Health Organization, health expenditure as a percentage of GDP was 6.7% in 2003.<sup>61</sup> In the same year, there were 2.7 physicians per 1000 people.<sup>62</sup> life expectancy is estimated at around 65 years and Infant mortality rates are estimated at around 52 per 1,000.<sup>63</sup> In 2004, the United States Embassy in Mongolia reported that the country out-performs most other countries at a comparable stage of development. However, the Embassy also noted that maternal mortality rate is one of the highest in the region, partly on account of iron deficiencies and the distance to medical facilities.<sup>64</sup>

#### **HIV/AIDS**

**4.4.3** Less than 0.10% of people aged 15-49 are known to be infected with HIV/AIDS.<sup>65</sup> Although there was no official discrimination against those with HIV/AIDS in 2006, some social discrimination did exist.<sup>66</sup>

<sup>61</sup> World Health Organization (WHO) Country Profile: Mongolia

<sup>62</sup> Europa publications, Regional Surveys of the World: The Far East and Australasia, 2005 (page 685)

<sup>63</sup> CIA World Factbook 2007: Mongolia

<sup>64</sup> Embassy of the United States, Ulaabaatar, Mongolia: USAID Annual Report FY2004

<sup>65</sup> UNAIDS: Mongolia & Europa publications, Regional Surveys of the World: The Far East and Australasia, 2005 (page 685)

### **Psychiatric treatment**

- 4.4.4** Mongolia's national mental health programme was formulated in 2002 and is based upon mental health promotion, community mental health care and accessibility to care. There are budget allocations for mental health and the country spends 5% of the total health budget on mental health. 90% of total budget allocated from the State for the treatment, rehabilitation, and social care of people with mental disorders is spent to cover hospital expenditures and for providing in patient and outpatient mental health care. Actual treatment of severe mental disorders is not available at the primary level.<sup>67</sup>
- 4.4.5** There are a number of therapeutic mental health drugs generally available at the primary health care level in Mongolia and there are 21 general hospital psychiatric units with 5 to 15 beds each and 2.4 psychiatric beds per 10,000 people.<sup>68</sup>
- 4.4.6** The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a caseworker considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

## **5. Returns**

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.

## **5.2 Caselaw.**

**B (Mongolia) [2004] UKIAT 00067 Date heard: 16 March 2004 Date promulgated: 8 April 2004** The IAT found that the claimant is not at risk of prosecution by reason only of the claimant's arrival in Mongolia without her own passport and that the Mongolian authorities are unlikely to keep a record of departure for their citizens - there is unlikely to be sufficient evidence to establish a breach of the criminal law. There is no evidence that the claimant is likely to receive a prison sentence at all, even if prosecuted and convicted. Article 89.1 of the criminal code provides that the penalty for illegally crossing the border is a fine rather than imprisonment; only once the crime is repeated can the offender be imprisoned for 5 years.

- 5.3** Mongolian nationals may return voluntarily to any region of Mongolia at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organization for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Mongolia. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Mongolian nationals wishing to avail themselves of this opportunity for assisted return to Mongolia should be put in contact with the IOM offices in London on 020 7233 0001 or [www.iomlondon.org](http://www.iomlondon.org).

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<sup>66</sup> USSD 2006 (Section 4)

<sup>67</sup> Mental Health Atlas 2005: Mongolia

<sup>68</sup> Mental Health Atlas 2005: Mongolia

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