

The Child Education Institute of Mongolia and Institute on Statelessness and Inclusion

Joint Submission to the Human Rights Council at the 36th Session of the Universal Periodic Review

Mongolia

Introduction

1. The Child Education Institute of Mongolia (CEIM) and Institute on Statelessness and Inclusion (ISI) make this joint submission to the Universal Periodic Review (UPR), on the right to a nationality and human rights challenges pertaining to statelessness in Mongolia.
2. CEIM is a civil society organization founded in 2015 in Ulaanbaatar, Mongolia with the vision to promote basic human rights through educational activism, social and policy research, advocacy and partnership throughout Mongolia and beyond.
3. ISI¹ is an independent non-profit organisation committed to an integrated, human rights based response to the injustice of statelessness and exclusion through a combination of research, education, partnerships and advocacy. Established in August 2014, it is the first and only global centre committed to promoting the human rights of stateless persons and ending statelessness. The Institute has made over 50 country specific UPR submissions on the human rights of stateless persons, and also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23rd to the 35th UPR Sessions.
4. This submission focuses on:
 - I. National Law Framework on Nationality
 - II. Status of Birth Registration
 - III. Citizenship of Kazakh Ethnic group

Mongolia's Universal Periodic Review under the First and Second Cycle

5. Mongolia was previously reviewed during the 9th session in 2010 and the 22nd session in 2015. During the first cycle, Mongolia received recommendations to accede to a number of treaties including the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (**ICRMW**); International Convention for the Protection of All Persons from Enforced Disappearance (**CED**); 1951 Convention relating to the Status of Refugees and its 1967 Protocol (**Refugee Convention**); and 1954 Convention relating to the Status of Stateless

¹ For more information, see www.institutesi.org.

Persons and the 1961 Convention on the Reduction of Statelessness (**Statelessness Conventions**).²

6. While Mongolia did not receive any statelessness specific recommendations, a joint submission from non-governmental bodies noted that "*ethnic minorities risked statelessness particularly noting documented cases of Kazakh individuals who became stateless as a result of moving between Mongolia and Kazakhstan in the early 1990s*".³

7. During the second cycle, the OHCHR Compilation of UN information included that:

*"while welcoming the fact that children of stateless persons may apply for citizenship, the HR Committee [HRC-CCPR] was concerned about persons who had become stateless as a result of the legal obligation for individuals to renounce their nationality upon application for another nationality. Mongolia should implement reforms to guarantee the right of all persons to receive a nationality, including stateless children born on its territory to stateless parents, and comply with the six-month legal deadline for completion of that procedure."*⁴

8. UNHCR's report urged states to recommend that Mongolia:

*"undertake a thorough analysis of its legal framework to identify the provisions that led 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."*⁵

9. During the 22nd session of the UPR, Mongolia received following recommendations relevant to statelessness and the right to nationality:⁶

- I. Norway recommended that Mongolia positively consider acceding to the Convention on the Status of Stateless Persons and the Convention on the Reduction of Statelessness;
- II. Sierra Leone recommended that Mongolia ratify the ICRMW and the Conventions on Refugees and Stateless Persons; and
- III. Uruguay recommended that Mongolia accede to the ICRMW and work together with UNHCR to ensure that asylum-seekers have access to their rights, particularly in compliance with the principle of non-refoulement.

10. In response, Mongolia indicated that "*a stateless person enjoys the same rights and freedoms as*

² UN Human Rights Council Working Group on the Universal Periodic Review, *Compilation prepared by the office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1*, 9th sess, UN Doc A/HRC/WG.6/9/MNG/2 (10 August 2010) p 3.

³ UN Human Rights Council Working Group on the Universal Periodic Review, *Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1*, 9th sess, UN Doc A/HRC/WG.6/9/MNG/3 (5 August 2010) para 65.

⁴ UN Human Rights Council Working Group on the Universal Periodic Review, *Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21*, 22nd sess, UN Doc A/HRC/WG.6/22/MNG/2 (2 March 2015), p 5.

⁵ Ibid, p 13.

⁶ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Mongolia*, 13th sess, UN Doc A/HRC/30/6 (13 July 2015).

foreign nationals".⁷ This was reasoned on the basis that:

- I. the nationality and citizenship of children born of stateless parents is regulated by domestic law;
- II. national security policy needs to balance foreign nationals, stateless persons and migrants; and
- III. *"these laws and policy documents fully support the rights of stateless persons under the Convention relating to the Status of Stateless Person and the Convention on the Reduction of Statelessness"*.⁸

Mongolia's International Obligations

11. Mongolia is not a party to the 1954 Convention relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness. It is, however, a party to a number of other international human rights treaties that provide for the right to a nationality, as set out below.
12. Mongolia ratified the International Convention on the Elimination of All Forms of Racial Discrimination (**CERD**), which provides for equal enjoyment of the right to nationality in its article 5(d)(iii), on 6 August 1969; the Convention on the Elimination of All Forms of Discrimination against Women (**CEDAW**) on 20 July 1981; the Convention on the Rights of the Child (**CRC**) on 5 July 1990 and the Convention on the Rights of Persons with Disabilities (**CRPD**) on 13 May 2009.
13. In its concluding observations of 12 July 2017, while noting the high rate of birth registration reported by the State party, the Committee on the Rights of the Child drew the attention to target 16.9 of the Sustainable Development Goals on providing a legal identity for all, including birth registration, and recommended that Mongolia:
 - I. *"Strengthen efforts to provide all children with a legal identity through birth registration, including Kazakh children, those who migrate within the territory of the State party and those who were born at home or without midwife support;*
 - II. *Take all necessary measures to grant Mongolian citizenship to all children residing in the State party who would otherwise be stateless, particularly Kazakh children who have returned to Mongolia;*
 - III. *Consider ratifying the Convention relating to the Status of Stateless Persons of 1954 and the Convention on the Reduction of Statelessness of 1961 and bring its legislation in line with these international instruments."*⁹
14. In its concluding observations of 5 September 2016, the Committee against Torture stated:

⁷ Ibid, para 10.

⁸ Ibid.

⁹ UN Committee on the Rights of the Child, *Concluding observations on the fifth periodic report of Mongolia*, 75th sess, UN Doc CRC/C/MNG/CO/5 (12 July 2017) p5.

*"The Committee is concerned that, while chapters 46 and 47 of the Code of Criminal Procedure regulating the extradition of foreign citizens or stateless persons who have committed crimes or have been sentenced to punishments in the territory of a foreign country provide for grounds for refusing extradition, they do not cover instances related to sufficient grounds to consider the risk of torture and that bilateral and multilateral extradition agreements concluded by the State party may not respect the principle of non-refoulement (arts. 2, 3 and 16)."*¹⁰

15. In a report of 30 May 2013, the Special Rapporteur on Extreme Poverty and Human Rights recommended that Mongolia improve the registration procedure for rural migrants to peri-urban settlements, and for internal migrants in urban areas, to ensure that they are not prevented from accessing basic services because of a protracted registration process.¹¹ The Special Rapporteur also 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 urged Mongolia to undertake a comprehensive review of national legislation and policies in order to prevent and reduce statelessness.¹² Finally, the Special Rapporteur recommended that Mongolia:

*"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".*¹³

Mongolia's Legal Framework

16. Citizenship in Mongolia is governed by the "Law of Mongolia on Citizenship" (**LMC**), the Constitution of Mongolia (**Constitution**) and various other legislative provisions.
17. Article 3 of the LMC provides that those who are considered to be Mongolian citizens are:
- I. the persons who were citizens of Mongolia on the day the LMC commenced;
 - II. those who were citizens on 11 July 1921 and have not lost it since; and
 - III. persons who became citizens in accordance with the LMC.¹⁴
18. While residence abroad or marriage to a foreigner does not impact on the nationality rights of Mongolians, dual citizenship is prohibited under Article 4 of the LMC. Consequently acquisition of another citizenship results in the loss of Mongolian citizenship.
19. Should a foreigner wish to become a Mongolian citizen, they must first renounce their current citizenship/loyalties. If the particular foreign nation's laws also prohibit dual citizenship and provide that the citizenship will be void on the acquisition of another citizenship, cessation may

¹⁰ UN Committee against Torture, *Concluding observations on the second periodic report of Mongolia*, 58th sess, UN Doc CAT/C/MNG/CO/2 (5 September 2016) p10.

¹¹ Ibid, pp 20 and 22.

¹² Above n 24, p21.

¹³ Ibid.

¹⁴ Law of Mongolia on Citizenship (as amended on 7 December 2000, 5 June 1995 Article 3.

not be required.¹⁵ This provision can lead to statelessness as it is not certain that Mongolian citizenship will be granted, despite the individual having renounced their citizenship to their former state.

20. A child that is born to two Mongolian parents will be a Mongolian citizen regardless of whether they were born in Mongolia or abroad. If a child is born in Mongolia to one citizen or if the child is a foundling or the child's parents are unidentifiable, the child will be regarded as a Mongolian citizen.¹⁶ A child born to stateless parents within Mongolia may obtain Mongolian citizenship after reaching the age of 16.¹⁷ However, this is not an automatic procedure, and requires the child to apply.¹⁸
21. This provision is in violation of Articles 7, 2 and 3 of the CRC, as it in effect, leaves children stateless until they are 16 years old. Further, even at this stage, there is no guarantee of receiving citizenship. As a child whose parents are unidentifiable will receive nationality immediately, this law places stateless parents with the impossible dilemma of maintaining familial relationships even if this will result in the child being denied their right to a nationality and access to other rights, or disowning their children, in order for them to be recognised as citizens and to have better access to other human rights.
22. Naturalisation criteria for adults are set out under article 9 of the LMC. Accordingly:
 - I. the person must have suitable living capability and resources;
 - II. the person must know Mongolian customs and the official language;
 - III. the person must have had lived in Mongolia for 5 years before the application;
 - IV. the person must meet the criteria specified by the State Administrative Central body;
 - V. the person must not have committed a crime; and,
 - VI. the relationship with other foreign powers must not interfere with the reputation and interests of Mongolia.¹⁹
23. The Law of Mongolia on the Legal Status of Foreign Nationals (**LLSFN**) purports to regulate the entry, exist, transit and residence of foreign visitors and stateless persons in Mongolia and define their rights and responsibilities.²⁰ This law provides foreigners with the right to seek political asylum in Mongolia.²¹

¹⁵ Law of Mongolia on Citizenship (as amended on 7 December 2000), 5 June 1995 Article 4.

¹⁶ 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".

¹⁷ Law of Mongolia on Citizenship (as amended on 7 December 2000), 5 June 1995 Article 7.

¹⁸ Law of Mongolia on Citizenship (as amended on 7 December 2000), 5 June 1995 Article 7(5).

¹⁹ Law of Mongolia on Citizenship (as amended on 7 December 2000), 5 June 1995 Article 9.

²⁰ Law of Mongolia on the Legal Status of Foreign Nationals (Revised edition), came into force on 1 September 2010, <https://consul.mn/file/LAW%20OF%20MONGOLIA%20ON%20THE%20LEGAL%20STATUS%20OF%20FOREIGN%20NATIONALS.pdf>.

²¹ Ibid, article 7.3.3.

24. Article 3.2 of the LLSFN states that the law applies to stateless persons. However, the provisions of the LLSFN predominantly relate to "foreign nationals", defined by article 5.1.1 to mean a person who has foreign citizenship, but not Mongolian citizenship. This does not include stateless persons. It is therefore unclear if the provisions of the LLSFN will apply to stateless persons in practice.²²
25. Significantly though, Article 18(4) of the Constitution provides that "*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.*" The Constitution further provides that "*Deprivation of Mongolian citizenship, exile and extradition of Mongolian citizens is prohibited.*"²³
26. It is to be noted that those who seek citizenship must apply to the President of Mongolia, and therefore, as the Special Rapporteur on extreme poverty has noted, a large number of children who lack the resources to make such applications, are denied their right to a nationality and left stateless.²⁴

Minority rights – the risk of statelessness among the Kazakh population

27. Legislative loopholes have rendered members of ethnic minority groups in Mongolia at risk of statelessness. Specifically, those belonging to the Kazakh minority face a high risk of becoming stateless as dual nationality in Mongolia is not permitted.²⁵
28. The UNHCR has reported that thousands of ethnic Kazakh Mongolians renounced their Mongolian nationality upon moving to Kazakhstan in the early 1990s. Not being granted Kazakh citizenship, many returned to Mongolia, now stateless.²⁶ These individuals have since encountered difficulties in the process of acquiring Mongolian nationality.
29. The process of reacquiring Mongolian nationality is long and complicated,²⁷ mostly due to the delay in signing the internal bilateral verification process between the two countries (Mongolia and Kazakhstan).²⁸ The Mongolian Immigration Agency does not consider ethnic Kazakhs to be stateless without a verification from Kazakh authorities that they are not Kazakh citizens while the process of verification by the Kazakh government is protracted.²⁹ The UNHCR has previously recommended enhancing the implementation of relevant laws to address this issue.³⁰

²² Ibid.

²³ The Constitution of Mongolia affirms in its Article 15(2) .

²⁴ UN Human Rights Council, *Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, - Addendum* , 23rd sess., UN Doc A/HRC/23/36/Add.2, (30 May 2013).

²⁵ UN Human Rights Council, *Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, - Addendum* , 23rd sess., UN Doc A/HRC/23/36/Add.2, (30 May 2013) para. 51.

²⁶ Ibid.

²⁷ Ibid.

²⁸ UN Human Rights Council, *Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, - Addendum* , 23rd sess., UN Doc A/HRC/23/36/Add.2, (30 May 2013) para. 51.

²⁹ US Department of State, Bureau of Democracy, Human Rights and Labor, 2010 Country Report on Human Rights issues - Mongolia (8 April 2011) <https://2009-2017.state.gov/documents/organization/160094.pdf>.

³⁰ Ibid.

30. CEIM sought information from the Bayan-Ulgii Governor (the province that Kazakh people mostly reside) regarding the number of stateless people in the area. The Governor's office responded that most of the cases have been resolved, and that currently about 100 people's cases are under consideration, out of which 20% are children. However, these numbers represent only those individuals who are registered, and have officially submitted an application to obtain Mongolian citizenship. There are also groups of people who have not done so and are therefore not included in this number. The Governor was not able to provide an exact number on this wider group. A Mongolian National Population census is planned in 2020, which could provide a better overview of the scope of the problem.

Racism and discrimination

31. In Mongolia, those who have renounced or involuntarily lost their citizenship are often discriminated against. There are a number of laws in place that aim to prevent discrimination:

- I. According to Article 14 (2) of the Constitution "*no person shall be discriminated against on the basis of national or ethnic origin, language, race, age, sex, social origin and status, wealth, occupation and post, religion, opinion or education. Everyone shall have the right to act as a legal person.*" Discrimination is therefore constitutionally prohibited. This trickles down into corresponding laws such as the Criminal Code 2002 and the Family Law 1999.³¹
- II. The Criminal Code of Mongolia³² provides that any propaganda that stirs racial discrimination or segregation will face a penalty of 5 to 10 years imprisonment. This demonstrates that Mongolia is making efforts to address discrimination.

32. However, discrimination still exists, with groups likely to be affected being stateless immigrants, children who are born to persons who are not Mongolian citizens, those who have had their citizenship revoked by the state and those who already suffer from racism. This discrimination has a widespread effect on stateless individuals, as "*many stateless persons do not approach the authorities or restore or acquire Mongolian nationality, because they fear the stigma of being identified as stateless*".³³

Stateless Refugees

33. As set out above, the Mongolian constitution guarantees the right to seek asylum, however, in reality, protection is poor and the law permits the Agency for Foreign Citizens and Naturalization (the country's immigration agency) to deport failed asylum seekers.

34. In Mongolia, refugees do not have access to necessary services such as health care and education,

³¹ Committee on the Elimination of Racial Discrimination, *Consideration of reports submitted by States parties under article 9 of the Convention - Mongolia*, UN Doc CERD/C/MNG/19-22 (29 August 2014).

³² Article 86, paragraph 1.

³³ UN Human Rights Council, *Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona*, - Addendum 23rd sess., UN Doc A/HRC/23/36/Add.2, (30 May 2013) para. 51.

nor are they allowed to work.³⁴ This also affects refugees who are also stateless. UNHCR has reported that "*stateless persons are unable to enjoy their most fundamental rights such as the right education, health care, and an adequate standard of living*".³⁵ As the law does not afford a specific legal status to refugees and asylum seekers, authorities usually treat them as irregular migrants and did not issued them work permits. Asylum seekers generally do not have access to government-provided basic services such as health care and education.

Recommendations

35. Based on the above analysis, the co-submitting organisations urge reviewing States to make the following recommendations to Mongolia:

- I. Strengthen efforts to provide all children with proof of their legal identity through immediate birth registration, including Kazakh children and rural migrants to (peri-)urban settlements, those who migrate within the territory of the State party and those who were born at home or without midwife support.
- II. Take all necessary measures in line with obligations under the CRC to grant Mongolian citizenship to all children residing in the State party who would otherwise be stateless, particularly Kazakh children who have returned to Mongolia.
- III. Ensure that stateless people and their children, have access to government services including basic health, education and other social services during the registration process.
- IV. Resolve the issue of statelessness, through improved registration of persons who previously held Mongolian nationality and expedite procedures for (re-)acquisition of Mongolian nationality, within the regulated time-frame of up to 6-months.
- V. Ensure that the planned 2020 Mongolian National Population census results in comprehensive disaggregated data on statelessness in Mongolia, including on the difficulties encountered by stateless people, and ensure that statelessness is addressed in Mongolian's human rights reports.
- VI. Accede to and fully implement the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.

³⁴ US Department of State, Bureau of Democracy, Human Rights and Labor, 2010 Country Report on Human Rights issues - Mongolia (8 April 2011) <https://2009-2017.state.gov/documents/organization/160094.pdf>.

³⁵ Ibid, p10.