



OPERATIONAL GUIDANCE NOTE

MONGOLIA

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1. Introduction

- 1.1 This document summarises the general, political and human rights situation in Mongolia and provides information on the nature and handling of claims frequently received from nationals/residents of that province. It must be read in conjunction with any COI Service Country of Origin information at:

http://www.homeoffice.gov.uk/rds/country_reports.html

- 1.2 This document is intended to provide clear guidance on whether the main types of claim are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers should refer to the following Asylum Policy Instructions for further details of the policy on these areas:

API on Assessing the Claim
 API on Humanitarian Protection
 API on Discretionary Leave
 API on the European Convention on Human Rights

- 1.3 Claims should be considered on an individual basis, but taking full account of the information set out below, in particular Part 3 on main categories of claims.
- 1.4 With effect from 2 December 2005 Mongolia is a country listed in section 94 of the Nationality, Immigration and Asylum Act 2002. Asylum and human rights claims must be considered on their individual merits. However, if, following consideration, a claim from a person entitled to reside in Mongolia made on or after 2 December 2005 is refused, caseworkers should certify the claim 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. The information set out below contains relevant country information, the most common

types of claim and guidance from the courts, including guidance on whether cases are likely to be clearly unfounded.

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.¹ 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.²
- 2.2** The Constitution provides citizens with the right to change their government peacefully, and citizens exercised this right in practice through periodic, free, and fair elections held on the basis of universal suffrage. However, the campaign and balloting process of the recent parliamentary elections held on 27th June 2004 were widely considered to be marred by violations and irregularities.³
- 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 2004.⁴
- 2.4** However, on 11 January 2006, 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 Enhbald as head.⁵
- 2.5** As reported in March 2005 by the United Nations 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.⁶
- 2.6** The Constitution provides for an independent judiciary, and the government generally respected this provision in practice during 2005. 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 practice, this provision was rarely observed in the courts. Defendants may question witnesses and appeal decisions.⁷

¹ COIS Mongolia Country Report para 5.04

² COIS Mongolia Country Report para 5.05

³ COIS Mongolia Country Report para 5.10

⁴ COIS Mongolia Country Report para 4.02

⁵ FCO Country Profile March 2006

⁶ COIS Mongolia Country Report para 5.06

⁷ USSD 2005 (Section 1)

- 2.7** The government generally respected the human rights of its citizens during 2005, however, the following human rights problems were noted police abuse of prisoners and detainees, including at least one suspicious death due to violence in a pre-trial detention centre, arbitrary arrests, lengthy detention, and corruption within the judicial system and possible government intimidation of the media, resulting in self-censorship by the press.⁸
- 2.8** In June a 36 year-old man died eight days after being released from the Ulaanbaatar pre-trial detention facility. The family alleged he was beaten by police during his three day detention; police said that he was beaten by fellow inmates. The case is under investigation by the State Investigation Department and the National Human Rights Commission.⁹
- 2.9** The Foreign and Commonwealth Office reported in March 2006 that generally, Mongolia's human rights record is 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 UNDP to develop human rights awareness. Mongolia has ratified all the UN Human Rights conventions, but its reporting record is less than perfect.¹⁰
- 2.10** The UNHCR reported in September 2005 that Mongolia's human rights record is generally satisfactory and continues to improve in an environment of increased transparency. Nonetheless, the UNHCR went on to say that torture and cruel and inhuman treatment in detention facilities does occur with impunity.¹¹ Despite efforts to combat abuses by law enforcement agencies, such as legislative reform and the establishment of a specialised unit within the Prosecutor's Office, torture continues to take place, particularly in police stations and pre-trial detention.¹²
- 2.11** The UN Special Rapporteur on Human Rights, visited Mongolia from 6-9 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.'¹³
- 2.12** The UNHCR could not conclusively identify any particular groups that are at risk of persecution or serious human rights abuses in Mongolia. Nonetheless, the UNHCR noted that some individuals (such as journalists, political opposition activists, or women) may experience difficulties in exercising their legitimate human rights or freedoms.¹⁴

3. Main categories of claims

- 3.1** This Section sets out the main types of asylum claim and human rights 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 API 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 API's, but how these affect particular categories of claim are set out in the instructions below.

⁸ USSD 2005 (Section 1)

⁹ USSD 2005 (Section 1)

¹⁰ FCO Country Profile March 2006

¹¹ COIS Mongolia Country Report para 6.04

¹² COIS Mongolia Country Report para 6.10

¹³ COIS Mongolia Country Report para 6.05

¹⁴ COIS Mongolia Country Report para 6.04

- 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 API 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 qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on his individual circumstances.
- 3.4** This guidance is **not** designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the API on Assessing the Claim)

- 3.5** All APIs can be accessed via the IND website at:

http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis.html

3.6 Minority ethnic groups

- 3.6.1** Most 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.¹⁵ 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.¹⁶
- 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.¹⁷
- 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 2005.¹⁸
- 3.6.6** Inter-ethnic and inter-religious marriages frequently amount to the same thing as the Khalka 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.¹⁹

¹⁵ COIS Mongolia Country Report paras 6.43 & 6.44

¹⁶ COIS Mongolia Country Report para 6.45

¹⁷ COIS Mongolia Country Report para 6.47

¹⁸ USSD 2005 (Section 5)

¹⁹ COIS Mongolia Country Report para 6.56

- 3.6.7** 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.²⁰
- 3.6.8** **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 2005.²¹ 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.
- 3.6.9** **Internal relocation.** The law provides for freedom of movement and the government generally respected this right in practice. In an effort to reduce the strain on city resources, Ulaanbaatar has initiated bureaucratic measures such as increased fees for residency applications.²² 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 including the capital Ulaanbaatar where they will not face any problems.
- 3.6.10** **Conclusion.** The Constitution prohibits discrimination on the basis of ethnic origin, language or race and the Mongolian authorities generally enforced these provisions in practice. In addition there were no legal impediments to the participation of ethnic minorities in government and politics and immigrant Chinese workers enjoyed 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 and 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. 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.
- 3.7 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 2003.²³ 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.²⁴
- 3.7.3** According to the Transparency International Corruption Perception Index 2004, 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 three out of ten (ten being zero perception of corruption). According to Transparency International a score of less than three out of ten indicates rampant corruption.²⁵
- 3.7.4** Corruption was perceived to be a growing problem at both lower and upper levels of government in 2005, government and parliamentary decision making was not sufficiently transparent, and public legislative hearings were rare. The State Secrets Law inhibits

²⁰ USSD 2005 (Section 6)

²¹ USSD 2005 (Section 5)

²² USSD 2005 (Section 2)

²³ COIS Mongolia Country Report para 3.07

²⁴ Criminal Code of Mongolia

²⁵ COIS Mongolia Country Report para 3.06

freedom of information and government transparency and accountability. There were public calls to amend the law and implement the equivalent of a "freedom of information act."²⁶

- 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.²⁷
- 3.7.6** **Sufficiency of protection.** The government generally respected the independence of the judiciary, and the post-Communist reforms to the police have created a more disciplined force. However, corruption within both the judiciary and police is still a problem.²⁸ While not endemic or pervasive, corruption within the Mongolian State 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 the government generally respected this right in practice. In an effort to reduce the strain on city resources, Ulaanbaatar has initiated bureaucratic measures such as increased fees for residency applications.²⁹ 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 exercised this right in practice through periodic, free, and fair elections held on the basis of universal suffrage. However, the campaign and balloting

²⁶ USSD 2005 (Section 3)

²⁷ USAID Assessment of Corruption in Mongolia p.2

²⁸ COIS Mongolia Country Report para 5.13 & 5.27

²⁹ USSD 2005 (Section 2)

process of the most recent parliamentary elections held on 27th June 2004 were widely considered to be marred by violations and irregularities.³⁰

- 3.8.3** There are 18 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).³¹
- 3.8.4** The NGO Freedom House reported in 2004 that Mongolia's press is largely free but faces some government pressure. Newspapers and magazines carry a wide range of party and independent views that often criticise the government. The government, however, 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.³² Mongolian professors and other teachers can generally write and lecture freely.³³
- 3.8.5** 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 criminal charges because of their work.³⁴ 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. Reports indicated that police briefly detained 30 journalists for questioning following a political commentator's dissemination of a column critical of the Minister of Justice.³⁵
- 3.8.6** The Constitution provides for freedom of assembly and association, and the Government generally respected these rights in practice.³⁶ Since the new coalition government was formed in August 2004 there have been numerous anti-government demonstrations. On 25 March 2005, about 3,000 demonstrators pushed past police and gathered on Sukhbaatar Square in Ulaanbaatar and on 29 March 2005 more than 5,000 activists gathered in Liberty Square in Ulaanbaatar, to protest against the results of the June 2004 elections.³⁷
- 3.8.7** On 7 April 2005, more than 2,000 supporters of the reformist Civil Movement for a Just Society marched through the capital calling on the government to step down and vowing to hold a Peoples' Assembly as an alternative to the 76-seat Parliament. The protesters ignored repeated warnings from police, marching through central Sukhbaatar Square and threatening to break into Government House.³⁸
- 3.8.8** Amnesty International reported in May 2005 that Lanjar Gundalai, a Member of Parliament for the opposition Democratic Coalition and vocal opponent of the government, was detained by plainclothes police officers as he attempted to leave the country to attend a regional conference on democracy in Singapore. Witnesses said the police showed no arrest warrants or identity cards. A videotape of the incident allegedly showed Lanjar Gundalai's driver, who was also arrested, being choked, and his assistant being beaten. Lanjar Gundalai was released the next day without charge.³⁹
- 3.8.9** Human rights lawyers were at risk of intimidation and criminal proceedings. In November 2004, L. Sanjaasuren was convicted of revealing a State secret while defending his client

³⁰ COIS Mongolia Country Report para 5.10

³¹ FCO Country Profile March 2006

³² COIS Mongolia Country Report para 6.11

³³ COIS Mongolia Country Report para 6.12

³⁴ COIS Mongolia Country Report para 6.15

³⁵ COIS Mongolia Country Report para 6.16

³⁶ COIS Mongolia Country Report para 6.36

³⁷ COIS Mongolia Country Report para 6.66 & 6.68

³⁸ COIS Mongolia Country Report para 6.67

³⁹ COIS Mongolia Country Report para 6.69

Enkhbat Damiran, (who was forcibly returned to Mongolia from France in 2003) and was sentenced to 18 months' imprisonment in a closed trial.⁴⁰

3.8.10 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.

3.8.11 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.

3.8.12 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 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,⁴¹ section 113 of the Penal Code prohibiting 'immoral gratification of sexual desires,' can be used against gay men.⁴² 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.⁴³

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.⁴⁴ 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 encourage better understanding amongst the general public.⁴⁵ In 2003 the Youth Centre for Gay Men was formed and organises training about safe sex issues.⁴⁶

3.9.4 According to an article published in November 2002 by a US-peace Corp volunteer, gay men from Mongolia who emigrate to Europe or North America do not do so to escape persecution by the State or hate groups, but more to experience their sexuality, free from the expectation that they will have a heterosexual family and children.⁴⁷

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.

⁴⁰ COIS Mongolia Country Report para 6.70

⁴¹ COIS Mongolia Country Report para 6.62

⁴² COIS Mongolia Country Report para 6.62

⁴³ COIS Mongolia Country Report para 6.63

⁴⁴ COIS Mongolia Country Report para 6.63

⁴⁵ The International Lesbian and Gay Association World Legal Survey.

⁴⁶ COIS Mongolia Country Report para 6.64

⁴⁷ COIS Mongolia Country Report para 6.65

3.9.6 Internal relocation. The law provides for freedom of movement and the government generally respected this right in practice. In an effort to reduce the strain on city resources, Ulaanbaatar has initiated bureaucratic measures such as increased fees for residency applications.⁴⁸ 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 including the capital Ulaanbaatar 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. Although, there may be pressure from family and friends to marry and have children this does not amount to persecution or a breach of article 3 of the ECHR and in general the ordinary Mongolian population do 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 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.⁴⁹ 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.⁵⁰ (For information on prison conditions in Mongolia see section 3.12)

3.10.3 As reported in December 2003 by the NGO Forum 18 there appears to be no provision for organised worship within the armed forces or exemption from military service for clergy.⁵¹

3.10.4 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.

3.10.5 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.

3.10.6 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 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.

3.10.7 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

⁴⁸ USSD 2005 (Section 2)

⁴⁹ COIS Mongolia Country Report para 5.35

⁵⁰ COIS Mongolia Country Report para 5.36

⁵¹ COIS Mongolia Country Report para 5.37

grounds of conscience and that a proper punishment for evading military service on such grounds is not persecution for a Convention reason.

3.10.8 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 2005, 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 2005.⁵²

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.⁵³

3.11.4 The 1993 law on religion is largely benign and straightforward and even its restrictive provisions – (State control on the absolute number of Buddhist monasteries and monks, a ban on the organised introduction of foreign religions from outside Mongolia and State preference for Buddhism) – are reportedly not enforced, and registration is not compulsory for religious organisations.⁵⁴

3.11.5 This is not to say that significant violations of religious freedom never occur in Mongolia. Protestant representatives reported several recent incidents in which unregistered churches were threatened or fined - apparently because they did not have registration - as well as a widespread tendency by State authorities to demand random 'fines' or 'donations' from churches. No regions appear to be particularly better or worse in this regard, since much depends upon the attitude of individual council members, who are not legally obliged to be neutral in religious matters, unlike State officials.⁵⁵

3.11.6 There are 279 registered places of worship in the country, including 172 Buddhist, 95 Christian, 5 Baha'i, 4 Muslim, and other organisations.⁵⁶ The registration process is decentralised with several layers of bureaucracy, in which officials sometimes demand payments in exchange for authorisation. Registration in the capital may not be sufficient if a group intends to work in the countryside where local registration also is necessary.⁵⁷

Buddhists

3.11.7 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

⁵² USIRF 2005

⁵³ Criminal Code of Mongolia

⁵⁴ COIS Mongolia Country Report para 6.22

⁵⁵ COIS Mongolia Country Report para 6.23

⁵⁶ COIS Mongolia Country Report para 6.20

⁵⁷ COIS Mongolia Country Report para 6.19

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.⁵⁸

3.11.8 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 as recently as November 2002.⁵⁹

Christians

3.11.9 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 24,000, or 3 percent of the registered population of the city.⁶⁰

3.11.10 Christians are able to worship conspicuously in Mongolia without impediment and it is estimated that there are 120 registered and unregistered Protestant churches in the capital city of Ulaanbaatar (population approximately 800,000).⁶¹

3.11.11 Protestant representatives report few obstructions to their social ministry in state institutions such as prisons, childrens' homes or hospitals once local officials are familiar with their work. While Christian literature in Mongolian might sometimes be detained by customs officers for a time (as was a consignment of 10,000 Bibles in 1997), it has never been confiscated.⁶²

3.11.12 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 Padilla⁶³ and the late Pope John Paul II held an open invitation to visit Mongolia.⁶⁴

Shamanism

3.11.13 Mongolian Shamanism derives from worshipping nature. Shamanism is still practised especially in the northern region (Lake Huvsgul).⁶⁵ There are no restrictions on their mainly rural activities.⁶⁶

3.11.14 *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.

3.11.15 *Internal relocation.* The law provides for freedom of movement and the government generally respected this right in practice. In an effort to reduce the strain on city resources, Ulaanbaatar has initiated bureaucratic measures such as increased fees for residency applications.⁶⁷ 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 including the capital Ulaanbaatar where they will not face any problems.

⁵⁸ COIS Mongolia Country Report para 6.24

⁵⁹ COIS Mongolia Country Report para 6.25

⁶⁰ COIS Mongolia Country Report para 6.28

⁶¹ COIS Mongolia Country Report para 6.30

⁶² COIS Mongolia Country Report para 6.31

⁶³ COIS Mongolia Country Report para 6.33

⁶⁴ COIS Mongolia Country Report para 6.32

⁶⁵ COIS Mongolia Country Report para 6.34

⁶⁶ COIS Mongolia Country Report para 6.35

⁶⁷ USSD 2005 (Section 2)

3.11.16 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 unofficial 'fines' or bribes to 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 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 2005 and during that year 209 domestic assaults were reported to the authorities. 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.⁶⁸

3.12.3 Although rape is illegal there was no law specifically prohibiting spousal rape, and both remained a problem during 2005, although during that year the number of cases reported to the authorities decreased compared to 2004.⁶⁹

3.12.4 However, domestic abuse is illegal, and offenders can be prosecuted after formal charges have been filed. In January 2005 a new comprehensive law specifically typesetting domestic violence came into effect and by end of 2005 20 cases had been brought to trial under the law. The law empowers central and local authorities to implement national policy aimed at combating and preventing domestic violence, funding such activities from the national budget, and enlisting the support and co-operation of NGOs in their efforts. 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. Police may also detain an offender temporarily, send drunken offenders to 'sobering houses,' and inform social workers and advise relevant authorities of restrictions to place on an offender.⁷⁰

3.12.5 The law also outlines the role of social welfare organisations and NGOs and confidentiality provisions for the victims. The law 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 prohibitions on access to minors, compulsory training aimed at changing behaviour and compulsory treatment for alcoholism.⁷¹

3.12.6 In addition there was increasing public and media discussion of domestic violence, 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.⁷²

⁶⁸ USSD 2005 (Section 5)

⁶⁹ USSD 2005 (Section 5)

⁷⁰ USSD 2005 (Section 5)

⁷¹ USSD 2005 (Section 5)

⁷² USSD 2005 (Section 5)

- 3.12.7** 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. The National Centre against Violence operated branches in two districts of Ulaanbaatar and eight provinces. Two shelters for victims of domestic abuse existed in the country, largely funded by foreign charitable organisations.⁷³
- 3.12.8** 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. Women represented approximately half of the work force, and a significant number were the 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. 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.⁷⁴
- 3.12.9** There was no separate government agency to oversee women's rights; 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.⁷⁵
- 3.12.10 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 January 2005 a new law came into effect that specifically deals with domestic violence and requires the police to treat each case seriously. During 2005 there were 20 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 and there were two 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.
- 3.12.11 Internal relocation** The law provides for freedom of movement and the government generally respected this right in practice. In an effort to reduce the strain on city resources, Ulaanbaatar has initiated bureaucratic measures such as increased fees for residency applications.⁷⁶ Internal relocation to escape an invariably localised threat from a husband or other members of a family will not be unduly harsh.
- 3.12.12 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. However the government has passed legislation that outlaws violence against women and during 2005, 20 prosecutions took place. In addition there are 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. In addition 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 addition 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

⁷³ USSD 2005 (Section 5)

⁷⁴ USSD 2005 (Section 5)

⁷⁵ USSD 2005 (Section 5)

⁷⁶ USSD 2005 (Section 2)

- 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 *Consideration.*** In general, conditions in pre-trial detention and prison facilities were poor by international standards during 2005. Insufficient food, heat, and medical care threatened the health and life of inmates. Overcrowding continued to be a problem. The number of prisoners in the central detention facility in Ulaanbaatar, which had declined to 461 inmates in 2004, increased to 866 in 2005, the level of previous years.⁷⁷
- 3.13.3** All female prisoners were held separately in one central prison in Ulaanbaatar. In detention centres throughout the country, women also were held separately from men. Convicted juveniles were housed separately from adults. At end of 2004, there were 105 children in a separate facility for juvenile prisoners in Ulaanbaatar; the facility was designated as a training centre. However, outside of Ulaanbaatar, juveniles between the ages of 14 and 18 who were charged with crimes were kept in the same detention centres as adults, un-segregated from the adult population.⁷⁸
- 3.13.4** 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 publicised widely.⁷⁹ Improvements in detention and prison conditions outside of the capital were minimal. However, families had better access to inmates, alleviating some of the difficulty in obtaining food and clothing. At least two domestic and six foreign NGOs worked to improve conditions in prisons and detention centres by distributing clothing, food, and books, and by providing English-language instruction and vocational training in computers and trades.⁸⁰

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.⁸¹
- 3.13.6** The UNHCR reported in September 2005 that the deplorable conditions on death row amounted to cruel treatment and the treatment of prisoners serving 30 year terms in isolation was inhuman.⁸²

Ordinary prisons

- 3.13.7** Regarding ordinary prison conditions, Amnesty stated that the detention conditions remained harsh with prisoners typically suffered from overcrowding, a high incidence of tuberculosis, inadequate nutrition and extremes of hot and cold temperatures in cells.⁸³ However, the UNHCR found in 2005 that 'ordinary' prison regime was found generally to be in line with international standards.⁸⁴
- 3.13.8** Prison staff members, including guards, social workers, and medical staff, received human rights training⁸⁵ and in addition, the Prison Administration completed installation of

⁷⁷ COIS Mongolia Country Report para 5.29

⁷⁸ COIS Mongolia Country Report para 5.30

⁷⁹ COIS Mongolia Country Report para 5.29

⁸⁰ USSD 2005 (Section 1)

⁸¹ AI 2006

⁸² COIS Mongolia Country Report para 6.33

⁸³ AI 2006

⁸⁴ COIS Mongolia Country Report para 6.33

⁸⁵ COIS Mongolia Country Report para 5.29

television monitoring systems in all 22 central prisons, which contributed to a significant decline in the number of prisoners and detainees beaten by guards.⁸⁶

3.13.9 The government permitted prison visits by human rights monitors, foreign diplomats, and journalists. Amnesty International, the UN Development Programme's (UNDP) human rights monitor, diplomatic representatives, local journalists, and other observers visited detention centres and prisons. However, the government declined a request by the UN Special Rapporteur on Torture to visit two pre-trial detention facilities.⁸⁷

3.13.10 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.

3.13.11 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 HP will be appropriate. Where the real risk of imprisonment is for reason of one of the five Refugee Convention grounds a grant of asylum will be appropriate.

3.13.12 However, in general conditions for prisoners in ordinary prisons while poor are unlikely to reach the Article 3 threshold. Therefore for the majority of claimants even where they can demonstrate a real risk of imprisonment on return to Mongolia a grant of Humanitarian Protection will not generally be appropriate. Similarly where the risk of imprisonment is for reason of one of the five Refugee Convention grounds, a grant of asylum will not be appropriate. However, the individual factors of each case should be considered to determine whether detention in an ordinary prison will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely 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 unless the risk of imprisonment is for reason of one of the five Refugee Convention grounds in which case a grant of asylum will be appropriate. Only where it clearly 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 API on Discretionary Leave)

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 not covered by the categories below which warrant a grant of DL - see the API on Discretionary Leave.

4.3 Minors claiming in their own right

⁸⁶ COIS Mongolia Country Report para 5.28

⁸⁷ USSD 2005 (Section 1)

- 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 or support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care or 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 or support arrangements, should if they do not qualify for leave on any more favourable grounds be granted DL for a period of three years or until their 18th birthday, whichever is the shorter period.

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 6.3% in 2002.⁸⁸ In 2003 there were 2.7 physicians per 1000 people.⁸⁹ More than 95% of all Mongolian children are vaccinated against childhood diseases and life expectancy is estimated at around 64 years. Infant mortality rates are estimated at around 30 per 1,000. In these and other areas, Mongolia out-performs most other countries at a comparable stage of development. However, the maternal mortality rate is one of the highest in the region, partly on account of iron deficiencies and the distance to medical facilities.⁹⁰

HIV/AIDS

- 4.4.3** Less than 0.10% of people aged 15-49 are known to be infected with HIV/AIDS⁹¹ and although there was no official discrimination against those with HIV/AIDS, some social discrimination does exist.⁹²

Psychiatric treatment

- 4.4.4** As noted by the Mongolian Ministry of Health in 2004 there are budget allocations for mental health. 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. The primary sources of mental health financing are government budget and social insurance. The National Mental Health Programme is financed by the State and local government budget. 77.6% of the population is covered by health insurance.⁹³
- 4.4.5** There are a number of therapeutic mental health drugs generally available at the primary health care level in Mongolia⁹⁴ and there are 21 general hospital psychiatric units with 5 to 15 beds each and 2.4 psychiatric beds per 10,000 people.⁹⁵
- 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.

⁸⁸ COIS Mongolia Country Report para 5.40

⁸⁹ COIS Mongolia Country Report para 5.28

⁹⁰ COIS Mongolia Country Report para 5.39

⁹¹ COIS Mongolia Country Report para 5.41

⁹² USSD 2005 (Section 4)

⁹³ COIS Mongolia Country Report para 5.43

⁹⁴ COIS Mongolia Country Report para 5.44

⁹⁵ COIS Mongolia Country Report para 5.45

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.

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 Organisation 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.

6. List of source documents

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