



# Country Situation

June 2018

## MONGOLIA

### ANALYSIS OF THE SITUATION

#### A. General situation

Mongolia is a Northern Asian nation, situated between China and Russia. Between the 17<sup>th</sup> and early 20<sup>th</sup> century, Mongolia was largely under Chinese control. A Mongolian communist regime took power in 1924, however the country transformed to a democracy after a peaceful democratic revolution in 1990. Mongolia has a population of 3,068 243 (July 2017 estimate). As of 2014, 35.5% of the population was aged between 0 and 19 years. Just over half of the population are Buddhist (53%), with the next highest 'religious' category being no religion (38.6%). Mongolia's economy is largely self reliant, with a substantial commodity exporting industry, although remittances from Mongolians working abroad are significant. Mongolia's economy was adversely affected by the global financial crisis, and is yet to fully recover. It remains susceptible to external factors, and is a highly volatile economy. As of 2014, 21.6% of the population lived below the poverty line.<sup>1</sup> In their 2017 Concluding Observations, the Committee on the Rights of the Child ('the 2017 CRC Concluding Observations') noted a number of concerns regarding Mongolia's economic position and the consequent risks to children's rights. These included: inadequate budget allocation for the needs of children; a lack of sustainable investment in basic services to promote and protect children's rights; corruption; and the economy's general volatility.<sup>2</sup>

The main risk issue for children in Mongolia is exposure to violence, abuse, neglect and exploitation, largely within their home environment. Corporal punishment is prevalent, despite laws prohibiting it.<sup>3</sup> The 2017 CRC Concluding

### TABLE OF CONTENTS)

#### ANALYSIS OF THE SITUATION

- A. General Situation 1
- B. Children deprived of their family and alternative care options 2  
Comments of the ISS/IRC 6
- C. Adoption 6  
Comments of the ISS/IRC 12

#### LEGISLATION

- A. International instruments 12
- B. Country legislation 12

#### APPENDICES

- Documents in the framework of the Committee on the Rights of the Child 13

<sup>1</sup> CIA, World Factbook: Mongolia, available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/mg.html>; The World Bank: Mongolia Overview, available at: <http://www.worldbank.org/en/country/mongolia/overview#1>; Save the Children, Child for Child, World Vision, 'For the Rights of All Children: Children's Report to the UN Committee on the Rights of the Child – Mongolia' (2015) ('Save the Children et al, Alternative Report 2015') at 3

<sup>2</sup> Committee on the Rights of the Child, Concluding Observations: Mongolia (2017) at 8,9

<sup>3</sup> Law of Mongolia on Child Protection 2016 ('Child Protection Law') arts. 2.6, 5.4, 6.3; Law of Mongolia on the Rights of the Child 2016 ('Child Rights Law') art. 7.1



Observations expressed a serious concern about growing inequality within Mongolia, and reports of increasing discrimination – particularly against children from low-income families, migrant and unregistered children, ethnic and linguistic minorities and indigenous groups, rural areas, the LGBTIQ community, and children with disabilities ('CWD'). A major longstanding concern for Mongolian children is child labour within the horse racing industry, with the prohibition against children under 16 years of age being used as jockeys lifted by the government in 2017.<sup>4</sup>

## B. Children deprived of their family and alternative care options

### Prevention (Support to Families/Families at Risk):

The **Ministry of Labor and Social Protection** ('the Ministry') is responsible for child welfare and care and protection. The National Council for Children ('NCC') and the National Authority for Children ('NAC') Authority for Family, Child and Youth Development (AFCYD) are, *inter alia*, responsible for developing child protection policies, advocating for child rights at the legislative and executive level, inter-agency coordination and monitoring the implementation of the Convention on the Rights of the Child.<sup>5</sup> At the provincial and district level, (divided into 21 Aimags<sup>6</sup>/Soums/ and 9 districts in the Capital, Ulaanbaatar) Child and Family Developmental departments exist. . There are 1500 social workers across the nation, who are subject to government standards regarding their work with families, as are all organisations that carry out family service activities, in the government, non-government and the civil society sectors.<sup>7</sup> As of 2016, Mongolia reported that services to vulnerable families consisted of the development of household plans for poor households, which involves referrals for essential social services, capacity building, and the provision of food stamps.<sup>8</sup> Early intervention services are provided by civil society organisations, for example World Vision reports providing over 10,000 early prevention activities over 2016, and providing support to 6,725 vulnerable households.<sup>9</sup>

Mongolia overhauled its child protection laws in early 2016, with the introduction of a Law on Child Protection and a revision of the Law on the Rights of the Child – both of which entered into force in September 2016. The new laws, supported by international civil society organisations working in Mongolia, seek to improve mechanisms for the protection of children's rights,<sup>10</sup> and recognise that children have a right to be cared for by their families, that parents have a responsibility to provide for their children and to meet their needs, and that a child has a right to State support and protection.<sup>11</sup>

These changes are welcome, but will need to be supported by human and financial resources to address the social and economic conditions in Mongolia that have in the past left children without a caring family environment. Namely, inadequate parenting skills, divorce, high levels of unemployment, or employment that requires parents travelling far from home (abroad, or in remote mines/farms).<sup>12</sup> Children whose parents work elsewhere are often informally left in the care of other families, or older siblings ('child headed households'). Children in these situations are at risk of living in an unsafe environment, of being bullied by peers, discrimination and criminal activity (either as a victim or a suspect). Children who live with other families are at risk of physical and psychological abuse with the host families often requiring these children to perform the hardest of household chores, subjecting them to physical and psychological abuse, and depriving them of education.<sup>13</sup> A significant issue for Mongolian families is domestic violence, with children (under 18 years) making up one sixth of all victims of domestic violence (physical, psychological

---

<sup>4</sup>Save the Children, Resource Centre: Mongolia, available at: <https://resourcecentre.savethechildren.net/countries/mongolia>; Committee on the Rights of the Child, Concluding Observations: Mongolia (2017) at 4, 15, 23-25, 40, 42; Save the Children et al, Alternative Report 2015 at 9, 14-17, 37,38; Cultural Survival, Alternative Report to the Committee on the Rights of the Child, 'Violations of Indigenous Children's Rights in Mongolia' at page 5

<sup>5</sup> UNICEF, 'Mining-Related In-Migration and the Impact on Children in Mongolia' (2017) at 7.1; Child Protection Law, art. 21

<sup>6</sup> 21 Aimags that are further divided into 331 soums

<sup>7</sup> Committee on the Rights of the Child, State Report: Mongolia (2016) at 85 - 87

<sup>8</sup> Committee on the Rights of the Child, State Report: Mongolia (2016) at 90-91

<sup>9</sup> World Vision, Annual Review 2016, at 2

<sup>10</sup> Committee on the Rights of the Child, State Report: Mongolia (2016) at 6; see also World Vision, Annual Report 2016, at 27

<sup>11</sup> Child Rights Law arts. 5.2, 5.4, 10. See also the Mongolian Constitution at art 16(11) which sets out that the 'State shall protect the interests of the Family, motherhood and the child'; and the Law of the Family, which provides that State administrative and social welfare institutions shall protect the rights of the family.

<sup>12</sup> Save the Children et al, Alternative Report 2015 at 13

<sup>13</sup> Save the Children et al, Alternative Report 2015 at 13



and sexual). A major risk factor for violence is alcohol abuse/dependency on the behalf of parents.<sup>14</sup>

The Mongolian Government supports partnerships with civil society, and the Ministry maintains a database of non-government organisations that work with children and families.<sup>15</sup> Such partnerships are likely to be crucial in improving the situation for children presently at risk of separation. A number of International CSO's are presently active in this space, and have called for steps to be taken to: ensure appropriate psychological support for children and families at a local level, and in schools; that adequate employment opportunities be provided by the State which allows children to live with their parents; that positive methods of discipline be promoted with consequences against parents who commit violence against their children; and that the State provide assistance to children from poor and vulnerable households, including measures to combat alcohol abuse.<sup>16</sup> UNICEF in their 2017-2021 Action Plan express an intention to work with the Ministry to support and build capacity, including budgeting capacity.<sup>17</sup>

### **Separation:**

In Mongolia's 2016 State Report' the government indicated that the main factors for separation were: the lifestyle needs of Mongolian herders; impacts of the mining boom; labour migration out of Mongolia; and other social, economic and cultural factors.<sup>18</sup> Although there are formal mechanisms for the removal of children from their parents care and/or responsibility, largely children are separated from their parents care on an informal basis due to the above stressors. It is unclear exactly the numbers of children living in these circumstances, however a 2016 report (desk review) indicated approximately 6% of children live outside of parental care.<sup>19</sup> Of those children 97.4% resided with a relative.<sup>20</sup> Those children who do not enter into informal care, are likely to live in school dormitories, at monasteries, or be unsupervised.<sup>21</sup> In the 2017 CRC Concluding Observations the Committee expressed continuing concern that children in the above situations remained vulnerable to neglect and abuse, and at risk of not having their rights fulfilled – namely to education and health.<sup>22</sup>

In the same report, the Mongolian government indicated that in the preceding 7 years, only 52 persons had lost their parental rights via an express court decision.<sup>23</sup> The power to remove parental rights is found within the Family Law<sup>24</sup>. The new Child Protection Law provides: a definition for when a child is at risk; outlines who are the appropriate professionals to work with children at risk (including multi-disciplinary teams); what services should be provided; and allows for risk assessments to be carried out.<sup>25</sup> It is unclear on the face of the legislation if particular standards or guidelines for assessment will be applicable to professionals in their work, or in decision-making processes regarding removal.<sup>26</sup>

### **Re-integration:**

As the majority of children separate from their parents due to employment or educational needs, it is likely that these are 'seasonal' separations, and it is unclear how many children in this circumstance remain separated from their parents care. The Child Protection Law provides for re-integration, however the relevant article is very brief, and does not clearly specify under what criteria a decision may be made to effect a restoration. The law simply provides that a child will be restored 'as far as it is possible to do so' and that any reintegration will be carried out with social workers.<sup>27</sup> However, the government has approved Alternative Care Standards (in 2017) which regulate the provision of

---

<sup>14</sup> Save the Children et al, Alternative Report 2015 at 14-17. Note that accompanying the new child protection and child rights laws is a Law on Combating Domestic Violence designed to support the provisions in the former two laws (see Child Protection Law, art 5.3)

<sup>15</sup> Committee on the Rights of the Child, State Report: Mongolia (2016) at 88

<sup>16</sup> Save the Children et al, Alternative Report 2015 at 17

<sup>17</sup> UNICEF, Country Programme Document, Mongolia 2017-2021, at 33

<sup>18</sup> Committee on the Rights of the Child, State Report: Mongolia (2016) at 146

<sup>19</sup> SOS Children's Villages, 'Alternative Child Care and Deinstitutionalisation in Asia' at 17 (Table 4)

<sup>20</sup> Ibid at 24 (Chart 1)

<sup>21</sup> Committee on the Rights of the Child, State Report: Mongolia (2016) at 146

<sup>22</sup> Committee on the Rights of the Child, Concluding Observations: Mongolia (2017) at 25

<sup>23</sup> Committee on the Rights of the Child, State Report: Mongolia (2016) at 61

<sup>24</sup> Family Law of 1999, arts. 27 - 33

<sup>25</sup> Child Protection Law, arts. 4.1.1 (child at risk); 4.12 4.15-4.17, 10-15 (professionals / responsive services). Note that the Child Protection Law also creates a hotline(art. 11.2) provides investigatory powers (art. 11) and allows for a situation assessment to be carried out (art. 12)

<sup>26</sup> Child Protection Law, art 14

<sup>27</sup> Child Protection Law, art. 16



alternative care in Mongolia, which *inter alia* provides for ‘Family Reunification Services’. These standards require a preparation stage for any reunification (although do not specify what is required during that preparation stage), and that any child who is reintegrated with their family be monitored by a local government office for a period of two years.<sup>28</sup> Mongolia’s Family Law covers decisions to remove/limit parental rights, and consequently provides how such rights may be restored. Such a decision will only be made in the children’s best interests, will not be made if a child has been adopted, and will be made with regard to the view of the child if they are over the age of 7 years.<sup>29</sup>

### **Alternative Care Options:**

The Law on Child Protection provides that when a measure is taken to remove a child from family care, alternative care services should be provided, and that those services are to be State approved and regulated. Alternative care services can be provided by government bodies, accredited child protection service providers, legal entities, families or individuals.<sup>30</sup> The law does not specify what the conditions are for accreditation, however the government has approved ‘*Guidelines for accreditation of legal entities for provision of child protection services*’ which provides this specificity.<sup>31</sup> The Alternative Care Standards, *inter alia*, provide general requirements for alternative care service providers (i.e. registration, criminal record check, health check).<sup>32</sup> The Alternative Care Standards further provide for children to receive health services, social welfare services, education and vocational training (including independent skills training), specific child protection services (i.e. case planning), and referrals to legal services.<sup>33</sup>

However, it remains unclear how new alternative care structures will be developed to replace existing structures, which largely consist of unregulated and informal care provision, in conjunction with institutional type care. In practice, family based care, such as foster care or small group homes are do not appear to be in existence in Mongolia, or are very rare.<sup>34</sup>

### Kinship Care/Informal Care:

The predominant care providers for children who are separated from their parents are family members.<sup>35</sup> Mongolian cultural norms recognise the importance of extended families providing support to one another, and the practice of children (and university students) residing with their grandparents, relatives or family friends while studying, for example, is common. This care is often provided to: children of herders, or other rural families who chose to have their children study at urban schools to pursue better educational opportunities; children whose parents live elsewhere for any other reason (including for work abroad or in another district); and divorced children.<sup>36</sup> Although, as noted, largely this care is provided by kin, this is not always the case. For example, this practice is also common among children who work as jockeys, who live at the camp of the horse trainer.<sup>37</sup> The Alternative Care Standards approved in 2017 requires any kinship care provider to be approved as a carer by the aimag or district governor, report to and be monitored by a public authority, undertake training and seek professional support if necessary.<sup>38</sup>

### Foster Care:

Although, as noted above, actual foster care services are rare in Mongolia, the Alternative Care Standards give the parameters for the provision of foster care. These include, *inter alia*, requirements that foster care providers be a Mongolian family, age requirements for both the carers and other children in the home, engage in peer support

---

<sup>28</sup> The Standards of Mongolia, Common Requirements for Alternative Care Services for Children (2017) (‘Alternative Care Standards’) at s 4.16, 7.6

<sup>29</sup> Family Law of 1999, art. 32

<sup>30</sup> Child Protection Law, arts. 13.2, 13.3

<sup>31</sup> N.B. At the time of drafting this report these standards are available only in Mongolian.

<sup>32</sup> Alternative Care Standards, s 6

<sup>33</sup> Alternative Care Standards, s 7

<sup>34</sup> UNICEF, Analysis of the Situation of Children in Mongolia (2014) at 57

<sup>35</sup> SOS Children’s Villages, ‘Alternative Child Care and Deinstitutionalisation in Asia’ at 24 (Chart 1)

<sup>36</sup> Committee on the Rights of the Child, State Report: Mongolia (2016) at 150-151; SOS Children’s Villages, ‘Alternative Child Care and Deinstitutionalisation in Asia’ at 19; NGOs Supplementary Report to the UN Committee of the CRC, 5<sup>th</sup> Periodic Review of Mongolia (2015), at 67

<sup>37</sup> Committee on the Rights of the Child, State Report: Mongolia (2016) at 150-151

<sup>38</sup> Alternative Care Standards, ss 4 .8, 6, 8



activities, and be formally approved to provide foster care.<sup>39</sup>

#### Small Group Homes:

Like foster care, in practice small group homes are not prevalent in Mongolia. Nonetheless, this type of care is provided for under the Alternative Care Standards. It is noted that in the standards label such care as 'residential care', however the kind of care envisaged under the standards are more akin to a small group home model, than the residential care actually in existence, and described below. The Alternative Care Standards provides that residential care takes two forms: family like (less than 5 children); or group home (8-10 children). Under the standards, such care provision needs, *inter alia*, to be: appropriately financed; formally approved; and non-affiliated with any religion. Centres must keep regularly updated case files for children and report on their activities.<sup>40</sup>

#### Residential Care:

The predominant State sponsored care for children is within a residential institution. This includes both permanent centres ('Child Care and Welfare Centres'), and centres that provide care for children during the school year ('Dormitories').

#### Child Care and Welfare Centres:

These services provide temporary care to children under the age of 18 years, whose parents/guardians are deceased, no other relative is willing to take on care for the child, or children who are under State guardianship. Of the children living in these centres, around 24% have living parents or families. These centres are regulated, and must be granted permission by the AFCYD to provide care – a process commenced in 2013, as a first step towards moving away from institutional care to family based solutions. The AFCYD operates an e-registration system for these centres, and undertakes preparatory steps for family reunification for these children.<sup>41</sup> The numbers of centres operating is slightly unclear with different numbers being provided by civil society organisations, and the government in reports between 2015 and 2016.<sup>42</sup> The most recent statistics provided by Mongolia to the Committee on the rights of the child in May 2017 stated that:

- 36 centres were operating, 3 of which were government run, with the majority (31) in Ulaanbaatar;
- 1060 children are raised in total, with the following age breakdowns: 153 (0-5 years); 342 (6-11 years); 459 (12-18 years) and 96 young people who continue to live in the centres.
- 28% of the children are complete orphans; 49% are semi orphans; and 27% have living parents.<sup>43</sup>

#### Dormitories:

Dormitories are a State sponsored alternative care solution largely provided to children of herding families, whose parents are necessarily transient. Dormitories provide care and education for children over the school year (September to July). These children otherwise reside in a home environment over holidays. As of the 2016/2017 school year, 513 dormitories were operating nationwide, accommodating 34,598 children (2017, Education sector Statistics, Ministry of Education, Culture, Science and Sports). Children as young as 6 may be enrolled in a dormitory. Children who live in dormitories are at risk of being bullied or discriminated against (including by teachers), and perceive an inability to be able to raise complaints about these concerns.<sup>44</sup>

#### **Specific Issues:**

##### Children with Disabilities:

According to 2015 statistics, there are 10,407 CWD, of whom 71 live in a residential care centre.<sup>45</sup> Neither of the newly introduced laws make specific provisions for CWD.

---

<sup>39</sup> Alternative Care Standards, ss 4.9, 6, 9

<sup>40</sup> Alternative Care Standards, ss 4.10, 6, 10

<sup>41</sup> Committee on the Rights of the Child, State Report: Mongolia (2016) at 92-93

<sup>42</sup> NGOs Supplementary Report to the UN Committee of the CRC, 5<sup>th</sup> Periodic Review of Mongolia (2015), at 62; Committee on the Rights of the Child, State Report: Mongolia (2016) at 92-93; UNICEF, Analysis of the Situation of Children in Mongolia (2014) at 57

<sup>43</sup> Committee on the Rights of the Child, Reply to List of Issues: Mongolia (2017) at 127-129

<sup>44</sup> Committee on the Rights of the Child, State Report: Mongolia (2016) at 132, 147-149

<sup>45</sup> Committee on the Rights of the Child, Reply to List of Issues: Mongolia (2017) at 131, 132



### Children on the Move:

There are no specific measures for providing alternative care to children on the move, or who are unaccompanied due to migration, and no official statistics on the numbers of children seeking asylum in Mongolia. Children are likely to be stateless in Mongolia, or seek naturalisation as a result of either being born within Mongolia to foreign citizens who had worked their illegally; or through having had their parents leave Mongolia (and consequently renounce their citizenship) only to have the families return to Mongolia. This latter situation is particularly common in the ethnically Kazakh community. In these situations steps are taken to assess/naturalise these children. The Government however acknowledges that Mongolia needs to improve the legal situation for these children.<sup>46</sup>

## Comments of the ISS/IRC

ISS/IRC welcomes the amendments made to the legal framework by the government of Mongolia, and the steps taken to bring the legal framework in line with international standards, and to provide a system which adequately protects children from risk of harm, and from unnecessary family separation. At this stage however, the new laws are seemingly not fully supported by the infrastructure necessary to implement it – namely, a well functioning alternative care system which promotes family based care, and results in quality sustainable solutions for children.

Although the revised laws go some way towards addressing the issues that had been apparent in Mongolia, they are fundamentally lacking in others. It is promising that the laws provide a framework for the appropriate support of families at risk, and proper assessment prior to any measures being taken. Conversely however in some places the law stops short of meeting international standards. For example, while the Law on Child Protection, specifies that any child protection should be ‘family-centered’<sup>47</sup> it does not go so far as to specifically prioritise/promote family based care. Likewise, while the Law on Child Rights, places the guaranteeing of those rights as a primary consideration in all activities of the State, citizens and legal entities<sup>48</sup> – neither law goes so far as to make the child’s best interest a primary consideration.

The present child protection situation in Mongolia sees large numbers of children living away from home in informal arrangements, in institutions, and either on the streets or living in child headed households. For the new legal framework to be effective, it is crucial at this stage that it is supported by sufficient human and financial resources – specifically well trained social workers, and the establishment of fundamental alternative care structures, such foster care and small group homes. IRC/ISS commends the Mongolian government on the positive work to date with civil society organisations in developing these laws. That momentum will need to be continued to fully ensure the rights of children are protected.

## C. Adoption

**At the time of drafting this report the Family Law of 1999 (the main law governing adoptions) was under major revision, with the parliament expected to consider the amendments in its fall session of 2018.**

THEMES	INFORMATION
<b>CENTRAL/ COMPETENT AUTHORITY<sup>49</sup></b>	<b>Ministry of Labor and Social Protection (Population development section)</b> United Nations street 5

<sup>46</sup> Committee on the Rights of the Child, State Report: Mongolia (2016) at 145

<sup>47</sup> Child Protection Law, art. 2.3

<sup>48</sup> Child Rights Law, art. 4.1.2

<sup>49</sup> HCCH: Mongolia – Central Authority, available at: <https://www.hcch.net/en/states/authorities/details3/?aid=555>; See also Committee on the Rights of the Child, State Report: Mongolia (2016) at 95



	<p>Chingeltei district 15160 Ulaanbaatar Mongolia Contact: Tungalagtamir S. (Head of Section) / Shiilegpurev J. (Officer in charge of child, child's right, development and protection of child) Tel: 976-51-261853 / 976-51-267635 Email: <a href="mailto:tungalagtamir@mlsp.gov.mn">tungalagtamir@mlsp.gov.mn</a> / <a href="mailto:shiileg@mlsp.gov.mn">shiileg@mlsp.gov.mn</a></p> <p><b>Ministry of Justice</b> <b>(Office of Immigration, Naturalization and Foreign Citizens)</b> Contact: Khatanatuul Batbayar (Head of Citizenship Department) / Nomin Tsogtgerel (Officer in charge of adoption) Tel: 976-70133459 Email: <a href="mailto:khatantuul.b@immigration.gov.mn">khatantuul.b@immigration.gov.mn</a>; <a href="mailto:nomin.ts@immigration.gov.mn">nomin.ts@immigration.gov.mn</a></p>
<b>FULL/ SIMPLE ADOPTION</b>	It is not clear on the face of the legislation if adoption is full/simple. Nonetheless, <b>only one type of adoption is provided for</b> , and it has the effect of transferring all parental rights to the adoptive parents, and freeing the child of any obligations towards their natural parents. This indicates that familial ties are severed between the child and the natural parents, akin to full adoption. <sup>50</sup>
<b>SUBSIDIARITY PRINCIPLE</b>	There is no explicit reference in the adoption legislation on the subsidiarity principle, and no clauses indicating that attempts must be made to place the child domestically prior to intercountry adoption ('ICA') being pursued.
<b>CHILD ADOPTABILITY</b>	There is no specific requirements in the legislation regarding child adoptability, save that it must be in accordance 'with the child's interests'. A child whose parents has had their parental responsibility rights curtailed may only be adopted 6 months from the date of the relevant final order. <sup>51</sup>
<b>PROSPECTIVE ADOPTIVE PARENTS</b>	<p>Persons between the age of 18 and 60 years, who have full civil law capacity and the ability to raise a child are eligible to adopt.<sup>52</sup> For foreign citizens residing in Mongolia, adoption application shall be submitted directly to the Ministry of Labour and Social Protection of Mongolia, not through the country of origins CA or any non-governmental organisation in charge of adoption. If they have been residing in Mongolia for more than 6 months, the foreign spouse of a Mongolian citizen is considered a domestic adopter.<sup>53</sup></p> <p>For ICA the prospective adoptive parents ('PAP'), must be either: a married couple who have lived together for more than 5 years; or an unmarried woman.<sup>54</sup> Additionally, any foreign adoptive parent must be able to: ensure the child's development, education, and protection of rights; inform the child of their country of origin (and if necessary of their biological parents); provide information to the Mongolian authorities about the child after the adoption; and, if necessary, undertake to allow representatives from the Mongolian consulate to visit and interview the child after the adoption.<sup>55</sup></p> <p>Persons with the following characteristics are ineligible to adopt :</p> <ul style="list-style-type: none"> <li>• Has their parental rights restricted/curtailed, or previously has had them restricted/curtailed;</li> <li>• Has previously returned an adopted child, through their own fault;</li> </ul>

<sup>50</sup> Family Law of 1999, arts. 59.1-2.

<sup>51</sup> Family Law of 1999, arts. 54, 55.5; Common Decree No. 100/32 of 2001, Rules governing adoption of a Mongolian child by foreigners ('Common Decree No. 100/32), art. 12(e)

<sup>52</sup> Family Law of 1999, art. 57.1;

<sup>53</sup> Family Law of 1999, art. 58.2; Common Decree No. 100/32, arts. 3, 6

<sup>54</sup> Common Decree No. 100/32, art. 7

<sup>55</sup> Common Decree No. 100/32, art. 15; Family Law of 1999, art. 58.8



	<ul style="list-style-type: none"> <li>• Has a vested interest in the adoption;</li> <li>• Has been declared by a court to have either no full civil capacity, or a restricted capacity;</li> <li>• Has tuberculosis, a mental disorder, or habitually consumes alcohol or narcotic substances;</li> <li>• Has a criminal record with several offences, and has undergone a period of imprisonment<sup>56</sup></li> </ul> <p>The above restrictions do not apply to a relative adoption of a completely orphaned child.<sup>57</sup> Additionally, for <b>ICA</b>, any PAP who has previously adopted a Mongolian child may not enter into a second adoption within one year of the first – save for a sibling adoption.<sup>58</sup></p>
<p><b>CONSENTS</b></p>	<p>The child's <b>parents</b> are to provide consent in writing, which is to be certified by a notary public. For any child who is a <b>complete orphan/both parents lack full capacity</b> consent is to be obtained from the child's guardian, caretaker, or from the child care institution.<sup>59</sup></p> <p>Uniquely for an <b>ICA</b> adoption, if the child's parents are unable to care for the child purely due to economic circumstances, consent must be in writing and the Governor of the Soum (county) or district where the child resides must attest to the parents' situation.<sup>60</sup></p> <p>For <b>PAP(s)</b>, if only one spouse is adopting, the other must provide consent.<sup>61</sup></p> <p>Any <b>child</b> who has reached the age of 7 years must provide consent to the adoption.<sup>62</sup></p>
<p><b>PROCEDURE</b></p>	<p>For <b>Domestic Adoption</b>, the PAP(s) submit an application for adoption to the Governor of the Soum or district where the child lives. The Governor reviews the application, and is required to make a decision to approve or deny the adoption within 20 days. If the adoption is approved, the office in charge of civil marriage registration is required to register the adoption.<sup>63</sup> There is nothing on the face of the legislation that any investigation is made by either the Governor, or any responsible caseworkers regarding the suitability of the adoption (e.g home studies, assessment of parenting capacity, health assessments, assessment of PAP(s) financial capacity).</p> <p>For <b>ICA</b> the PAP(s) are to apply through an accredited adoption body ('AAB') or competent/central authority in their own country to the Mongolian CA (Ministry of Labor and Social Protection). The PAP(s) file is to contain:</p> <ul style="list-style-type: none"> <li>• An application form (joint, if an adoption by spouses), translated and notarised;</li> <li>• Information on the background of the PAP(s) and their parents, including photos;</li> <li>• Certification of their living and financial circumstances, including proof of residence certified by a relevant authority and the police;</li> <li>• A medical certification that the PAP(s) do not have AIDS/HIV, tuberculosis, or a mental illness;</li> <li>• A criminal record check;</li> <li>• Copies of marriage certificate (if applicable), and birth certificate(s); and</li> <li>• A certification from the State authority in charge of population matters regarding the PAP(s), confirming that the receiving State ('RC') approves the adoption and that the child can enter and permanently reside there.<sup>64</sup></li> </ul> <p>After the application is received, the PAP(s) file is sent to the CA. Within 30 days of the application, the CA is to study the file, and chooses a suitable child. The child's file is then sent to the RC's CA/AAB inclusive of: the child's birth certificate; relevant consents/authorisation; and medical</p>

<sup>56</sup> Family Law of 1999, arts. 57.2, 58.5; Common Decree No. 100/32, art. 8

<sup>57</sup> Family Law of 1999, art. 57.3

<sup>58</sup> Common Decree No. 100/32, art. 4

<sup>59</sup> Family Law of 1999, arts. 55.1, 55.3; Common Decree No. 100/32, arts. 12(b)-(f)

<sup>60</sup> Common Decree No. 100/32, art. 11(f)

<sup>61</sup> Family Law of 1999, art. 55.2

<sup>62</sup> Family Law of 1999, art. 55.4; Common Decree No. 100/32, art. 9

<sup>63</sup> Family Law of 1999, arts. 55.6-55.8

<sup>64</sup> Family Law of 1999, art. 58.3; Common Decree No. 100/32, art. 10





	information. Upon receipt of the file, the CA/AAB are to decide whether the adoption should be approved, and notify the PAP(s) within 30 days. <sup>65</sup> Following the adoption, the State authority in charge of birth registration, is to issue a document certifying the adoption. <sup>66</sup>
<b>MATCHING</b>	There is no explicit or implicit reference within the law for a matching procedure for <b>domestic</b> adoption. For <b>ICA</b> the only reference to matching is the CA selecting a child upon receipt of the application. <sup>67</sup> However there is no reference as to <u>how</u> the child is selected or appropriately matched with the PAP(s).
<b>PROBATIONARY PERIOD</b>	There is no requirement for a probationary period for either domestic adoption or ICA.
<b>REGISTER</b>	The Soum or District Governor is to research children eligible for adoption, and maintain a register of 'all adoptable children in difficult conditions in their jurisdiction'. The Ministry of Labor and Social Protection is to maintain a unified register, and 'place supervision over adopted children in difficult circumstances'. <sup>68</sup>  The Ministry of Labor and Social Protection is to maintain a register of all foreign citizens who have applied for adoption. The State Centre for Civil Registration and Information is to register any ICA that has occurred. <sup>69</sup>
<b>ADOPTION DECISION</b>	The decision is administrative, made by the relevant Governor for <b>domestic adoption</b> , or the Office of Immigration, Naturalisation and Foreign Citizens for <b>ICA</b> . <sup>70</sup>
<b>ADOPTION EFFECTS</b>	Adoption creates the same obligations and rights between the child and the adoptive parents, as would exist between a child and their natural parents. The child no longer has any obligation towards their natural parents, and also loses any inheritance rights. The child can take the surname of their adoptive parent(s). Any child adopted through <b>ICA</b> has a choice as to whether or not they keep their Mongolian citizenship, or take on that of the RC. <sup>71</sup>
<b>ADOPTION REVOCATION</b>	For both <b>domestic adoption and ICA</b> , the adoption decision can be nullified by a court if: <ul style="list-style-type: none"> <li>• Fraudulent information was provided by the adopter, and they in fact met one of the prohibiting criteria (see under 'Prospective Adoptive Parents');</li> <li>• The adopter has misused their parental rights;</li> <li>• The adopter has mistreated the child; or</li> <li>• At the courts discretion.</li> </ul> Any application for annulment can be filed by: the natural parents; the adoption child (if over the age of 14); a child rights body; or any other interested person. If the court annuls the adoption, the court must then determine the most suitable future placement for the child. If an <b>ICA</b> is annulled, the Mongolian consulate in the RC is to be informed. <sup>72</sup>
<b>POST-ADOPTION FOLLOW-UP</b>	There are no post adoption requirements for <b>domestic adoption</b> other than a reference in the law to the Ministry of Labor and Social Protection placing 'supervision over adopted children in difficult circumstances'. It is unclear the extent of this supervision, or its purpose. <sup>73</sup>  For <b>ICA</b> post-adoption reports shall be sent by the adoptive parents to the Office of Immigration, Naturalisation and Foreign Citizens, every: <ul style="list-style-type: none"> <li>• Six months for children aged between 1 month and 3 years;</li> </ul>

<sup>65</sup> Common Decree No. 100/32 arts. 12-14; See also, Committee on the Rights of the Child, State Report: Mongolia (2016) at 95

<sup>66</sup> Common Decree No. 100/32, arts. 16-17

<sup>67</sup> Common Decree No. 100/32 art. 12

<sup>68</sup> Family Law of 1999, art 56

<sup>69</sup> Family Law of 1999, arts. 58.4, 58.6; Law on Foreign Citizenship, art. 11

<sup>70</sup> Family Law of 1999, art. 55.7; Common Decree No. 100/32, art. 14; See also, US Department of State, Intercountry Adoption: Mongolia

<sup>71</sup> Family Law of 1999, arts. 24.5, 58.9, 59

<sup>72</sup> Family Law of 1999, arts. 61, 62; Common Decree No. 100/32, arts. 18-21

<sup>73</sup> Family Law of 1999, art. 56.2



	<ul style="list-style-type: none"> <li>• Yearly for children aged between 4 and 8 years; and</li> <li>• Every two years for children aged between 8 and 16 years.</li> </ul> <p>ICA adoptive parent(s) are obliged, if necessary, to permit an employee of a Mongolian diplomatic/consular mission to visit the child, interview them, and inspect living conditions.<sup>74</sup></p>																																																																																	
<b>SEARCH OF ORIGINS</b>	<p>The law does not contain any provisions regarding search of origins. The law provides that officials (or any other person) aware of the adoption must keep the adoption secret, and will be liable for any resulting damage if the adoption is disclosed without the consent of the adoptee/er.<sup>75</sup> However, for both <b>ICA</b> and <b>domestic adoption</b> the adopters are required to inform the child of their Mongolian/cultural heritage and about their parents.<sup>76</sup></p>																																																																																	
<b>ADOPTION ACCREDITED BODIES (AAB)</b>	<p>The legislation does not provide any requirements regarding the ability for accredited adoption bodies to operate in Mongolia. The legislation provides for applications to be filed with the Mongolian CA through the competent authority of the country of origin, and is silent on AAB's.</p> <p>In its 2009 report to the Committee on the Rights of the Child, the Mongolian government indicated that it was cooperating with six countries regarding ICA. It is unclear if these were one off applications, or attempts to establish bi-lateral agreements. In its 2016 report, no such assertion was made. Similarly, in the same report it was indicated that NGO's operating as AAB's from Germany, Italy, France and the USA had representatives in Mongolia.<sup>77</sup> Again, this was not repeated in the most recent report and it is unclear if this remains the case.<sup>78</sup> The US State Department adoption website indicates only one AAB is authorised to operate in Mongolia, 'Holt International'.</p>																																																																																	
<b>ADOPTION COSTS</b>	<p>There are no fees associated with the adoption process.<sup>79</sup></p>																																																																																	
<b>STATISTICS</b>	<table border="1"> <thead> <tr> <th>Receiving Country</th> <th>2007</th> <th>2008</th> <th>2009</th> <th>2010</th> <th>2011</th> <th>2012</th> <th>2013</th> <th>Total</th> </tr> </thead> <tbody> <tr> <td>Australia</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Finland</td> <td></td> <td></td> <td></td> <td></td> <td>1</td> <td></td> <td></td> <td></td> </tr> <tr> <td>France</td> <td></td> <td></td> <td>3</td> <td>1</td> <td>2</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Italy</td> <td>1</td> <td>2</td> <td>1</td> <td>1</td> <td></td> <td></td> <td></td> <td>5</td> </tr> <tr> <td>Netherlands</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>1</td> <td></td> <td>1</td> </tr> <tr> <td>Sweden</td> <td></td> <td>1</td> <td>2</td> <td></td> <td></td> <td></td> <td></td> <td>3</td> </tr> <tr> <td>U.S.A.</td> <td></td> <td>9</td> <td>8</td> <td>1</td> <td></td> <td>1</td> <td>2</td> <td>21</td> </tr> <tr> <td>Total</td> <td>1</td> <td>12</td> <td>14</td> <td>3</td> <td>3</td> <td>2</td> <td>2</td> <td>39</td> </tr> </tbody> </table> <p>There are no official statistics available for Mongolia on the HCCH website. The above statistics reflect those provided by the AICAN network. The US Department of State's website does not provide a yearly breakdown of adoptions, and records 136 adoptions in total between 1999 and 2016, with the majority of adoptions being of children aged between 1 and 2 years.<sup>80</sup> In Mongolia's 2016 State report, it was indicated that between 2009 and 2013 49 children were adopted by foreign families, and 10,300 children were adopted domestically.<sup>81</sup></p>	Receiving Country	2007	2008	2009	2010	2011	2012	2013	Total	Australia									Finland					1				France			3	1	2				Italy	1	2	1	1				5	Netherlands						1		1	Sweden		1	2					3	U.S.A.		9	8	1		1	2	21	Total	1	12	14	3	3	2	2	39
Receiving Country	2007	2008	2009	2010	2011	2012	2013	Total																																																																										
Australia																																																																																		
Finland					1																																																																													
France			3	1	2																																																																													
Italy	1	2	1	1				5																																																																										
Netherlands						1		1																																																																										
Sweden		1	2					3																																																																										
U.S.A.		9	8	1		1	2	21																																																																										
Total	1	12	14	3	3	2	2	39																																																																										

<sup>74</sup> Common Decree No. 100/32, arts. 15(c)(d)

<sup>75</sup> Family Law of 1999, art. 60

<sup>76</sup> Family Law of 1999, art. 58.8; Common Decree No. 100/32, art. 15(b)

<sup>77</sup> Committee on the Rights of the Child, State Report: Mongolia (2009) at 172

<sup>78</sup> US Department of State, Intercountry Adoption: Mongolia

<sup>79</sup> US Department of State, Intercountry Adoption: Mongolia

<sup>80</sup> AICAN, International Adoption Statistics, available at: <http://www.aican.org/statistics.php?region=0&type=birth>; US Department of State, Statistics: Intercountry Adoption, available at: <https://travel.state.gov/content/adoptionsabroad/en/about-us/statistics.html>

<sup>81</sup> Committee on the Rights of the Child, State Report: Mongolia (2016) at 96



## Comments of the ISS/IRC

Mongolia joined the 1993-HC in 2000, however the legal framework clearly is not in full conformity with the convention. Consistently the Committee on the Rights of the Child has urged Mongolia to address its domestic laws to bring them in line with their convention obligations. In its 2010 concluding observations, the Committee expressed concern that there was: a lack of information regarding the institution responsible for implementing the convention; an absence of support systems for PAP(s); no mechanisms for review, monitoring or follow up; a lack of statistics; and a lack of information regarding the child's views – a concern which was reiterated in its most recent report delivered in 2017.<sup>82</sup> Similarly lacking is legislative recognition that the best interests of the child is the paramount consideration in the adoption process – particularly in adoptability/suitability assessments.<sup>83</sup>

In Mongolia's 2016 State Report, it was indicated that it is proposed to amend the Family Law to bring it into line with both their obligations under the provisions of the 1993-HC, and also article 21 of the Convention on the Rights of the Child.<sup>84</sup> ISS/IRC welcomes this step, and urges that any legislative amendments ensure that all gaps in the present legislative framework be addressed. As well as those concerns noted by the Committee above, ISS/IRC urges that the legislation include proper safeguards regarding: assessing the child as adoptable; assessing suitability of PAP(s); obtaining consent; respecting the view of the child; record keeping; and, in particular, a matching process that gives priority to the best interests of the child rather than to the interest of the adults to become parents.

The need for law reform is evident not just within the ICA sphere, but also for domestic adoptions. The same protections, which are lacking for ICA are lacking for domestic adoption – the area of adoption in Mongolia where the numbers are significantly high. In Mongolia's 2016 State Report, it is indicated that domestic adoption is often pursued for a financial reason: persons may receive a retirement benefit for raising many children; or may receive a 'Glorious Mother' medal – which comes with a financial reward. Alternatively, Mongolia's records indicate that adoption may be pursued by persons who cannot have children, or by grandparents seeking to adopt their grandchild.<sup>85</sup>

Any reform must ensure the principle of subsidiarity is respected, and to do so the legal framework surrounding domestic adoption must also accord with international rights standards. The reforms which have already occurred seeking to bring the alternative care system into conformity with such standards, is a welcome step in the adoption sphere also. By improving both the manner in which children are placed in out of home care, and the assessment of those providing care it is hoped that situations such as those noted above will be avoided, and children will not be unnecessarily adopted. Nonetheless, ISS/IRC considers that until such time as the legal framework is reviewed to respect Mongolia's international obligations, it would not be sound to pursue an ICA with Mongolia.

## LEGISLATION

### A. International Instruments

INTERNATIONAL INSTRUMENTS (Calibri 11/capital letters/orange/full)	Signature (S) / Ratification (R) / Accession (A) / In Force (F)	Website
<b>United Nations Convention on the Rights of the Child (1989) (Calibri 11/blue/full)</b>	26 January 1990 (S) 5 July 1990 (R)	<a href="http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtid=g_no=IV-11&amp;chapter=4&amp;lang=en">http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtid=g_no=IV-11&amp;chapter=4&amp;lang=en</a>

<sup>82</sup> Committee on the Rights of the Child, Concluding Observations: Mongolia (2010) at 45; Committee on the Rights of the Child, Concluding Observations: Mongolia (2017) at 28

<sup>83</sup> Committee on the Rights of the Child, Concluding Observations: Mongolia (2017) at 28(b)

<sup>84</sup> Committee on the Rights of the Child, State Report: Mongolia (2016) at 95

<sup>85</sup> Committee on the Rights of the Child, State Report: Mongolia (2016) at 87



Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000)	12 November 2001 (S) 27 June 2003 (R)	<a href="http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtid_g_no=IV-11-c&amp;chapter=4&amp;lang=en">http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtid_g_no=IV-11-c&amp;chapter=4&amp;lang=en</a>
Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (1993)	15 April 2000 (A) 1 August 2000 (F)	<a href="http://www.hcch.net/index_en.php?act=conventions.status&amp;cid=69">http://www.hcch.net/index_en.php?act=conventions.status&amp;cid=69</a>
Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (1996)	-	<a href="http://www.hcch.net/index_en.php?act=conventions.status&amp;cid=70">http://www.hcch.net/index_en.php?act=conventions.status&amp;cid=70</a>

## B. Country legislation

LAW/REGULATION	Web Site
Law of Mongolia on Family Law (1999) (Chapter VII Adoption)	<a href="http://www.refworld.org/docid/3ed91a1c2.html">http://www.refworld.org/docid/3ed91a1c2.html</a> (ENG)
Law of Mongolia on Child Rights (2016)	Available at ISS/IRC (ENG)
Law of Mongolia on Child Protection (2016)	Available at ISS/IRC (ENG)
Constitution of Mongolia (1992)	<a href="http://www.refworld.org/docid/4af7dde52.html">http://www.refworld.org/docid/4af7dde52.html</a> (ENG)
Common Decree n° 100/32 of 2001, "Rules governing adoption of a Mongolian child by Foreigners"	Available at ISS/IRC (FRA)
Action Program for the Government of Mongolia (2016-2020) (Section 3.4)	<a href="http://www.mfa.gov.mn/wp-content/uploads/2015/06/2016-2020_Gov_AP_Eng_Revised.pdf">http://www.mfa.gov.mn/wp-content/uploads/2015/06/2016-2020_Gov_AP_Eng_Revised.pdf</a> (ENG)
The Standards of Mongolia, Common Requirements for Alternative Care Services for Children (2017)	Available at ISS/IRC (ENG)
Guidelines For Accreditation Of Legal Entities For Provision Of Child Protection Response Services	Only available in Mongolian

## APPENDICES

### Documents in the framework of the Committee on the Rights of the Child

#### Convention on the Rights of the Child

- Concluding Observations of the Committee on the Rights of the Child: Mongolia, CRC/C/MNG/5, 12 July 2017
- State Party's Fifth Periodic Report: Mongolia, CRC/C/MNG/Q/5, 6 September 2016
- Replies to the List of Issues: Mongolia, CRC/C/MNG/Q/5Add.1, 1 May 2017



- Concluding Observations of the Committee on the Rights of the Child: Mongolia, CRC/C/MNG/CO/3-4, 10 March 2010
- State Party's Third and Fourth Periodic Report: Mongolia, CRC/C/MNG/3-4, 9 June 2009

### **Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography**

- Concluding Observations of the Committee on the Rights of the Child: Mongolia, CRC/C/OPSC/MNG/CO/1, 3 March 2010
- State Party's First Periodic Report: Mongolia, CRC/C/OPSC/MNG/1, 28 May 2009

---

**Source:** Committee on the Rights of the Child – including documents related to former sessions of the Committee:  
[http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=MNG&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=MNG&Lang=EN)

\*\*\*\*\*

