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MONGOLIA: HUMAN RIGHTS AGENDA FOR THE 2012-2015 STATE GREAT KHURAL

Amnesty International urges members of the State Great Khural (parliament) to use their election to public office to improve Mongolia's national human rights record and to demonstrate the country's strong commitment to promoting and protecting human rights within Mongolia and beyond.

Amnesty International notes that the previous government issued resolution No. 159, *2011-2014 Action Plan on Measures to Implement the Recommendations of the UN Human Rights Council* (Action Plan). This Action Plan includes recommendations made during Mongolia's review under the UN Universal Periodic Review in 2010, as well as recommendations made by the UN Committee against Torture in 2010, the Human Rights Committee in 2011 and other UN Treaty Bodies in recent years.

The recommendations below aim to highlight and complement the ambitions outlined in the existing Action Plan and recommendations made by UN treaty bodies. Amnesty International calls on the members of the State Great Khural to fulfil the human rights agenda points outlined below as part of an on-going programme of work to promote and protect human rights in Mongolia.

Abolish the death penalty in law

In January this year, Mongolia acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming for the abolition of the death penalty. This move must be consolidated by amending the Criminal Code to remove the death penalty as a form of punishment. Amnesty International believes that Mongolia's Criminal Code needs amending on several fronts and other recommendations provided throughout this document call for amendments to the Criminal Code.

- Remove the death penalty as a form of punishment from the Criminal Code.
- Remove the death penalty from other relevant legislation including the Law on State Secrets and the Law on the List of State Secrets so that information about the application of the death penalty in Mongolia can be made available to the families of individuals who were executed and to the public.

Combat torture and other ill-treatment, and impunity

Amnesty International has previously raised concerns about the lack of legal provisions to address the use of torture and other ill-treatment, and impunity. For example, Mongolia's Criminal Code does not define a crime of torture in accordance with the definition in the UN Convention against Torture. Moreover, Article 44.1 of the Criminal Code of Mongolia provides that acts causing harm to the rights and interests protected by the criminal code do not constitute crimes if those acts were committed in the course of carrying out mandatory orders. This article gives impunity to law enforcement officials, including in instances where police kill or torture, in breach of international treaties to which Mongolia is a state party, including the International Covenant on Civil and Political Rights and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Impunity for law enforcement officials who torture or otherwise ill-treat detainees and others, including during interrogations at detention facilities, appears to be widespread in Mongolia. Complaints made against law enforcement officials are rarely taken to court and there are few convictions. Some pre-trial detention facilities, including detention facility 461, which opened in early 2011, have installed video cameras in interrogation rooms but there are insufficient safeguards or procedures in place to monitor and prevent misuse of this equipment.

Amnesty International notes that Mongolia has yet to fully implement the recommendations made to Mongolia by the UN Committee against Torture and by the UN Special Rapporteur on Torture and other

cruel, inhuman or degrading treatment or punishment, including ratification of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The Optional Protocol provides for the establishment of professional, independent, mechanisms for the prevention of torture and other ill-treatment, both at the national and international levels, including through visits to places of detention. At present Mongolia has not ratified the OPCAT and has no formal system in place for independent inspection of places of detention to ensure that human rights violations are not occurring there.

- Amend the Criminal Code to define torture as a crime in accordance with its definition in the UN Convention against Torture.
- Abolish or revise Article 44.1 so that there is no impunity for human rights violators.
- Ratify the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Work with civil society and the National Human Rights Commission of Mongolia to amend existing legislation, including the Law on the National Human Rights Commission to ensure the establishment of a National Preventive Mechanism, which is in line with the provisions of the Optional Protocol.
- Take immediate action to implement the recommendations of experts regarding the prevention and punishment of torture and other ill-treatment, including those of the UN Special Rapporteur on torture and cruel, inhuman or degrading treatment or punishment and the UN Committee against Torture.

Enact legislation to implement Mongolia's obligations under the Rome Statute of the International Criminal Court

Amnesty International has previously noted that Mongolia's Criminal Code does not include provisions to ensure full compliance with Mongolia's obligations under the Rome Statute of the International Criminal Court which the Mongolian government ratified in 2002. Mongolia, a strong supporter of the establishment of the International Criminal Court and one of the first 60 states parties to the Rome Statute of the International Criminal Court (Rome Statute), has not yet implemented its obligations under that treaty to cooperate with the International Criminal Court. Mongolia must comply with its cooperation obligations as a matter of priority to ensure that it does not become a safe haven for fugitives from international justice being sought by the International Criminal Court.¹

- Amend the Criminal Code to:
 - Provide definitions of the territorial scope of the crimes of genocide, crimes against humanity, war crimes, torture, extrajudicial executions and enforced disappearances that authorize Mongolian courts to exercise universal jurisdiction over any person suspected of these crimes.
 - Ensure that the appropriate authorities can investigate and prosecute all crimes under international law in particular genocide, crimes against humanity, war crimes, torture, extrajudicial executions and enforced disappearances.
 - Add specific provisions for holding persons with command and superior responsibility criminally liable in line with the Rome Statute.
 - Provide that superior orders can never be a defence for genocide, crimes against humanity, war crimes, torture, extrajudicial executions and enforced disappearances.
 - Exclude statutes of limitations for genocide, crimes against humanity, war crimes, torture, extrajudicial executions and enforced disappearances.

Combat Discrimination

Amnesty International has received reports of discrimination against minority and marginalised groups in Mongolia. Entrenched discrimination leaves individuals at risk of other human rights violations and creates an environment where abuse and attacks against individuals go unreported and perpetrators go unpunished. The absence of comprehensive legal protection and a robust action against impunity by those in authority facilitates and exacerbates this situation. Hostility and discrimination, particularly

¹ For more details on the recommendations in this section see, Amnesty International, "*Mongolia: Comments and Recommendations on the Draft Criminal Code of Mongolia*", 2009, ASA 30/001/2009 <http://www.amnesty.org/en/library/info/ASA30/001/2009/en>

against people on the basis of their gender identity and/or sexual orientation, continues to be a matter of concern. Support for persons with disabilities including persons with physical, mental, intellectual and sensory disabilities, also needs to be improved in legislation and strengthened in policy and practice.

- Introduce new legislation to combat discrimination, including the prohibition of any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Legislation must include a definition of discrimination in line with the International Covenant on Civil and Political Rights and must ensure protection of lesbian, gay, bisexual, transgender and intersex individuals, people living with HIV/AIDS and non-Mongolian nationals, who are often the target of discrimination.
- Strengthen existing legislation to ensure the rights of individuals with physical, mental, intellectual and sensory disabilities.

Ensure that laws on land acquisition, resettlement and compensation comply with international human rights standards

The State Great Khural is due to debate and vote on new legislation on land acquisition, resettlement and compensation as well as a new urban development law. These laws must be consistent with international human rights treaties that Mongolia is a party to, including the International Covenant on Economic, Social and Cultural Rights.

- Legislation on land acquisition, resettlement and compensation as well as the new urban development law should:
 - Prohibit forced evictions and set out safeguards that must be strictly followed before any eviction is carried out. These laws should be based on the UN Basic Principles and Guidelines on Development-based Evictions and Displacement and comply with international human rights standards.
 - Ensure that everyone has at least a minimum degree of security of tenure, which provides them with protection against forced evictions, harassment and other threats.
 - Set out a framework to review planning and other regulations which currently act as barriers to people increasing their security of tenure and regularizing their situation, where possible.
 - Expressly prohibit relocations to areas which are unsafe and/or polluted, and which pose a risk to lives and to health and oblige the authorities to ensure that all relocation sites comply with international standards on adequacy of housing.
 - Provide that no person may be denied access to minimum essential levels of water and sanitation, irrespective of their ability to pay.
 - Ensure equal treatment and protection from discrimination in access to housing.
 - Regulate any private actors involved in implementation of projects to ensure that they respect the human rights of affected people and comply with all the safeguards set out under the legislation and as required under international human rights law.
 - Provide mechanisms for monitoring all authorities, whether at the national or local levels, to ensure that the authorities act consistently with its provisions, and provide effective remedies for victims of violations.

Implement Quality Human Rights Education

Human rights education contributes to the promotion, protection and effective realisation of all human rights. Mongolia has a duty to provide human rights education, not only to ensure human rights education is taught in schools and higher learning institutions, but also to provide continuous human rights education and training to all government agents and officials, including the police, legal professionals and others involved in the administration of justice.

In addition, the UN Declaration on Human Rights Education and Training adopted by the UN Human Rights Council on 23 March 2011 re-affirms that everyone has the right to education which shall be directed to promoting respect for human rights and fundamental freedoms. The Declaration also declares that States have the primary responsibility to promote and ensure human rights education and training. The Declaration is an important affirmation of states' commitment to human rights education.

Together with the World Programme for Human Rights Education, the adoption of the Declaration offers educators and policy makers an occasion to reassess national policies and priorities in line with international standards.

Heeding the recommendation of the Human Rights Council, Mongolia should intensify its efforts to disseminate the Declaration and to promote its universal respect and understanding, with the goal of building a culture of respect for and defence of human rights for all.

- Ensure without delay the adoption of a National Human Rights Education Plan in accordance with the UN Declaration on Human Rights Education and Training, and the World Programme for Human Rights Education which encompasses guidelines for integrating human rights education into the formal education system, including higher education, and for the provision of human rights training programmes for teachers and educators, civil servants, law enforcement officials and military personnel. This includes ensuring that sufficient resources are allocated in the national budget to support the effective implementation of the plan.
- Ensure all legislation and guidelines related to education and training whether in non-formal or formal setting, and at all levels (including preschool, primary, secondary and higher education) integrate a human rights perspective.
- Ensure that human rights education and training encompasses:(a) Education *about* human rights, which includes providing knowledge and understanding of human rights norms and principles, the values that underpin them and the mechanisms for their protection; (b) Education *through* human rights, which includes learning and teaching in a way that respects the rights of both educators and learners; (c) Education *for* human rights, which includes empowering persons to enjoy and exercise their rights and to respect and uphold the rights of others.
- Ensure the government promotes human rights education among policy makers in the Ministry of Education, Ministry of Justice and other relevant government departments and agencies, in order for such authorities to provide quality human rights education and training for teachers, educators, trainers (and other categories in the formal and non-formal education sectors), health workers, social workers, as well as others who work with vulnerable and marginalized groups.
- Ensure that any amendment made to legislation related to formal education aims to support schools to promote a culture of human rights in all aspects of school life. This includes ensuring the human rights principles of equality, respect, non-discrimination and inclusion, accountability, participation and empowerment, are integrated into areas such as curriculum and extra-curricular domain, school governance, relationships between members of the school community, and the school environment.
- Ensure dedicated training of members of government departments and agencies about the rights of people with disabilities, and the relevant international, regional and national legal frameworks.