

**EXTERNAL**

19 February 1993

**@Z. BYAMBADORJ**

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**£Mongolia**

The information currently available on this case comes from the English-language newspaper Mongol Messenger, which on 9 February 1993 reported that Z. Byambadorj had been sentenced to death by the Ulan Bator city court. He was convicted of the murder of a child and rape under Articles 86 and 112 part 3 of the Mongolian Criminal Code. He is reported to have unspecified previous convictions.

Amnesty International opposes the death penalty in all cases and without reservation, on the grounds that it is a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment as proclaimed in the Universal Declaration of Human Rights. Amnesty International is appealing to the authorities in Mongolia to commute the death sentence passed on Z. Byambadorj.

**Background information**

Under the current criminal code, which was adopted in 1961 and amended in 1986, Mongolia retains the death penalty for eight offences: treason; espionage; political murder; political murder of a representative of a foreign state; wrecking; premeditated murder under aggravating circumstances; rape by an especially dangerous recidivist resulting in loss of life or grievous bodily harm, or the rape of a minor; and attempted murder of a militia worker [police officer] or militia volunteer. The death penalty is not applied to women, nor to men aged under 18 or aged 60 and over. Execution is by shooting.

At a meeting with an Amnesty International delegation which visited Mongolia in September 1991 the then Justice Minister explained the process for hearing appeals against a death sentence and for considering clemency petitions. He stated that everyone sentenced to death has a right of appeal to a higher court. After a sentence has been imposed by a court of first instance (provincial, city or special courts), the defendant has 10 days in which to appeal to the Supreme Court. If the sentence is upheld, the defendant then has 10 days in which to submit a petition for clemency to the President (prior to the election of Mongolia's first President in September 1990, following creation of this office by constitutional amendment, clemency petitions were considered by the Presidium of the People's Great Hural). Amnesty International considers that these periods are too short to permit the defendant effectively to prepare, in a case where life is at stake, an appeal or a clemency petition. Death sentences may be commuted to 20 years' imprisonment (the maximum prison term). It is also possible for clemency to be granted by the President as part of general amnesties on special state occasions (the last such being the 70th anniversary of Mongolia's full independence from China in July 1991).

Detailed statistics for the use of the death penalty in Mongolia from 1980 to the end of June 1991 were made available to the Amnesty International delegation by the State General Procurator. These indicated that between 1980 and 1990, 171 people were sentenced to death, of whom 118 were executed. The number of executions peaked at 22 in 1985, declining to five in 1990. The State General Procurator informed Amnesty International in March 1992 that a total of 10 executions were carried out in the whole of 1991. This reversal of the downward trend of the previous five years was officially attributed to a sharply increased crime rate connected with serious problems in the national economic situation. No statistics are currently available for the use of the death penalty in 1992.

A new Constitution which entered into force in February 1992 restricts the guarantee of the right to life by stating in Article 16(1) that "deprivation of human life shall be prohibited unless capital punishment is imposed by due judgment of a court for the most serious crimes constituted by Mongolian penal law". Amnesty International in an August 1991 memorandum urged that the new Mongolian Constitution include a declaration that the death penalty will never be allowed, and in an external document Mongolia: Continuing legislative reform (AI Index ASA 30/01/92), published in June 1992, the organization continued to call on the Mongolian authorities to abolish the death penalty by constitutional amendment, or by omitting capital penalties from the new criminal code. It called on the authorities to at least reduce the scope of the death penalty as a step towards total abolition, and to impose a moratorium on death sentences and executions pending a review of this punishment.