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UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the independence of judges and lawyers.

REFERENCE: AL G/SO 214 (67-17) G/SO 214 (3-3-16)
MNG 1/2012

21 May 2012

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the independence of judges and lawyers pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 16/4 and 17/2.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding Mr. **Enkhbayar Nambar**, 53 years old, former President of Mongolia and Chairman of the Mongolian People's Revolutionary Party (MPRP), who was arrested during a police raid on the early morning of 13 April 2012.

According to information received:

On 13 April 2012, Mr. Enkhbayar was taken into custody on charges of corruption initiated by the Independent Authority against Corruption. It was reported that Mr. Enkhbayar was arrested without the issuance of a proper court order and placed in custody in Tuv Aimag Prison, a detention centre two hours from Ulaanbaatar where he normally resides. It is further alleged that Mr. Enkhbayar's access to his legal counsel and family members was strictly restricted and monitored. The arrest allegedly came in the evening of Mr. Enkhbayar's release to the media of unpublished records of discussions among various stakeholders on the days immediately following the events of 1 July 2008, when five people were killed while demonstrating against alleged electoral fraud. A district court judge in Ulaanbaatar reportedly extended Mr. Enkhbayar's detention for up to two months, during the first week of May 2012.

It is further reported that Mr. Enkhbayar had been on a hunger strike since 4 May and that his health gradually deteriorated requiring his transfer to a hospital. According to information received, on 14 May Mr. Enkhbayar was released on bail and ended his hunger strike.

While we do not wish to prejudge the accuracy of these allegations, , we would like to refer your Excellency's Government to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, and in particular to the Principle 6, which states that “the principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.”

Furthermore, we would like to draw the attention of your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, and in particular to the Principle 8, which provides that “all arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.”

We would also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the ICCPR, which provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

Moreover, we wish to reiterate the principle enunciated in Human Rights Council resolution 12/16 which calls on States, while noting that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions, including on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned person are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victim?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please provide details on what measures have been taken to safeguard the rights of the above-mentioned person in compliance with the above international instruments.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Enkhbayar Nambar are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

Frank La Rue

Special Rapporteur on the promotion and protection of the right to freedom of
opinion and expression

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers