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Mongolian authorities must respect the human rights of former Mongolian president following his arrest

Amnesty International calls on the Mongolian government to ensure that former president N. Enkhbayar, who has been detained since 13 April on accusations of involvement in corruption offences, is treated in line with international human rights standards, including with respect to his rights of access to lawyers, contact with family members, adequate medical care and the right to liberty.

N. Enkhbayar has been detained in Tuv aimag detention centre since 13 April. After starting a hunger strike and deterioration of his health, on 5 May he was transferred to the hospital wing of detention centre #461 and was transferred to General Hospital Number 2 on 9 May.

Key Concerns

- From the court documents viewed by Amnesty International, N. Enkhbayar's detention appears to be arbitrary. If the authorities have evidence to justify his continued detention, it is certainly not recorded in any of the court documents we have seen, and they need to bring it before a court where his lawyers have an effective opportunity to challenge it. If the authorities do not have such evidence, he should be released pending trial. Amnesty International has contacted Mongolian authorities to request further documentation and information as to the basis of his continued detention and are awaiting a response.
- Amnesty International is deeply alarmed at reports that the police authorities have ordered that N. Enkhbayar be forcibly fed. Any decision to carry out non-consensual feeding of a hunger striker should be made only by qualified health professionals on the basis of medical necessity and only after assessing the individual's health needs and mental competence. If such a decision is made, the feeding should only be undertaken by medically trained personnel under continuing medical supervision.
- We understand N Enkhbayar was deprived of all contact with all family members for a month and we consider this a violation of international human rights standards. Since 7 May there has been some contact, but what will happen in the future remains unclear.
- N. Enkhbayar's lawyers have stated that the authorities have interfered with his right to confidential access to his legal counsel of choice. They say they have been wrongfully prevented from accompanying him during questioning and lawyer-client confidentiality has not been respected.

Further Details and Relevant Human Rights Standards

Right to liberty:

N. Enkhbayar was arrested in the early morning of 13 April in a large scale police operation. Law enforcement officials and agents from the Independent Authority Against Corruption (IAAC) raided the house. While an earlier unsuccessful attempt to arrest him may have been made without (or at least without presenting) prior judicial authorization, Amnesty International understands that at the time of his arrest the authorities had obtained a judicial detention order that stated it had been issued on the basis that there was a possibility that he might obstruct the investigation process. This in turn appears to have been based on the statement by an IAAC official that he had not appeared for questioning during the investigation process despite being called a number of times and thus prescribing that he be brought in by force for questioning.

N. Enkhbayar and his family's complaint of ill-treatment during the arrest should be assessed by an independent and impartial authority competent to receive complaints of such treatment and they should be provided an effective remedy if the claim is established.

Amnesty International understands that an extension of N. Enkhbayar's detention was authorised by a judicial authority on 27 April, for a further period of as long as two months. The order states that the Prosecutor requested the extension on the basis that N. Enkhbayar might pervert the course of justice. However the order does not indicate what if any evidence the court had before it of any particular actions in which it considered N. Enkhbayar would likely engage. Amnesty International was not present at any hearing on the extension order. However, the order itself records that N. Enkhbayar's lawyers submitted that the Prosecutor had not clarified the nature of or basis for any such alleged risk, and that his exercising his right against self-incrimination by refusing to answer questions could not rightly be characterised as perversion of justice, and that his place of work (and presumably any relevant records therein) had already been sealed by the authorities. In the ruling recorded in the extension order, the court does not address any of these points and simply states that it accepts the Prosecutor's request. Amnesty International understands that an appeal from the judgment was dismissed on or about 7 May but was not present at any hearing of the appeal and does not have a copy of any written judgment. A bail application was made on 8 May but as of 10 May, a decision had yet to be issued.

Under international human rights law, the presumption of innocence and right to liberty mean that all persons accused of criminal offences have the right to be released pending trial (subject to conditions if necessary) unless an independent judicial authority finds the state has justified detention on the basis of evidence of a likelihood that the accused would abscond or destroy evidence, influence witnesses, or flee from the jurisdiction.

Any person who is deprived of liberty is entitled to challenge the lawfulness of his or her detention before a court and to be released if the state does not establish (as a matter of facts and law) the lawfulness of the detention. The hearing of such a challenge must be fair and allow the detainee an effective opportunity to challenge any evidence presented by the authorities.

Amnesty International has contacted Mongolian authorities to request further documentation and information as to the basis of his continued detention and are awaiting a response.

The only specific basis recorded in the court documents Amnesty International has seen to justify the continued detention of N. Enkhbayar on grounds of 'risk of interference with the investigation', after nearly a month, is that he did not earlier attend for questioning despite having been lawfully summoned to do so (his lawyers contest the claim that he was lawfully summoned). Amnesty International understands he has now been questioned on several occasions and invoked his right against self-incrimination, a right recognised by international

human rights law, in refusing to answer the questions. His invocation of this right cannot justify any continued detention.

Access to Lawyers:

N. Enkhbayar's lawyers have stated that the authorities have interfered with his right to confidential access to his legal counsel of choice.

International human rights standards stipulate that anyone facing a criminal charge is entitled to adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing. Anyone deprived of liberty must be given prompt access to a lawyer, which in no case should ever be later than 48 hours from the time of arrest or detention, and has the right to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality.

These standards provide that lawyer-client meetings may be "within sight but not within the hearing" of state officials. N. Enkhbayar's lawyers allege particularly that a few days after his arrest the authorities installed video cameras and had a guard present within the room where he meets with his lawyers, conditions that appear incompatible with the international standards. His lawyers have also stated that spurious reasons were given for preventing N. Enkhbayar's lawyers from being present during questioning; if so, this would not be in accordance with Mongolian Criminal Procedure Code or the recommendations of the UN Special Rapporteur on independence of judges and lawyers or the Minimum Interrogation Standards adopted by the Advisory Council of Jurists of the Asia-Pacific Forum of National Human Rights Institutions, which note that lawyers should be able to be present during interrogations, in order to ensure respect for the rights of the accused.

Access to Family:

International human rights standards also recognise that detainees have the right to be visited by and communicate with family subject only to such restrictions as are necessary in the interests of the administration of justice and the good order of the institution. Even in most exceptional cases such contact may not be denied for more than a matter of days.

Amnesty International understands that N. Enkhbayar's wife was permitted to visit her husband for the first time on 7 May. His lawyers have stated that prior to 7 May the authorities refused to allow him any contact – whether by telephone, written correspondence, or visits – with any family member. The imposition of such blanket prohibitions on contact with family for such an extended period is in violation of international human rights standards. It remains unclear whether further contact will be permitted in future, or on what terms.

Medical Care:

Amnesty International is deeply alarmed at reports that the police authorities have ordered that N. Enkhbayar be forcibly fed. Any decision to carry out non-consensual feeding of a hunger striker should be made only by qualified health professionals on the basis of medical necessity and only after assessing the individual's health needs and mental competence. Any non-consensual feeding undertaken on this basis should be done only by medically trained personnel under continuing medical supervision. The authorities must never require health professionals treating hunger strikers to act in any way contrary to their professional judgment or medical ethics. Amnesty International opposes non-consensual feeding of hunger-strikers without medical supervision, or if it is done for reasons other than medical necessity, or in a manner which amounts to cruel, inhuman or degrading treatment.

In the beginning stages of his hunger strike there were reported delays in providing medical care for N. Enkhbayar. States are obliged to ensure medical care for those in custody, and the UN Human Rights Committee has stated that all detainees should be afforded prompt and regular access to doctors. They should be offered an independent medical examination as promptly as possible after being brought into detention and medical care should be provided thereafter whenever necessary. Indeed, the UN Standard Minimum Rules for the Treatment of

Prisoners provide that a prisoner under arrest or awaiting trial shall be allowed to be visited and treated by his/her own doctor.

A hunger striking detainee's refusal of food must not prejudice other aspects of their health care, and they should have adequate access to qualified health professionals. Health care for hunger-strikers should comply with medical ethics, including principles of confidentiality, autonomy, and informed consent.

Amnesty International calls on the government of Mongolia to:

- Release N. Enkhbayar pending trial, unless evidence has been presented to a court in a manner allowing for his lawyers to challenge that evidence, which would reasonably establish the existence of a likelihood that he will abscond or destroy evidence, influence witnesses, or flee from the jurisdiction. Neither his refusal to answer questions nor the possibility he might destroy documents that the authorities have already sealed are capable of justifying any continuing detention.
- So long as he remains in detention, ensure respect for the right of N. Enkhbayar to receive visits from and to communicate with lawyers of his own choosing, and family members, of a frequency and in conditions of privacy that are in line with international standards.
- Ensure that N. Enkhbayar has adequate access to qualified health professions to provide health care in line with medical ethics, including principles of confidentiality, autonomy and informed consent.
- Ensure that his family are immediately notified of any further transfers, are able to visit him on a regular basis, and have access to any and all information regarding his health for which his consent is given or may be presumed.

Background

N. Enkhbayar is the former President of Mongolia and current head of the Mongolia People's Revolutionary Party which formed in 2011. His family and lawyers have told Amnesty International they believe he has been targeted for political reasons. He was arrested shortly after he released classified transcripts of officials discussing the authorities' response to the post-electoral violence that broke out on 1 July 2008. On 1 July 2008, thousands of people protested against allegations of widespread election fraud in parliamentary elections. At least nine people were shot by the police, four people fatally, and a fifth person died allegedly from smoke inhalation. Mongolia's next parliamentary elections are due to take place on 28 June.

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