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Mongolia

MON/01 - Zorig Sanjasuuren

Decision adopted unanimously by the IPU Governing Council at its 200th session (Dhaka, 5 April 2017)

The Governing Council of the Inter-Parliamentary Union,

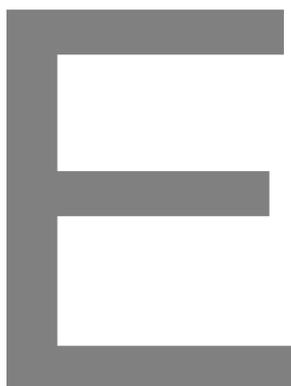
Referring to the case of Mr. Zorig Sanjasuuren, a member of the State Great Hural of Mongolia, and acting Minister of Infrastructure Development – regarded as the father of the democracy movement in Mongolia in the 1990s – who was assassinated on 2 October 1998, and to the decisions adopted by the IPU Governing Council at its 198th session (Lusaka, March 2016) and by the Committee on the Human Rights of Parliamentarians at its 152nd session (January 2017),

Referring to the letters of 27 January and 27 March 2017 of the Vice-Chairman of the State Great Hural, to the hearing held with two members of the Mongolian delegation to the 136th IPU Assembly and to the information recently shared by the complainants and by third parties,

Referring also to the report of the visit conducted to Mongolia (CL/198/12(b)-R.1) from 16 to 19 September 2015,

Recalling the following long-standing concerns in this case:

- Uninterrupted investigations have officially been ongoing since Mr. Zorig's assassination almost 19 years ago. They have remained shrouded in secrecy and have yielded little results until recently. The excessive secrecy surrounding the investigation and the lack of progress has strongly eroded the trust and confidence in the investigative process and in the existence of a real political will to establish the truth. The renewed commitments to shed light on Mr. Zorig's assassination have long been seen as empty political promises;
- The murder is still widely believed to have been a political assassination that was covered up. It cannot be excluded that political interference is one of many combined factors that are likely to account for the lack of results in the investigation and include:
 - Initial investigative deficiencies (particularly contamination of the crime scene);
 - Issues related to the training and competence of the investigators, as well as forensic technologies available;
 - The endless replacement of investigators;
 - The top secret classification of the case, which is the main reason for the continued role of the central intelligence agency, the unusually wide scope of its involvement and the “wall of secrecy” surrounding the case – including in relation to alleged dubious investigation and questioning methods used by the Mongolian intelligence services, which have reportedly included the mistreatment of suspects and the use of coerced confessions on several occasions in the past;



- The political dimension of the case and its subsequent political instrumentalization by political parties;
- The time elapsed and its consequences;
- The lack of accountability of the relevant authorities, in view of the absence of results in the investigation,

Further recalling that, following the visit conducted to Mongolia, the IPU Governing Council has called on the Mongolian authorities to do their utmost to ensure that justice is done and seen to be done in resolving the case of Mr. Zorig's assassination, and to give urgent consideration to the following recommendations:

- Urgently declassify the case and increase transparency in the investigation, including by engaging in regular communication with the IPU and Mr. Zorig's relatives, but also by sharing public information with the Mongolian people on the results and challenges of the investigation, in order to restore confidence in the investigative efforts and demonstrate that the case has been handled in an impartial, independent and effective manner;
- Limit the role of the central intelligence agency to a minimum and ensure strict compliance with standards of due process, as well as accountability and redress for abuses committed in the course of the investigation; place the investigation under the full and effective control of the General Prosecutor's office; seek specialized assistance in the investigation of contract killings and include experienced foreign criminal experts in the investigation (as part of the existing working group or of a new independent investigative mechanism); focus on the examination of witness statements, public records and open source materials, rather than exclusively investing in forensic analysis;
- Grant access to the investigative files to Mr. Zorig's relatives, who are party to the legal procedure, and inform them regularly of new developments in the investigation;
- Use existing institutional checks and balances to ensure that all authorities concerned from the legislative, executive and judicial branches of power deliver appropriate results and are held accountable if and when failing to fulfil their constitutional and legal duties;
- Keep the IPU regularly apprised of: (i) recent investigative activities, including their outcome and outstanding challenges; (ii) the assessment and recommendations made by the special oversight subcommittee of the State Great Hural; and (iii) and progress made in implementing the recommendations arising out of the mission report,

Recalling that significant developments have taken place in the case in recent months; and *taking into account* that parliamentary elections took place in June 2016; that they have resulted in the defeat of the Democratic Party and brought the Mongolian People's Party (MPP) back to power; and that presidential elections are scheduled for late June 2017,

Considering the following information:

- **Detention and torture of Ms. Bulgan**

- Ms. Banzragch Bulgan, Mr. Zorig's widow, was arrested on 13 November 2015 – shortly after the Committee's visit to Mongolia. She was detained at the Tuv Aimag (central province) prison by the central intelligence agency, in conditions allegedly amounting to torture under international human rights standards. Reliable sources stated that Ms. Bulgan was being held in solitary confinement and deprived of medical care, in a cell where artificial lighting was kept on 24 hours a day. According to them, she had been interrogated by intelligence officers and put under intense psychological pressure. The sources indicated that her prolonged detention had not been reviewed and authorized by a judge and that no charges had been formally brought against her by March 2016. Visits to Ms. Bulgan in detention were allegedly restricted. Her lawyer had not been granted access to the evidence against her, on the grounds that the case was classified. This was the second time that she had been placed in illegal detention since the start of the investigation;
- The allegations relating to Ms. Bulgan's detention, torture and the violation of her rights to due process were ascertained during the 13 April 2016 visit of a parliamentary delegation

headed by Mr. Bold Luvsanvandan, the then head of the parliamentary human rights commission. The delegation noted that the prison was under the full control of the intelligence services. It called on the President of Mongolia, the Speaker of the State Great Hural parliament and the Prime Minister to take action to put an end to that situation. Around 22 April 2016, Ms Bulgan was transferred to another prison, where she was reportedly held in better conditions and received medical care. A hearing was scheduled for 13 May 2016 to extend Ms. Bulgan's detention;

- No subsequent information was forthcoming on Ms. Bulgan's situation until January 2017, despite urgent appeals communicated to the Parliament of Mongolia. The Vice-Chairman of the State Great Hural responded in letters dated 27 January and 27 March 2017 that Ms. Bulgan had been released. She had been investigated and questioned as a suspect and defendant. Her participation in the case was not proved, the case was "backed down" and "while obtaining additional evidence, her involvement in the crime was not established and thus the case was terminated". The Committee was able to obtain confirmation from third parties that Ms. Bulgan had indeed been released;
- In relation to the detention and torture of Ms. Bulgan, the members of the delegation of Mongolia to the 136th IPU Assembly stated that, if torture had taken place while she was in detention, she could have complained to NGOs and the National Human Rights Commission of Mongolia, as they were paying close attention to such issues. She was, in any case, still entitled to lodge a judicial complaint if her rights had been violated,

- **Arrests and first instance trial**

- Three suspects were reportedly arrested in August 2015 in connection with Mr. Zorig's murder and had allegedly confessed to the murder, possibly in relation to the "Erdenet scenario", according to media reports. That scenario was one of the possible motives for the assassination, which had never been discounted. It was mentioned that Mr. Zorig had been informed of the embezzlement of funds from Erdenet (a major Mongolian mining company) and was ready to disclose the information or to take appropriate action to hold the culprits accountable, if and when appointed Prime Minister. During its visit to Mongolia – which took place shortly after these arrests – the Committee's delegation was never informed about these arrests, or even that any suspects in the case were being detained. The Mongolian authorities provided no response on these developments before January 2017, despite the urgent requests for information communicated to them;
- In January 2017, the Mongolian authorities and the complainants confirmed that three suspects had been convicted for Mr. Zorig's murder on 27 December 2016 and sentenced to 24 to 25 years' imprisonment. The verdict was handed down after a trial held behind closed doors. Mr. Zorig's family and their lawyer were authorized to attend the trial, but were prohibited from sharing information on the proceedings or the verdict on the grounds that the case was classified. They would be arrested and prosecuted in the event they failed to comply. No copy of the verdict or details of the proceedings was made available to the IPU or to the public on the same grounds. Mr. Zorig's family deplored that the requests made for the declassification of the case and for a public trial were rejected by the Mongolian authorities, including by the court. Mr. Zorig's family issued a public statement questioning the legitimacy of the closed trial and of the court decision and considered that justice has not been done and that the case should continue;
- Media reports published in Mongolia and abroad after the verdict further reflected the general lack of confidence in the impartiality and independence of the investigation and court proceedings. These reports considered that the trial was a smokescreen designed to conceal the real culprit(s)/mastermind(s) of the assassination. They emphasized that many questions remained unanswered. They recalled that the case had been highly politicized and noted it was hardly credible that the three convicted persons could have committed the assassination 18 years ago, considering their age at the time. They also recalled that at least 17 persons, including witnesses, police and judicial officers, had died in unexplained circumstances, and that the investigation had never shed light on the circumstances of their death;

- The Vice-Chairman of the State Great Hural stated that the defendants and the victims' lawyers had appealed the first instance conviction and that parliament would "carefully observe" the appeal proceedings and keep the IPU informed,

- **Appeal trial**

- The appeal trial was held over one single day on 14 March 2017. It was held behind closed doors again. At the opening of the hearing, the family's lawyer once again requested, in vain, that the case be declassified and that the proceedings be held in open court. The lawyers for the accused and for the Zorig family were allowed to attend the proceedings, but were barred from sharing any information relating thereto. The verdict was issued the same day and confirmed the first instance sentence;
- The Vice-Chairman of the State Great Hural stated, in a letter dated 27 March 2017, that the appeals court had reviewed the appeals case and concluded that all legal and procedural requirements had been respected pursuant to the law on criminal procedure and other regulations, including the right of the parties to appeal. According to the letter, the testimonies and examination of the suspects and of the witnesses by the court were consistent with and corroborated each other. Witnesses appeared before the court and immediately identified the suspects. Information obtained through undercover operations was proved and all evidence collected during the investigation was examined. The law had not been violated and the appeal was therefore dismissed. The Vice-Chairman also confirmed that the accused and the victims had requested to hold the trial openly but that the court had ruled that it was impossible because the 220-page judicial files included five pages of information classified as top secret. Accordingly, under article 235(1) of the criminal procedure law, the trial was closed to the public pursuant to the state secret law. It was thereafter forbidden to share the court decision unless authorized authorities made a decision to declassify the case. The Vice-Chairman nevertheless stated that, once the final court decision was delivered, "some documents and testimonies relating to the crime" would be exposed to the public;
- The Mongolian authorities and the complainant confirmed that the defendants and the victims could lodge a last-resort appeal before the Supreme Court's criminal law chamber. The Supreme Court would then make the final decision on the case, which is therefore not yet concluded at this stage. The Vice-Chairman of the State Great Hural made a commitment that the Parliament of Mongolia would demand a "fair and correct decision" in compliance with the law. In a press conference held in early April 2017, the Vice-Chairman expressed public concerns about the manner in which the Zorig case had been handled,

Considering that, at the hearing held during the 136th IPU Assembly, two members of the Mongolian delegation shared the additional following information:

- The proceedings had exclusively targeted the direct perpetrators of the assassination (four of which had been identified, with only three still being alive). The motives established by the court were "greed and money". A second investigation appeared to have been opened to target the organizers and the instigators of the assassination on the basis of names allegedly provided by the convicted suspects. These proceedings would probably look into possible political motives of the assassination. A second trial would subsequently follow in due time. Little information had been made available to parliament on these recent developments, as the criminal investigation is confidential and remains classified;
- The two members of the delegation reconfirmed that the trials were closed pursuant to existing rules of criminal procedure, which warrant top-level confidentiality when classified information is involved as evidence in a case. The parliamentary authorities had therefore not been authorized to provide copies of the court decisions to the IPU. The judicial authorities had informed parliament that the appeals court had verified that all legal and evidentiary requirements had been respected during the trial proceedings. The investigation may have been rushed but it was in accordance with the law, which provided that investigations needed to be completed within certain deadlines according to the information obtained by parliament;
- The members of the delegation stated that they shared the Committee's concern about the need for justice to be done in this case and to be seen to be done. They also

condemned the politicization of the case. They stated that, if any one of three suspects convicted were not guilty, it would be perceived as political repression and would look very bad for Mongolia. The members of the delegation observed that the fact that the trial had taken place behind closed doors indeed looked suspicious to the people. The fact that Ms. Bulgan did not participate in any of the hearings during the trials, in spite of being the only eyewitness in the case, also raised questions and suspicions. However, it was in compliance with criminal procedure laws;

- The members of the delegation stated that they were only able to obtain limited information on the case, due to the separation of powers and the classification of the case. Neither members of parliament or parliament could intervene in the investigative and judicial process, again due to the separation of powers. Given the concerns raised in this case and in others, a working group was now being established to amend the Constitution. A draft amendment was being prepared and discussed to allow for the establishment of ad hoc committees mandated to review suspicious cases such as that of Mr. Zorig at the end of the investigative and judicial proceedings;
- The members of the delegation stated that the Committee would be welcome should it decide to send a delegation to Mongolia to seek further information and discuss its concerns with all relevant authorities,

Recalling that Mongolia is a party to the International Covenant on Civil and Political Rights and to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, it is therefore bound to ensure that: (i) no suspects or witnesses shall be subjected to torture or to cruel, inhuman or degrading treatment; (ii) that perpetrators of such acts should be held accountable and that confessions obtained through such means should not be considered admissible evidence in court proceedings; and (iii) that any person accused of a criminal charge shall be entitled to a fair and public trial by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial only for moral reasons or reasons of public order or national security in a democratic society, or when the interest of the private lives of the parties so requires. Such restrictive measure should be proportionate and only allowed to the extent strictly necessary in special circumstances where publicity would prejudice the interests of justice. Any judgement rendered in a criminal case should in any case be made public,

1. *Thanks* the Vice-Chairman of the State Great Hural and the members of the delegation of Mongolia for their cooperation; and *is encouraged* by the resumption of a constructive dialogue with the State Great Hural;
2. *Takes note with interest* that, since late December 2016, first instance and appeals trials have been conducted, with the result that three suspects have been convicted and sentenced to long prison terms for their involvement as the direct perpetrators of the assassination of Mr. Zorig; that the case is still ongoing, as the defendants and the victims' lawyers are entitled to a last-resort appeal to the Supreme court; and that a new, confidential investigation is now being initiated against suspected organizers and instigators of the assassination;
3. *Is deeply concerned* that the trials were held behind closed doors and that the court decisions have not been disclosed; *points out* that neither the parliamentary authorities, nor Mr. Zorig's family or the Mongolian people, consider that justice has been done or has been seen to be done in the recent trial proceedings, and that serious concerns and questions on the case remain unanswered due to the continued excessive secrecy of the proceedings and top-secret classification of the case;
4. *Remains concerned* that the alleged torture of Ms. Bulgan has not been adequately addressed by the relevant authorities of Mongolia, despite her release; and *still fails to understand* on what grounds her prolonged detention could have been legal, given that the authorities confirmed that her participation in the crime had not been proven;

5. *Reaffirms its prior concerns* about the politicization of the case; *is therefore deeply troubled* by the sudden rush in the proceedings following almost 20 years of apparent inertia in the investigative process; and *observes* that this coincides with a major change in political power following parliamentary elections and the fast-approaching presidential elections in June 2017;
6. *Considers* that the recent trials violated international fair-trial standards and further undermine the legitimacy and integrity of the whole investigative process; *calls again* for the immediate declassification of the case; and *urges* the Supreme Court to remedy the existing serious deficiencies by ordering a public re-trial in the presence of domestic and international observers, in order to avoid any miscarriage of justice and to help shed light on the truth in this case; *expresses its wish* to send a trial observer to attend the proceedings; *further points out* that there are many alternative means available for maintaining a reasonable and appropriate measure of confidentiality in respect of legitimate sensitive evidence, without infringing on the right to a fair trial or jeopardizing the credibility and integrity of the proceedings and of the judicial institution;
7. *Remains convinced* that transparency, paired with strict respect for due process and the rights of defence, in compliance with the Constitution of Mongolia and international standards, could eventually restore confidence in the long-standing efforts to shed light on the truth of the assassination of Mr. Zorig, and contribute to further strengthening democracy and the rule of law in Mongolia;
8. *Notes with interest* that the State Great Hural is still actively monitoring the case; and *expresses its support and encouragement* for its ongoing efforts to look into new ways of exercising proactive oversight in the case; *wishes to receive* more detailed information in this respect, particularly on the draft constitutional amendment under discussion; *further calls on* parliament to urgently review the existing State secret laws and regulations and to bring them into line with international standards and best practices in that respect; *offers* the availability of the IPU to facilitate technical assistance on these matters upon request;
9. *Wishes* the Committee to conduct a mission to Mongolia to obtain more information on recent developments from all relevant authorities and to facilitate progress in the case, in strict compliance with international human rights standards; *welcomes* the positive response of the two members of the Mongolian delegation in that respect; and *trusts* that it will soon receive official confirmation from the Parliament of Mongolia to that end; *also wishes* to continue being kept regularly apprised of any new developments relating to the case;
10. *Requests* the Secretary General to convey this decision to the competent authorities, the complainant and any third party likely to be in a position to supply relevant information;
11. *Requests* the Committee to continue examining this case and to report back in due course.