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Mongolia

MON/01 - Zorig Sanjasuuren

Decision adopted unanimously by the IPU Governing Council at its 201st session (St. Petersburg, 18 October 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 decision it adopted at its 200th session (Dhaka, April 2017),

Referring to the letter of 17 May 2017 of the Vice-Chairman of the State Great Hural and to the information shared by the complainants and by third parties,

Taking into account that a delegation of the Committee on the Human Rights of Parliamentarians, led by Ms. Fawzia Koofi, President of the Committee, and by Mr. Ali Alaradi, Committee member, conducted a mission to Mongolia from 11 to 13 September 2017,

Taking into account that over the 19 years since the initial submission of the case, three Committee missions have taken place and the IPU has adopted over 50 decisions on it,

Recalling that, following the 2015 Committee visit to Mongolia, the IPU Governing Council called on the Mongolian authorities to do their utmost to ensure that justice was 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;

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- 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) progress made in implementing the recommendations arising out of the mission report,

Recalling that the following developments have taken place following the 2015 visit:

- Ms. Banzragch Bulgan, Mr. Zorig's widow, was arrested on 13 November 2015 and kept in detention for months by the central intelligence agency, in conditions amounting to torture under international human rights standards, as confirmed by a parliamentary delegation which visited her in detention; Ms. Bulgan was eventually released and the parliamentary authorities indicated at that time that she had been considered a suspect in the case but that, "her involvement in the crime has not been established and thus the case has been terminated". Ms. Bulgan has, however, remained prohibited from travelling abroad since her release and has been subjected to constant surveillance;
- Three other suspects were arrested and allegedly confessed to committing the murder of Mr. Zorig. They were sentenced to 24 to 25 years' imprisonment on 27 December 2016. On 14 March 2017, the Appeal Court upheld the first-instance verdict;
- The first-instance and appeal trials were held behind closed doors on the grounds that the case was classified as top secret. Repeated requests made by the defendants' lawyers and by Mr. Zorig's family for declassification of the case and for a public trial were systematically rejected by the 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. For the same reason, no copy of the verdict or details of the proceedings were made available. Mr. Zorig's family issued a public statement questioning the legitimacy of the proceedings and court decisions and concluding that, in its view, justice has not been done and the case should continue. The trials were also considered by reliable third parties and the Mongolian media to be a smokescreen designed to conceal the real culprit(s)/mastermind(s) of the assassination,

Recalling that the parliamentary authorities have repeatedly expressed concern about the manner in which the case was handled and have stated that they were not able to obtain information on the proceedings and could not intervene due to the separation of powers and the classification of the case, but have welcomed a new mission by the Committee to raise the concerns directly with the relevant judicial and executive authorities,

Considering the following preliminary observations and recommendations by the delegation that conducted the recent mission to Mongolia, to which the Committee fully subscribed while awaiting the full mission report:

- **Preliminary observations**
 - The delegation regretted that it was not allowed to meet the convicts in prison or the members of the Supreme Court; it was nonetheless pleased that it was able to hold constructive discussions with all other relevant parliamentary, executive and judicial authorities, including the Chairman and Vice Chairman of the State Great Hural, the newly elected President of Mongolia, Mr. Zorig's family members and those of the three convicted persons, human rights organizations and diplomats;
 - The delegation confirmed prior allegations and concerns that the trial and conviction of the three individuals for the assassination of Mr. Zorig violated international fair-trial standards and undermined the legitimacy and integrity of the investigative and judicial process; the delegation based this preliminary conclusion on the findings below:

- (i) None of the Governing Council's or Committee's prior recommendations have been implemented by the Mongolian authorities since the Committee's 2015 mission;
- (ii) The trial again took place behind closed doors. Requests for public hearings made by the defendants and the civil party's lawyers were denied on the grounds that the case was classified. After a very brief hearing, the Supreme Court issued a final verdict on 4 August 2017. The lengthy sentences against the three suspects were confirmed and only reduced by a couple of years. The IPU was not informed of this development in advance of the mission;
- (iii) Most of the evidence has remained classified, having been collected by intelligence officers during undercover operations. Such secret evidence has never been made accessible to the prosecutor's office or to defence counsel at any stage of the proceedings. It is not subject to cross-examination or questioning of any kind. The delegation was told that such evidence was provided exclusively to the Supreme Court judges, an affirmation that it was not able to verify, since the Supreme Court refused to meet with the delegation and its decision of 4 August 2017 has been kept secret;
- (iv) The final verdict has not been made available to anyone. The delegation has not been able to obtain a copy of it or any information on the grounds underpinning it (or on those underpinning the lower courts' prior decisions). At the time of the mission, none of the parties had received the court decision, despite over one month having passed since the verdict;
- (v) Although the sentences have now become final under Mongolian law, it appears that the three convicted persons may be able to lodge one final appeal with the President of the Supreme Court within 30 days of receiving the final court decision. The delegation was unable, however, to find out when the Court would make its verdict available. It also observed with deep concern that the judges who ruled on the case included the President of the Supreme Court, a very unusual situation which, in the delegation's view, will create a conflict of interest when he is now called upon to decide on the convicted persons' last avenue of appeal;
- (vi) Before and during the mission, the delegation received recurrent and credible reports about the use of torture and corruption to divert the course of justice in this case. Such reports were not seriously addressed by the judicial authorities through independent, credible and transparent procedures. The delegation was simply told, and asked to believe, that there was no truth to those reports;
- (vii) The delegation came to the preliminary conclusion that the three convicted persons were most likely pressured by the intelligence services to make false confessions about their involvement, and the involvement of others, in the commission and organization of the crime. Given that this concern has been raised repeatedly about investigations of suspects and witnesses over the past 19 years, the delegation cannot rule out the possibility that others have suffered the same fate and that innocent people have been framed for Mr. Zorig's murder;
- (viii) Given the above concerns, there is a high probability that much of what is constantly referred to as secret evidence was actually fabricated over the years by the intelligence services. Unless the case file is fully declassified, intelligence and law enforcement officers who may have committed serious abuses of power will be able to continue doing so with full impunity, in violation of the fundamental human rights of Mongolian citizens. This will prevent the truth about Mr. Zorig's assassination from ever being known;
- (ix) The delegation was shocked by the level of intimidation and pressure exercised against all persons taking an interest in the case, whether directly (parties to the proceedings and their legal counsels, and possibly judicial staff and investigators) or indirectly (parliamentarians, politicians, civil society actors or ordinary citizens publicly voicing concerns about how the case has been handled or simply sharing IPU decisions with the Mongolian people). The delegation noted that some of its interlocutors withheld information out of fear of reprisals. Lawyers were not even allowed to share information with their own clients on the proceedings or their

defence strategy. Parties to the proceedings stated clearly to the delegation that, owing to the classified status of the case, they had been forced to sign a non-disclosure agreement and thus could not share any information on the criminal file, the trial proceedings or the grounds for court decisions. They would be subject, should they do so, to being charged, arrested and convicted for disclosing State secrets to foreign nationals,

- The delegation is extremely worried that the persistent secrecy and the political resistance to declassifying the case are signs that the investigations and recent proceedings are not actually aimed at uncovering the truth, but at covering for the real mastermind(s) and organizer(s) of the assassination. In that context, it is of particular concern that the 25-year statute of limitations (2023) is approaching;
- This raises still more serious concerns about the investigation that has now been allegedly opened to identify the organizer(s) and mastermind(s). The judicial investigative working group under the authority of the Prosecutor General's Office has been discharged from the case and the intelligence agency given exclusive responsibility for the investigation. The delegation could not fail to notice that none of the persons it met appeared to consider it likely that the process would lead to anything or achieve true justice. There were fears that it would likely be used to exert pressure and frame people to other ends;
- Justice must be provided to the family of Mr. Zorig, as well as to the three persons convicted. A fair, open and just trial before an independent and impartial court is now the only means to achieve true justice. It must take place without further delay to avoid a serious miscarriage of justice being perpetrated for political purposes. Given the profound distrust that has developed over the past few years, the delegation is further convinced that this is a crucial test of the ability of the Mongolian judiciary to demonstrate that it operates under the rule of law and has not become hostage to political and commercial interests.

- **Preliminary recommendations**

- The President of Mongolia, the Chairman of the State Great Hural and the Prime Minister should put an end to the persistent secrecy and order the immediate and full declassification of the case pursuant to the State Secret Law, which grants them this power as members of the National Security Council. If the relevant authorities have nothing to hide, as they claim, the case should at last be opened up for the sake of justice and fairness, and to honour Mr. Zorig's memory and the dignity of his family;
- The judiciary should demonstrate its independence, impartiality and respect for the rights of the defence by ordering without further delay a public retrial of the three convicted persons in the presence of domestic and international observers, to remedy all existing serious flaws;
- To avoid a serious miscarriage of justice, the three convicted persons should be released and presumed innocent until a retrial has been completed in a fair, just and transparent manner; until their release, the three convicted persons should benefit from ordinary conditions of detention with appropriate medical care and unrestricted access to their families and lawyers in prison;
- Urgent measures should be taken to end all ongoing pressures and intimidation against the parties to the case, and all issues related to the coercion, torture and pressuring of witnesses and suspects should be urgently addressed through independent and impartial investigation procedures;
- Ms. Bulgan and all other persons who were detained as suspects and subsequently discharged due to lack of evidence should be presumed innocent and their fundamental rights fully respected. They should be allowed to move freely around Mongolia and to travel abroad without restrictions, unless formally charged by a court of law on the basis of solid evidence;
- The separate investigation opened to identify the organizer(s) and mastermind(s) of the assassination should be immediately transferred from the National Intelligence Agency to

the Prosecutor's Office; it should be closely supervised to ensure that all incriminatory and exculpatory evidence is taken into account and that the investigative methods used by law enforcement officials are in strict compliance with human rights standards and the rule of law;

- The State Great Hural should exercise strong parliamentary oversight, while respecting the separation of powers, to ensure that justice is done, and seen to be done, in the present case. It should consider urgently re-establishing an ad hoc parliamentary committee with a clear mandate to that end, granting it full access to all court documents and classified evidence so that a comprehensive assessment can be conducted. The IPU remains available, upon request, to facilitate technical assistance on ways to strengthen parliamentary oversight,
- 1. *Thanks* the Mongolian parliamentary authorities for their cooperation during the recent mission by the Committee to Mongolia while *deeply regretting* that the delegation was not allowed to meet with the detainees or with the members of the Supreme Court;
- 2. *Thanks* the mission delegation for the work undertaken; *takes note* of the preliminary observations and recommendations on the mission and *eagerly awaits* the final mission report at the next IPU Assembly (March 2018);
- 3. *Deplores* that the authorities responsible for the investigation and judicial proceedings appear to continue to favour methods involving torture, intimidation, secret evidence and trials over transparent proceedings that respect the right to a fair trial; *also deplores* that the case continues to be used as a political bargaining chip by all political parties;
- 4. *Renews its previous call* for immediate declassification of the case *and urges* the Chairman of the State Great Hural, the President and the Prime Minister to take action to that end without further delay so as to ensure respect for the right to a fair trial in compliance with the Constitution of Mongolia and international human rights standards;
- 5. *Exhorts* the Supreme Court to order a public retrial in the presence of domestic and international observers, including an IPU observer, to avoid a serious miscarriage of justice; *calls* for the urgent release of the three convicted persons until a retrial has been completed in a fair, just and transparent manner; *further calls* for the immediate lifting of all restrictions on the freedom of movement of persons who are not formally charged by a court as suspects in the case;
- 6. *Appeals* to the State Great Hural to resume its oversight work on the case by urgently re-establishing an ad hoc parliamentary committee to that end and giving it a clear mandate to adequately review all issues of concern and to recommend effective remedies; *recalls* that parliamentary oversight is a primary safeguard against abuse of power and corruption, and that it helps to ensure that government policies and actions deliver on commitments made to the people they serve; *further reaffirms* the availability of the IPU to provide technical assistance to the Parliament of Mongolia;
- 7. *Wishes* to be kept apprised of new developments related to the case by the parliamentary and other relevant authorities;
- 8. *Requests* the Secretary General to convey this decision to the relevant authorities, the complainant and any third party likely to be in a position to supply relevant information;
- 9. *Requests* the Committee to continue examining this case and to report back in due course.