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Committee on the Human Rights of Parliamentarians

Report on the mission to Mongolia
16-19 September 2015

MON01 - Zorig Sanjaasuren

Executive Summary

On 16-19 September 2015, a delegation of the Committee on the Human Rights of Parliamentarians conducted a mission to Mongolia to gather first-hand information on the status of the investigation into the assassination of Mr. Zorig Sanjasuuren ("Mr. Zorig"). Regarded by many as the father of the democratic movement in Mongolia in the 1990s, Mr. Zorig was a member of parliament and the acting Minister of Infrastructure Development when he was killed on 2 October 1998. Despite uninterrupted investigations for the past 17 years, no one has been held accountable and the investigation has remained shrouded in secrecy.

The main findings of the delegation are that only tangible progress and transparency in the investigation can effectively demonstrate that strong political will to find out who killed Zorig Sanjasuuren still exists today in Mongolia. Renewed impetus in the investigation is therefore urgently needed to resolve what is widely believed to have been a political assassination. Increased transparency and regular public communication on the investigation, with the IPU and with Mr. Zorig's relatives, but also with the Mongolian people, is just as essential to restore confidence in the investigative efforts undertaken.

The delegation calls on the Mongolian authorities to redouble their efforts to solve the case, as well as to declassify the case and to start communicating on the investigation to boost public confidence that appropriate action is being taken by the authorities. Finally, it urges the State Great Hural, and particularly its oversight subcommittee, to continue playing a proactive monitoring role.

Geneva, 17 December 2015

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A. Origin and conduct of the mission

1 Origin of the mission

1. At the 132nd IPU Assembly (Hanoi, April 2015), the Governing Council noted with appreciation that the State Great Hural had welcomed a mission of the Committee on the Human Rights of Parliamentarians (thereafter “the Committee”) and requested the Secretary General to make the necessary arrangements for the mission to take place. It further recommended that the delegation of the Committee be accompanied by an international forensic expert. By a letter of 6 May 2015, the Vice-Chairman of the State Great Hural and Chairman of the Executive Committee of the Mongolian Inter-Parliamentary Group confirmed the willingness of the parliamentary authorities of Mongolia to facilitate the mission of the delegation. Despite extensive efforts undertaken by the IPU Secretariat, the inclusion of an international forensic expert in the delegation could not be achieved since information on the forensic challenges faced by Mongolian authorities and the type of forensic expert needed was not shared before the mission.

2 Conduct of the mission

2. The mission took place from 16 to 19 September 2015. It was conducted by Ms. Kiener-Nellen, member of the Committee and member of the Swiss National Council, with the assistance of Ms. Gaëlle Laroque, Human Rights Programme Officer and lawyer, from the IPU Secretariat. Its main objective was to enhance the Committee’s understanding of the status of the investigation, almost 17 years after the assassination of Mr. Zorig Sanjasuuren (“Mr. Zorig”), and of the challenges that the investigative group continued to face, including as regards forensic evidence.

3. First and foremost, the delegation sincerely thanks the authorities of Mongolia for their cooperation and willingness to engage, in particular the Chairman and the Vice-Chairman of the State Great Hural as well as the Deputy Prosecutor in charge of the investigation and the Minister of Justice. During its stay in Ulaanbaatar, the delegation was able to meet with all the authorities and individuals it wished to see, with the exception of Mr. S. Byambatsogt, member of parliament and Chairman of the parliamentary caucus of the Mongolian People’s Party, who was not available. The delegation met with the following parliamentary, government and judicial authorities, members of parliament, members of political parties, law enforcement entities, human rights organizations, family members and diplomats:

- Parliamentary authorities
 - Mr. Z. Enkhbold, Chairman of the State Great Hural,
 - Mr. R. Gonchigdorj, Vice-Chairman of the State Great Hural, Head of the Executive Committee of the Mongolian Inter-Parliamentary Group,
 - Mr. G. Batkhuu, Chairman of the Special Oversight Subcommittee
- Executive authorities
 - Mr. D. Dorligjav, Minister of Justice
- Judicial authorities
 - Mr. G Erdenebat, Head of the investigation working group, deputy of the Mongolian General Prosecutor, and two senior investigative officers of the police authority and the central intelligence agency
- National Human Rights Commission
 - Mr. J. Byambadorj, Chairman of the National Human Rights Commission,
 - Ms. E. Tuul, Officer of the NHRC
- Political parties/Parliamentary Political Caucuses and other members of parliament
 - Mr. B. Garamgaibaatar, MP, Chairman of parliamentary caucus of the Democratic Party
 - Mr. N. Battsereg, MP, Chairman of the parliamentary caucus of the “Justice” coalition of MPRP-MNDP
 - Mr. B. Javkhan, Officer of the Democratic Party’s Caucus
 - Mr. N. Enkhbold, MP
 - Ms. M. Batchimeg, MP

- Family members and friends of Mr. Zorig
 - Ms. S. Oyun, sister of Mr. Zorig and member of Parliament
 - Mr. S. Bayara, brother of Mr. Zorig
 - Ms. L. Enkhsaikhan, lawyer of the family

- Foreign Embassies
 - H.E. Mr. Gerhard Thiedemann, Ambassador of Germany
 - H.E. Mr. Takenori Shimizu, Ambassador of Japan
 - Mr. Raphaël Droszewski, First Secretary, French Embassy

- Human Rights NGO
 - Ms. Melanie Lindberg, Asia Foundation
 - Ms. D. Sukhgerel, Oyu Tolgoi Watch,
 - Ms. V. Udval, Legal Research and Development NGO (and former Deputy Minister of Justice)
 - Ms. H. Hulan, Former Member of Parliament and developed an MDG 9 on good governance for Mongolia
 - Mr. L. Sumati, Sant Maral Foundation, public polling organization

- Others
 - Mr. R. Badamdandin, former member of parliament and former Chairman of the parliamentary working group monitoring the case in 1999, board member of the Zorig Foundation
 - Mr. Den Barsboldt, artist, close friend of Mr. Zorig

4. The delegation also wishes to extend its gratitude to the secretariat of the Mongolian IPU Group, which ensured that the logistics of the visit went smoothly, and to Ms. Oyundari from the ASEM office of the Ministry of Foreign Affairs for her assistance with interpretation.

B. Outline of the case

5. Regarded by many as the father of the democratic movement in Mongolia in the 1990s, Mr. Zorig Sanjasuuren ("Mr. Zorig"), a member of parliament and acting Minister of Infrastructure Development at the time, was assassinated on 2 October 1998. At the time, Mongolia was enduring a period of political upheaval after the breakdown of the coalition government and negotiations were in place to select the next Prime Minister. Mr. Zorig was being considered as a candidate for the post on the day he was killed. Fears that the assassination may have been politically motivated have been expressed since that time, although other scenarios were also explored and never formally ruled out.

6. The case has been before the Committee on the Human Rights of Parliamentarians since October 2000. A first fact-finding mission to Mongolia took place in 2001. At that time, the Mongolian authorities were optimistic despite the mistakes made at the start of the investigation. They stated that the evidence was abundant and many lines of inquiry were still being verified at that time. A judicial investigative working group and a parliamentary oversight committee have now been in place for most of the past 17 years to pursue the investigations. The Mongolian authorities have repeatedly affirmed that every effort was being made to identify the murderers and bring them to justice. However, no one has been held accountable for the murder and impunity continues to prevail. Furthermore, the investigation has remained shrouded in secrecy as the case has been considered a "state secret".

7. The Committee has continued to call on the Mongolian authorities to ensure that the murder of Mr. Zorig did not go unpunished. It has encouraged them to pursue the investigation actively and has facilitated technical forensic assistance. It submitted the case to the IPU Governing Council for the first time in 2001. Since then, a total of 46 decisions have been adopted on the case, the most recent ones in March and October 2015.

C. Information gathered during the mission

1. Status of the investigation

8. The delegation was able to meet and exchange at length with the deputy prosecutor general - who chairs the judicial investigative working group dedicated to elucidating the case - and two senior police and intelligence officers who were senior members of the working group. Despite restrictions due to the confidentiality of the case, the delegation's questions were answered in an open and constructive manner and the delegation was pleased with the investigators' willingness to engage. The delegation also had a useful exchange with the Minister of Justice, who had formerly been in charge of the investigation as Prosecutor General.

9. These authorities confirmed that the investigative working group had been first set up right after the assassination and continued to operate for the past 17 years. Its members and leadership had been renewed repeatedly, most recently in December 2013, and with each new team a fresh review of the investigation started. The delegation was told that the investigative working group is currently composed of nine persons from the police, the central intelligence agency and the prosecutor's office, all working full time on the investigation under the direction and supervision of the Deputy Prosecutor General. According to the latter, he reports periodically to the General Prosecutor and to the National Security Council on the status of the investigation.

10. The delegation was able to verify that a judicial investigation was still effectively ongoing, although no suspect had yet been charged. According to the Deputy Prosecutor, since his appointment, he has intensified the investigations and made it a top priority to resolve the case and bring it to a conclusion. He stated that he had not faced any political hindrance in his work. He explained that the investigative working group had continued to investigate all possible scenarios for the assassination and various suspects, but was impeded in its work by the initial deficiencies of the investigation, as well as, by the repeated changes of investigators in the working group. This opinion was shared by the Minister of Justice.

11. The delegation found from most of its interlocutors that it was widely believed, among the general public, that Mr. Zorig's assassination was a political contract killing, which was most likely related to his upcoming appointment as Prime Minister.¹ This has nevertheless not been proved to date and the investigative working group appears to continue pursuing different lines of inquiries regarding the motive of the assassination.

12. The delegation was unable to assess the overall progress made in the investigation in recent years, or its timeline for the coming months because of the high threshold of confidentiality. For similar reasons, the delegation was unable to determine what scenarios, facts and hypotheses have been discarded by the investigative working group in the past 17 years of investigation and what was the most credible case theory today. Both the Deputy Prosecutor and the Minister of Justice, however, told the delegation that they had reached a stage where they had narrowed down the most likely motives to just a few, including the political contract killing scenario.

13. The delegation was unable to obtain information on any potential suspects for similar reasons but was told that the current investigative activities were also targeting some potential suspects. The delegation understood from the Deputy Prosecutor that the investigation continued to concentrate on identifying the murderers of Mr. Zorig and that it had not seriously attempted to identify potential organizers/ instigators. The investigators believed that the only way to do so was through the arrest of the murderers. Concerns were also expressed that, should the investigators start focusing on potential instigators, there were very high risks that politicians would use the case to suspect each other of having contracted the killers, thus politicizing the case once more and further blurring the picture. The decision had thus been to find the killers first, then to establish their motives, and next to

¹ According to the concurring version of the facts shared by several of the delegation's interlocutors (who were close friends of Mr. Zorig at the time), on the day he was assassinated, Mr. Zorig had just agreed to be nominated Prime Minister. He had refused before but all candidates previously nominated were not approved by the Parliament and he was asked again by the President, who was ready to support him. He accepted the offer on the day he was killed. He had only informed some members of his faction at lunch time. There were ongoing discussions in his party that day and towards the end of the day it was becoming clear that he would get the support of the majority although he had not yet informed most members of the party about his acceptance. A meeting of the bureau of the party was scheduled 48 hours later. It is believed that it would have officially endorsed his candidature and resulted in his appointment.

draw conclusions as to the identity of potential instigator(s) and organizers having acted behind the scenes and ordered the assassination.

14. The delegation questioned the value of concentrating investigative efforts on identifying the killers rather than the instigator(s) of the assassination.² The delegation observed with concern that the current investigative approach would end in failure if the direct perpetrators were no longer alive or could never be identified. In that respect, the delegation was also told by many of its interlocutors that it was highly unlikely, in their personal opinion, that the contracted killers would be found alive after such a long time - whether they had been quickly disposed of after the assassination, or had died in the meantime of natural causes owing to the time elapsed. The delegation noted, however, that a few persons did not rule out the possibility that they had found refuge abroad. The delegation suggested that the investigative group could benefit from foreign training and expertise on special investigation techniques related to contract killings. It also urged it urgently to start exploring ways of identifying the instigators by other means than identifying the direct perpetrators.

15. The delegation also received confirmation that the investigation was particularly difficult in the light of the initial deficiencies of the investigation (in particular the contamination of the crime scene) and the passage of time. It was told that witnesses were growing older and had difficulty remembering the events precisely. The Deputy Prosecutor stated that an analysis of the political and economic environment before and after the assassination had been conducted and that over 100 witnesses had been questioned in the course of the investigation. He confirmed that all key politicians had been questioned at the time. The delegation was unable to obtain any details on the identity of the witnesses and the evidence they had provided, or to ascertain whether the investigators were still in regular contact with key witnesses or only relied on the written account established after the assassination.

16. The delegation noted that some of its interlocutors were not confident that the investigators had seriously looked into the involvement of high-level politicians and feared that the witnesses questioned did not represent the full political spectrum at the time and might have given a politically biased picture of the case. Supporters of the Democratic Party ("DP" - Mr. Zorig's party) expressed the view that they had been unfairly targeted and questioned as suspects (rather than witnesses) while stating that, to their knowledge, few politicians of the Mongolian People's Revolutionary Party ("MPRP") had suffered similar treatment. They observed that, being from the same party as Mr. Zorig, members of the DP had no motive to want him killed on the eve of his nomination as Prime Minister, quite the contrary. They therefore felt that the investigation should have rather focused on the alleged involvement of the MPRP, which at the time was trying to get back into power following the emergence of the democratic regime and still exercised strong influence on the intelligence and law enforcement services. Supporters of the DP remained bitter that, as a result of the investigation focus and of a public campaign led by the MPRP in the run-up to the elections, they had been publicly portrayed as being behind the assassination of Mr. Zorig for purely political purposes (with the outcome of losing most of their seats in Parliament following the 2000 election). On the other hand, supporters of the MPRP told the delegation that at the time of the assassination, the DP was divided and that Mr. Zorig belonged to a dissident faction which had its own enemies within the party. Hence they believed at the time that some members of the DP were behind the assassination. They refuted the view that only the DP was targeted by the investigation and felt that most key actors had been questioned and asked the right questions by the investigators at the time. The delegation could not fail to remark that the above views were expressions of personal opinions (some of which have also evolved over time) and that, given the confidentiality of the case, no one appeared to actually know what had really been done by the investigators. The delegation was nevertheless struck to see that personal opinions on the subject remain very strong, owing largely to the lack of results and the opacity of the investigation.

17. Finally, the delegation did not get a clear sense as to whether documentary evidence had been thoroughly collected and analysed at any point by the investigators, and with what result. The delegation shared its conviction with the Deputy Prosecutor that, considering the history and circumstances of the case, witness statements and public records (including official records but also such open source material as speeches, public statements or media reports) were likely to be the

² It further noted that this had been questioned already in the first report of the parliamentary special working group established after the assassination to assist in the investigation (published on 7 July 2000, and distributed to all members of the State Great Hural at the time). The working group found that there was a lack of focus on investigative efforts and analysis as to who the potential organizers could be from the political point of view. It concluded that political will was lacking to resolve the case.

strongest evidence available. This conviction was further strengthened when the delegation was told by a few persons that they remembered that some of the speeches delivered immediately after the assassination warranted serious investigation in the light of their content and timing.

2. Forensic evidence and foreign assistance

18. The Deputy Prosecutor confirmed that a significant focus of investigative efforts had been on forensic analysis in recent years. He acknowledged that he was not in a position to guarantee 100% the quality of the evidence gathered owing to the initial contamination of the crime scene. He further confirmed that past IPU assistance had been valuable in establishing contact with foreign forensic experts able to conduct appropriate verifications.

19. The Minister of Justice explained to the delegation that before 2008-2010, Mongolia lacked any forensic analysis capacity. It gradually obtained the requisite support from international partners to acquire adequate facilities and domestic expertise to conduct fingerprint analysis, DNA testing and other analyses. A forensic laboratory was established under the authority of the Ministry of Justice and the law on forensic evidence was amended to enable law enforcement personnel to have access to and use the technologies available. This helped “resuscitate” evidence collected in the Zorig case. The Minister of Justice further told the delegation that, when Prosecutor General, he had taken steps to secure foreign judicial assistance by signing memoranda of understandings with a number of countries.

20. The Deputy Prosecutor told the delegation that, following his appointment, he had made the decision to focus on all forensic evidence available in the case, first to check whether or not it had been affected by the passage of time and the conditions of storage, and, second, to analyse and research thoroughly all the samples available to a greater extent considering that new technologies had now become available which might yield promising results.

21. He explained that, in the past, forensic assistance was provided by the German and Japanese police (2008-2010) thanks to the facilitation of the IPU. Because of the poor quality of the samples and the existing technology at the time, the analyses were not conclusive. The cooperation was later pursued with Korea and the United States. Mongolia approached these countries, and many others, for help in analysing 21 pieces of hair and 18 fingerprints found at the crime scene. The fingerprints were compared with the prints available in Mongolian databases but not all of them could be matched, which led the investigators to think that the perpetrators must have left Mongolia.³ As regards the hair samples, the initial analysis showed that the samples did not comply with requirements for DNA analysis. With the emergence of new technologies, such as mitotyping, the Mongolian authorities have tried to establish contact with specialized forensic centres able to run these new types of analysis, which, according to the investigators, would allow them to define gender, age and ethnicity on the basis of the hair samples. They have cooperated, and continue to cooperate, with a Mitotyping Institute based in the United States since 2011 to that end. They have also requested IPU assistance to help them identify, and establish cooperation with, a scientific research institute in Europe with the requisite technology.

22. According to the Deputy Prosecutor General and the parliamentary authorities (who have conveyed the request to the IPU), Mongolia has recently sought assistance from 39 countries⁴ to run the fingerprints in their systems and check whether they match the identity of Mongolian citizens present on their territory. The Mongolian authorities have insisted that not only criminal databases should be checked, but also immigration and intelligence databases. According to the Deputy Prosecutor, many countries have responded to the request and some have agreed to provide assistance and run the samples in their criminal databases. However, few have agreed to check their immigration or intelligence records. The Minister of Justice nevertheless pointed out that it was very difficult to obtain such assistance without hard evidence pinpointing a suspect. He confirmed that, in the present case, the investigators were not targeting specific suspects or even specific countries but

³ The parliamentary authorities further explained to the delegation that the assumption was that the crime had been committed by Mongolian nationals on the basis of witness testimonies and that they must have fled abroad a long time ago because today all Mongolian ID cards include fingerprints and have thus been checked.

⁴ Countries with large communities of Mongolian citizens

were seeking broad access to fingerprint databases of other countries to see if any matched the fingerprints they had found at the crime scene.

23. The Mongolian authorities consider that further assistance remains necessary to ensure that the forensic samples can be run in the systems of all requested countries until a match is found. They have expressed the hope that the IPU could help facilitate this new request for assistance. The delegation was informed that the State Great Hural had submitted a formal request to the Committee back in January 2014 and explained that the request had indeed been received but that the Committee had been unable to respond since the above detailed explanations had not been forthcoming, despite repeated requests to that end.

24. During its mission, and particularly in its meeting with the Deputy Prosecutor, the delegation questioned the value of forensic evidence on the premises that, even if forensic analysis eventually led to the identification of the direct perpetrators, it was unlikely that the evidence would stand up in court, owing to the initial crime scene contamination and the conditions in which the forensic samples were collected and stored for 17 years. It also expressed its belief that other evidence, such as witness statements and public records, would build a stronger case and might also help identify the instigator(s), unlike forensic evidence.

25. Finally, the delegation noted with surprise during its meetings with the Ambassadors of Germany and Japan that they were unaware of the pending forensic assistance requests, which had not been conveyed to them by the Mongolian authorities. The delegation also took note of the legitimate concerns of family members that the forensic evidence might have been damaged or tampered with over the years since no detailed information has been made available on the conditions of storage and chain of custody. They were also worried that some items of evidence might have disappeared or been destroyed. Among others, specific reference was made to a blood-stained carpet that was in Mr. Zorig's apartment and had been burnt some years ago.

3. Confidentiality of the investigation

26. The delegation was able to clarify that the "wall of secrecy" surrounding the case was in part due to the classification of the case under the State Secret Law, and in part to the usual confidentiality of ongoing criminal investigations. It understood that the case was classified because of the involvement of the intelligence agency in the investigation under article 81 of the Criminal Code and article 27 of the Code of Criminal Procedure, as well as pursuant to the law on State secrets. This involvement was justified by the fact that Mr. Zorig was an official figure at the time of his assassination, as he was a member of parliament as well as the Minister of Infrastructure Development at that time. If the crime had been considered an ordinary murder, only the police would have investigated it and the case would not have been classified. It would have anyway been kept confidential since the criminal investigation was ongoing. Under Mongolian criminal law, the Prosecutor's Office is under no obligation to disclose the case file until charges are brought against identified suspects. Therefore, even if the case were declassified today, it would remain confidential. However, in such an event, the head of the investigative working group would have the authority to decide to disclose some information on the investigation, as is usual practice in ordinary criminal investigations. Communications and open debate about the case would also not be restricted in a similar way.

27. The delegation was told that, unless the State Secret Law was amended or the case declassified, it remained formally prohibited to disclose any information on the case and anyone acting contrary to the law would be immediately placed under arrest. The delegation was told that a declassification procedure existed although it was unclear and appeared not to have been ever used. The delegation understood that, as in any criminal investigation, there was a need for a measure of confidentiality to be maintained, particularly in view of the political sensitivity of the case. It did not, however, find it appropriate that the case continued to be classified 17 years later.

28. The delegation also found it very unusual and troubling that intelligence services would play such an important and lasting role in a criminal investigation. It observed that the uninterrupted involvement of the intelligence agency in the investigation and the ensuing lack of transparency, combined with alleged dubious methods of questioning and investigation at times, were also raised by many as a concern. Particular reference was made to the case of a Mongolian national who had been

abducted from Europe, forcibly returned to Mongolia and tortured by the intelligence services. He claimed that he had been pressured into confessing to Mr. Zorig's assassination and naming one of the leaders of the Democratic Party as a suspect. The delegation further noted that some of its interlocutors thought that such an assassination could not have happened - or remained unpunished - without the complicity of the intelligence services in a country like Mongolia where their influence and control over political life was extremely important at the time.

29. The delegation received confirmation that no debate on the case, or on its lack of settlement, had ever taken place in Parliament or in any other public spheres because it was classified. According to what many interlocutors told the delegation, the people of Mongolia, including highly active, well-educated and politically engaged civil society members, – but also members of Parliament – were generally not informed that an investigation into the assassination of Mr. Zorig was still ongoing. Those knowing about it appeared to have little hope that the truth would ever be known as they had been given the same answer for years (“the investigation is confidential and is still ongoing”) whenever they tried to find out why nothing had happened.

30. The delegation understood that the classification of the case and the high level of confidentiality also largely accounted for the fact that relatives of Mr. Zorig, who are formal parties to the judicial proceedings, have been denied access to the investigative files. Their requests have been left unanswered although, according to their lawyer, they were legally entitled to access forensic reports and files related to the crime scene. Finally, in the view of the delegation, the same reasons explain why the IPU Committee had been unable to receive substantive responses to its repeated information queries until the present mission.

31. The delegation therefore wishes to remind the Mongolian authorities that justice needs to be done, but it also needs to be seen to be done. It can but consider that the confidentiality of the case has been and remains excessive and that it has not been conducive to progress or accountability, quite the contrary. The delegation believes that the high level of confidentiality has prevented any effective oversight of the investigation, which has been happening behind closed doors with no public scrutiny for the past 17 years. The delegation emphasizes that “rule of law, respect for the lawful interests of citizens, openness and impartiality” are among the main principles that should guide decisions on information transparency, pursuant to article 5 of the 2011 Law on Information Transparency and the Right to Information. Significant progress appears to have been made in Mongolia as regards information transparency in various areas of public life. While it is perfectly normal for a State to be able to classify some information for security purposes, the delegation notes that concerns have been expressed in the past regarding the far-reaching scope of the Mongolian legislation on state secrets which has been analysed as detrimental to the public interest and in contradiction with the government's prior commitment to openness.⁵ The delegation further observes that it was unable to obtain clear answers on the procedure applicable to obtaining the declassification of information.⁶ It would welcome additional information on this issue as well as on reforms undertaken or contemplated in relation to state secrets.

⁵ A comparative legal analysis of the Mongolian legislation on state secrets produced in 2004 concluded that the legislation in force set up “such far-reaching restrictions on access to government records in Mongolia as to make it possible for virtually anything to be classified as “secret” are hidden from the public view for an indefinite period.” It also found that it contradicted the spirit of the government's commitment to openness and that unnecessary secrecy bred irresponsibility on the part of government officials and led to corruption. It further pointed out in its analysis of the legislation that it failed to prohibit the classification of what must not be classified as a state secret, such as state repression against its own citizens and abuse of human rights. The legal analysis was prepared by Sergey Radchenko, a United States professor who was at the time a visiting faculty member at the National University of Mongolia; http://www.forum.mn/pdf/feature/state_secret_en.pdf He appears to have undertaken this research under a project on freedom of information in Mongolia for the NGO Globe International which paved the way to the adoption of the Law on Information Transparency and Right to Access Information in 2011, <http://www.globeinter.org.mn/old/en/eprograms/index.html>

⁶ According to an English translation of the State Secret Law of 1995 available on the Internet, article 21 provides the grounds on which state secrets shall be declassified, which include “no grounds to classify due to new circumstances” and “other grounds”. Articles 13 and 14 define the respective powers of the State Great Hural, the President of Mongolia as Chairman of the National Security Council and the Government in guarding state secrets. The provisions are not entirely clear but provide possibilities of declassification which are regulated as follows:

- (i) The Great State Hural has the power to declassify state secrets on the basis of proposals submitted by the National Security Council and the government cabinet (Article 13(1)(b));
- (ii) All three institutions have the right to submit proposals to the Central Intelligence Agency to declassify state secrets or to propose to transfer or extract them (Article 14(1)(2) and (3));
- (iii) The central intelligence agency has the right to submit proposals to the Government to declassify information, documents or items as state secret.

4. Role of the State Great Hural

32. The parliamentary authorities confirmed to the delegation that they shared the Committee's dissatisfaction that the perpetrators had not been brought to justice. They thanked the Committee for supporting the continuation of the investigation and for facilitating foreign technical assistance. They expressed the hope that the delegation's meetings with the relevant authorities, particularly the Deputy Prosecutor and the Minister of Justice, would lend new impetus to the settlement of the case and enable the Committee to obtain all the necessary information. They observed that the fact that the case remained unresolved was one of the causes of mistrust among the political groups and that it was in the national interest to solve it.⁷ They also strongly reaffirmed that leaving the assassination of a member of the State Great Hural unpunished sent a dangerous message and was not acceptable.

33. The State Great Hural has been monitoring the investigation since December 1998 through successive parliamentary committees (currently, the special parliamentary Oversight Subcommittee, also called special inspection committee, thereafter designated as "the Oversight Subcommittee"). The Oversight Subcommittee does not deal solely with the monitoring of the Zorig case. It has a broad mandate of inspection/oversight of all law enforcement agencies, including budget allotment and oversight of their activities. The members of the Subcommittee come from all political parties and the subsequent political balance is seen as an essential element of effective and impartial oversight.

34. The Chairman of the Oversight Committee explained that he was not in a position to provide the delegation with detailed information on the case because of its classified status. The Chairman of the State Great Hural clarified that the Chairman of the Oversight Subcommittee had no authority to direct the investigative working group to share detailed information with the delegation or even with the Subcommittee itself. He also emphasized that the State Great Hural lacked any investigative powers under the Constitution of Mongolia and could only monitor the investigation as part of its oversight function. The Chairman of the Oversight Subcommittee acknowledged that striking an appropriate balance was a difficult exercise given the sensitivity of the case. He did not believe that such appropriate equilibrium between transparency and confidentiality had yet been found and agreed with the delegation that the current formula needed to be improved to facilitate internal and external communications and reporting on the investigation. He nevertheless warned the delegation that the case remained very sensitive as many rumours had spread on possible suspects, including MPs who were at times named publicly in violation of the presumption of innocence and parliamentary immunity. The Chairman of the Oversight Committee reminded the delegation in this regard that parliamentary immunity prevented the scrutiny of members of parliament unless they had first been proven guilty.

35. According to the Chairman of the Oversight Subcommittee and the Deputy Prosecutor, a new practice was put in place since late 2014 to improve information-sharing and a more effective exercise of the parliamentary oversight function. It was agreed that the investigative working group would start reporting quarterly to the Oversight Subcommittee. The working group now submits a written report which is then discussed during a closed session of the Subcommittee. The latter is entitled to report back to Parliament and to the executive branch in cases of hindrance in the investigative process. The Chairman of the Oversight Subcommittee pointed out that this reporting procedure was still quite new and needed to be further improved because the reports submitted so far had failed to report adequately on the investigative steps actually taken and the progress achieved during the reporting period.

36. In an attempt to improve future communications between the State Great Hural and the Committee, the Chairman of the Oversight Subcommittee agreed to share written updates with it twice a year before IPU Assemblies. He also suggested to the delegation and the Mongolian IPU Group that he could be invited to take part in IPU Assemblies to share an oral update with the members of the Committee.

37. Finally, during discussions with members of parliament, the delegation was also informed that individual members of parliament were entitled to submit queries on the case and that Ms. Oyun Sanjaasuren, the sister of Mr. Zorig and a member of Parliament, had done so in the past. The delegation was not provided with other examples of the use of this parliamentary procedure in relation to

⁷ Interestingly, the delegation noted that this was already reported in the initial report of the parliamentary committee established to monitor the investigation, published on 7 July 2000.

the case. It was surprised to find out that none of the political parties had apparently ever made such queries or taken action to support the settlement of the case within the parliamentary institution. The delegation understood that, following its discussion with the Chairman of Democratic Party parliamentary caucus, he would be willing to suggest that a closed session/hearing be organized at committee or plenary level to discuss the status of the case and the monitoring role of the State Great Hural. The delegation also raised the issue with the Chairman of the Justice Coalition, who did not oppose it. It regretted that it was unable to discuss it with the Chairman of the Mongolian People's Party caucus, as it felt that with support from all political parties, a debate could be organized and hopefully lead to the adoption of a joint resolution by consensus in support of the settlement of the case.

5. Political Will

38. It was important for the delegation to find out whether there was still some political will on the part of the Mongolian authorities to resolve the case. It noted with satisfaction that all authorities shared their dissatisfaction and disappointment that the crime had not been resolved after such a long time and reaffirmed their continued commitment to shedding light on the assassination and holding the culprits to account. The Minister of Justice stated that the President of Mongolia had specifically given guidance to all relevant authorities that the case must be settled during his current term of office. The delegation observed that, according to many of its interlocutors, the persistence of impunity in the case was widely seen as a stain on the 25th anniversary of democracy in Mongolia, particularly given the unique role played by Mr. Zorig in the 1990s to set the country on the road of democratic change. The delegation noted with interest that most of its interlocutors, regardless of their positions or political affiliations, were quite aware that the strength of democracy and rule of law in Mongolia today was also affected and measured by the capacity of the State to address past human rights violations, such as the assassination of Mr. Zorig.

39. As previously mentioned, the delegation noted that secrecy and lack of progress in the investigation had strongly eroded the trust and confidence of the general public that there was ever any real political will to establish the truth. While all authorities, including the investigative working group, asserted that they had encountered no political hurdles or interference, the delegation could not fail to note that it was repeatedly told by its interlocutors that the general public was by and large convinced of the opposite and believed that the case had been covered up. The renewed commitments to shedding light on Mr. Zorig Sanjasuuren's assassination appear to have been widely seen as empty political promises.

40. The delegation also wishes to reflect the following points and issues of concern raised by a number of interlocutors, some of whom questioned the will of the authorities to resolve the case on these grounds and sometimes went as far as stating that the current status quo was probably convenient for all political parties today:

- The case should have been easy to solve: Mongolia has a small population and an even smaller top political and economic leadership (even more so in 1998). Everyone initially expected that it would be handled in a matter of weeks after the assassination. Initial suspicions of possible state complicities and lack of political will to hold the culprits to account were reinforced over time given the lack of results. It was ventured that some investigators might have found the truth and been subsequently removed. It was also mentioned to the delegation that some murder cases had been solved with less evidence and that the Mongolian judicial system functioned properly in ordinary circumstances. Only few murder cases were reportedly left unresolved today in Mongolia and the only other unsolved political crimes brought to the attention of the delegation seem to relate to contract killings in the 1960s where the context was entirely different as Mongolia was not yet a democracy.
- The authorities of Mongolia repeatedly assured the IPU of their commitment to settling the case. However, at the domestic level, no commitment has allegedly been voiced or effectively demonstrated. The impression of people not privy to the investigation appears to be that only relatives of Mr. Zorig have continued to actively seek the truth and insist that the investigation should continue and that neither the authorities nor the political parties have actively supported their quest for justice. Quite the contrary, some of Mr. Zorig's relatives and close friends told the delegation that they had been criticized for being persistent and vocal regarding the case. Furthermore, the authorities responsible for the investigation for the past 17 years have in no way been held accountable for their lack of any result; not even the authorities responsible for the initial contamination of the crime scene appear to have

been punished or demoted; some officials were reportedly promoted despite their failure to settle the case.

- Politics has historically been conducted in a very personalized way in Mongolia and, overall, the same circle of individuals has retained positions of power since the assassination (although in different positions and following repeated changes of alliances). It has reportedly not been conducive to progress in the investigation despite reforms to end the old ways and further entrench democratic principles. Should justice and accountability not be achieved, one hope apparently shared by a variety of persons was that persons involved or who had first-hand information on the circumstances and motives of the assassination would eventually consider confessing to the crime in one way or another once they retired from political life, so that the family of Mr. Zorig would at last know the truth.
- Political functions and judicial/law enforcement duties have often been treated as interchangeable. It is not unusual for one person to act as member or leader of a political party at one time, as law enforcement official/personnel at another time, or a Minister or a member of Parliament at yet another time - and to deal in turn with the same business in different capacities. Many examples of such "career changes" were mentioned to the delegation in relation to the Zorig case.⁸ While such practice is not illegal per se, it raises concerns as judicial and law enforcement duties require strict political neutrality. Such practice is likely to result in frequent conflicts of interests and to contribute to the perception, by the general public, that officials do not act pursuant to the national interest but for their own political benefit.⁹ It can also give the impression that some institutions, more particularly law enforcement agencies, serve political interests rather than the national interest when considered more profitable.
- Law enforcement personnel in Mongolia reportedly remain strongly influenced by political parties. There are concerns about the effective independence of judicial staff and law enforcement personnel as shifts in appointments are frequent and remain largely based on political affiliation and patronage as well as on personal ties and short-term political and economic interests. It is apparently still common practice in Mongolia, when a senior official is replaced, to change all the personnel under him as well, down to the lowest level of hierarchy. Systematic rotations of officials and technical/ administrative personnel are not conducive to ensuring independence.

41. In view of the above, the delegation considered that there were many combined factors that were likely to account for the lack of results in the investigation after 17 years, including:

- the initial investigative deficiencies (particularly the 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 the investigators;
- the ongoing involvement of the central intelligence agency and excessive secrecy created by the classified status of the case;
- the political dimension of the case and its subsequent political instrumentalizing by political parties;
- the time elapsed and its consequences;
- the lack of accountability of the competent authorities despite the absence of results in the investigation.

42. The delegation concluded that it was therefore not in a position to conclude that, among the various factors, political interference may have played a significant role, but it could also not exclude it. This was particularly true considering the lack of results in resolving the case after 17 years of full-time

⁸ The most frequent example given the delegation was that the then chairman of the investigative working group (Mr. Mörön, who was the Chief of Police at the time), ran in the 2000 parliamentary elections and was reportedly elected after promising that his party – the MPRP – would settle the case in no time at all.

⁹ The law on Regulating Public and Private Interests in Public Service and Preventing Conflicts of Interest (January 2012) was adopted in an attempt to regulate and prevent conflicts of interest arising between the official duties and private interests of those in public service roles, and to regulate and monitor conflicts of interest in order to ensure that public service activities accorded with the public interest and that transparency and faith in public services was maintained. It defines conflict of interest as a situation where a private interest of a public official contradicts public interest in his/her official capacity and may affect a fair and unbiased discharge of his/her official duties. It has introduced some restrictions but they apply essentially to conflict of economic interest, illicit enrichment and corruption.

uninterrupted investigations and corresponding political commitments by the successive authorities to establishing the truth. Considering that the assassination of political figures such Mr. Zorig is subject to a 25-year statute of limitations, and that the investigation is becoming increasingly difficult as time passes, the delegation believes that renewed impetus in the investigation is urgently needed and calls upon all relevant authorities; including the National Security Council, to take immediate action to that end.

43. In order to rebuild confidence in the investigative work, the delegation also invites the Mongolian authorities to consider establishing an independent mechanism to conduct a full review and assessment of the investigation case files and evidence, with the assistance of experienced foreign criminal experts whose expertise and impartiality would, in the delegation's opinion, make an invaluable contribution to the existing investigative work that has been achieved under difficult circumstances. Alternatively, the delegation suggests that the current investigative working group should invite experienced foreign criminal experts to join the working group for an extended period of time with a view to benefiting from their expertise, impartiality and networks for foreign assistance. The delegation recommends that the IPU facilitate foreign assistance for the above purposes.

44. The delegation also considers that the National Human Rights Commission could play an important role in promoting progress in the case from a human rights perspective, particularly in the light of concerns related to due process, unreasonable delays in providing redress for the crime and lack of information provided to the victims. It regrets that the case has not been referred to it and encourages qualified complainants, particularly relatives of Mr. Zorig and human rights NGOs, to lodge a formal complaint.

45. Finally, the delegation has noted with concern that the persisting impunity in the Zorig case does fuel a fear that such criminal acts may in future target MPs again. It deeply appreciated the fact that the Chairman and the Vice-Chairman of the State Great Hural confirmed that this precisely why the institution of Parliament as a whole remains committed to settling the case and will continue to monitor the investigation.

D. Observations and recommendations further to the mission

46. On the basis of the information gathered during its mission, the delegation is of the view that only tangible progress and transparency in the investigation can effectively demonstrate that strong political will to find out who killed Zorig Sanjasuuren still exists today in Mongolia. Renewed impetus in the investigation is therefore urgently needed. The delegation calls on the Mongolian authorities to redouble their efforts to resolve what is widely believed to have been a political assassination: it urges them to establish clear priorities and a timeline to that end. It trusts that the President, the Prime Minister and the Chairman of the State Great Hural, in their respective capacities and as members of the National Security Council, will do their utmost to ensure that justice is done and seen to be done.

47. The delegation also believes that the investigative working group could benefit from specialized assistance and training on investigation methodology related to contract killings. The delegation invites the Mongolian authorities to include experienced foreign criminal experts in the investigation, as part of the existing working group or of a new independent investigative mechanism. It strongly believes that the expertise and impartiality of foreign experts would make an invaluable contribution to the existing investigative work and help strengthen public confidence. It also suggests that the investigative team should spend more time examining witness statements, public records and open source materials instead of essentially focusing on forensic analysis, which, in the view of the delegation, is unlikely to prove conclusive and will, in any case, not help establish the motives of the assassination or the identity of the instigators. In the hope that forensic analysis may nevertheless advance the investigation, it suggests that the Committee invite IPU members of countries that have officially been approached by Mongolia to assist with the recent request for forensic assistance to encourage the relevant national authorities to respond positively to the request.

48. The delegation further calls on the Mongolian authorities to strike an appropriate balance in the treatment of the case between the need for a reasonable measure of confidentiality and the pressing need for increased transparency and regular public communication on the investigation. The delegation recommends that the case be promptly declassified and that the State Secret Law be amended to avoid similar situations in the future. It calls upon the competent authorities, in particular the National Security

Council and the State Great Hural, to take prompt action to that end. It also recommends that a system of public reporting on the investigation be promptly established and that opportunities for public debate be created to boost public confidence that appropriate action is being taken by the competent authorities.

49. It further recommends that legal provisions which permanently assign intelligence officers to criminal investigations be amended to ensure that any action taken by intelligence services under a criminal investigation occurs exclusively on instructions, and under the full supervision of the Prosecutor's Office. It should be restricted in time and its scope should be strictly limited to intelligence activities. It should strictly adhere to international standards of human rights, and redress and accountability mechanisms should be put in place in cases of abuse.

50. The delegation invites Mr. Zorig's relatives to file a complaint with the National Human Rights Commission of Mongolia so that it is able to make constructive suggestions on ways forward within the scope of its mandate.

51. The delegation expects that the investigative working group will continue to report quarterly on its latest investigative activities (including breakthrough and challenges) to the Oversight Subcommittee of the State Great Hural and that the latter will be able to exercise its oversight function more effectively. The delegation urges the Mongolian authorities, particularly the investigative working group and the special Oversight Subcommittee of the State Great Hural, to keep the Committee on the Human Rights of Parliamentarians apprised of their efforts, including recent investigative steps taken, their outcome and outstanding challenges. To that end, it wishes to receive periodic reports on the investigation at least twice a year before each IPU Assembly. It would find it useful for the Committee if the Chairman of the Oversight Subcommittee, or one of its members, or the Deputy Prosecutor could occasionally participate to an IPU Assembly and come before the Committee to share the latest developments in the investigation.

52. The delegation further invites the State Great Hural to organize a debate on the case in parliament. It calls on all political parties to adopt a joint resolution by consensus in support of the settlement of the case. It is convinced that it would be an important step forward for all political forces to acknowledge the existing concerns and commit themselves, in the common interest of the nation, to taking and supporting all appropriate measures to bring about progress, including increased transparency, effective oversight and a commitment to stop resorting to the case for political gain. The delegation suggests that such a joint resolution should also include an expression of support and a public apology to Mr. Zorig's family for the State's failure to bring those responsible for his killing to justice.

E. Observations supplied by the complainants

53. The complainants have confirmed that they were satisfied with the content of the mission report and its recommendations.

54. According to the complainants, a few months ago the Mongolian media reported that several people, including Mr. Zorig's former partner, Ms. Bulgan, had been detained in relation to this case. No information has been provided by the investigating authorities relating to these detentions. According to the complainants, Mr. Zorig's family, through their lawyer, have requested access to the information to which they have a legal right. The family has been informed, again through their lawyer, that they will be able to have access to some of the evidence relating to the case in the near future. This has, however, not happened to date and they have noted their disappointment that this was taking longer than expected.

55. According to the complainants, Mr. Byambadorj, Head of the Human Rights Commission, gave an interview to a newspaper responding to questions about whether there had been human rights abuses, in particular with regard to Ms. Bulgan's detention. According to the complainants, Mr. Zorig's family has not officially submitted a complaint to the Human Rights Commission of Mongolia, in the hope that progress would be made following the new developments over the last few months.

56. The complainants further indicated that, in view of the parliamentary election campaign, they hoped that the case would not be too politicized to the detriment of the resolution of the case.