MEDIA FREEDOM REPORT

2012-2014

Globe International Center

Our sincere gratitude for publication of this report to:

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TITLE

PREFACE

It is our pleasure to present the Media Freedom Report 2012-2014 to be published on the occasion of the World Press Freedom Day annually celebrated on May 3.

According to the Press Institute 2014 survey, about 5000 media professionals work in 506 media outlets throughout the country. There are 142 TV stations, 72 radio stations, 123 newspapers, 98 magazines and 71 online media outlets. 30 percent of all media outlets operate in provinces outside of the capital.

As information communication technology continues to develop, the number of online media users is likely to increase each year, and it follows that media will face new challenges in the future. Multilateral and more integrated public discussion about issues on freedom of expression on the Internet, privacy, ethics, access and digital security must be held. Issues on the nature of the Internet, opportunities to share information and knowledge, levels and capacity of user-generated content need to be discussed, as well as users' actions, culture and ability to speak and express themselves publicly and to dispute and discuss important social issues from all sides. The United Nations constantly calls for people to respect openness and the freedom of expression. Unfortunately, the regulations issued by the General Communications Regulation Commission (CRC), including its requirements which require the use of a filtering system, the registering of websites, the need to obtain operations licenses are inconsistent with UN and international standards. Furthermore, these regulations unduly restrict the freedom of expression on the Internet. These issues have grown in import during the reported years.

As Globe International Center (GIC) reported, from 2012-2014, violations against journalists and the media increased compared to previous years and journalists faced external threats and intervention in their professional work, different types of pressures, threats, censorship in distribution, demands to reveal their information sources, to question and give testimony in mass by law enforcement bodies, especially by the General Intelligence Agency, use of criminal defamation law by politicians and public bodies or public officials censoring the media.

In the report, we included three chapters. The first describes the media legal environment, which guarantees and restricts the freedom of expression; the second chapter highlights freedom of expression violations in 2012-2014; and the third includes a survey on criminal and civil defamation cases.

This year's World Press Freedom Day is significant as it is concurrent with two other occasions. First, Mongolia joined the Freedom Online Coalition and the chairmanship of the Coalition was passed on to Mongolia for the year 2014-2015. The Fifth Freedom Online conference will be held in Ulaanbaatar on May 4-5, 2015. Second, on May 5 the UN Human Rights Council will review the Mongolian submission for the Human Rights Universal Periodic Review (UPR) in Geneva. The Mongolian Human Rights NGO Forum

delivered twelve submissions, among them GIC prepared a separate report "Freedoms of opinion and expression" (Please see the full report in Annex 2)

We believe that next year's World Press Freedom Day will be celebrated with delight as the Parliament and t of Mongolia amend the relevant laws and regulations consistent with Article 19 of the ICCPR, which Mongolia ratified in 1974. In the Constitution, Mongolia declared to fulfill in good faith its obligations under international treaties to which it is a party.

We would appreciate your comments and recommendations regarding the report. Please send to globe@globeinter.org.mn, or globenews@globeinter.org.mn. We will consider your valuable input in the next report.

Khashkhuu Naranjargal, Head of Globe International Center

ONE. MEDIA LEGAL ENVIRONMENT

1.1. Guarantees of Freedom of Expression

Constitution and International laws and standards

Article 16 of the Chapter on Human Rights and Freedoms of the Constitution of Mongolia guaranteed that "The citizens of Mongolia shall be guaranteed the privilege to enjoy the following rights and freedoms:

16.16 Freedom of thought, opinion, expression, speech, press and peaceful assembly.

16.17 The right to seek and receive information except that which the state and its bodies are legally bound to protect as secret.

Mongolia became a member of the United Nations in 1961 and recognized the Universal Declaration of Human Rights. In 1974, Mongolia ratified the International Covenant on Civil and Political Rights (ICCPR) and joined the Organization for Security and Co-operation in Europe (OSCE) in 2012. As such, Mongolia is legally bound to protect the freedom of expression in accordance with international laws and standards. In conformity with Article 10 of the Constitution, the above mentioned documents are effective as domestic laws. This is formally recognized in part 10.3 of Article 10 of the Constitution which stated that "The international treaties to which Mongolia is a Party become effective as domestic legislation upon the entry into force of the laws on their ratification or accession" and was published in Turiin Medeelel (State Gazette) in 2005.

Article 19 of the Universal Declaration of Human Rights stated that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Article 19 of the International Covenant on Civil and Political Rights stated that "Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

The UN Human Rights Committee adopted the General Comment No34 on Article 19 of ICCPR which guaranteed the right to freedom of expression, by its session 102 held from 11-29 July 2011 in Geneva. This General Comment provides a more clear interpretation and application of Article 19.

Part 16.17 of Article 16 of the Constitution of Mongolia stated that "In order to protect the human rights, dignity and reputation of persons and to ensure national defense, security and public order, the information which is not subject to disclosure must be classified and protected by law." This article indicates the purpose and reason that can put restriction on freedom of expression.

1.2. Media Freedom and Journalism Professional Activities

The Parliament of Mongolia enacted the Law on Media Freedom on 28 August, 1998. Article 2 of the Law prohibited the Parliament to pass any laws restricting media freedom. Article 3 of the Law stated: "The Government shall not censor the content of the public information and media outlets shall take responsibility for its publications and programs". Article 4 of the Law prohibited the Government to own its own mass media. This Law is the main regulation guaranteeing the media freedom.

The Supreme Court of Mongolia interpreted "media tools" as definition of "informing tools mean networks of television, radio and communication, computer network, specific programs, print media and other tools" which reflected in part 3.1.5 of Article 3 of Law on Advertisement.

The Parliament passed the Law on Public Radio and Television on 27 January 2005. It created a legal ground for public television and radio which are under control and finance of public at national level.

Since then no legal regulation has been adopted to address broad programmes which is important in the media sector, protection of confidential sources and whistleblowers, fair competition, and ownership transparency.

Article 139 of the Criminal Code passed in 2002 recognized the interruption to the journalistic professional activities as a crime. The Supreme Court made an interpretation of Article 139 by its resolution 51 dated on 21 December 2007. "Any information which affects the culprit's or others' interests…" mean that "any production prepared by a journalist in order to publicly inform a specific issue and topic related to the culprit or others", "…journalist's professional activities that are consistent with law…" mean that activities of seeking, receiving, collecting, developing and publishing information except the information which is related to the confidentiality of state, organizations and individuals protected under the Constitution and other laws." This provision and interpretation of the Law are not able to ensure the protection for journalists' activities.

Working group members headed by Mrs. Batchimeg M., Member of the Parliament developed the revised draft Law on Media Freedom and submitted it to the Parliament on 4th July 2014.

According to the Law on the National Human Rights Commission of Mongolia passed in 2000, the Commission is an institution mandated with the promotion and protection of human rights and charged with monitoring over the implementation of the provisions on human rights and freedoms, provided in the Constitution of Mongolia, laws and international treaties of Mongolia (Article 3.1). Since its establishment in 2001, the Commission has been receiving and resolving the complaints of human rights violations.

The National Security Concept stated that the State, citizens and media shall "cooperate in developing a policy to build awareness on society to be proud of motherland, nationality and respect for national interests, ethics, rule of law and state" (3.3.3.2). It also stated

that social sustainability should be ensured through the strengthening of independence and autonomy of the media and by following responsible and professional journalism and journalism ethical standards (3.3.4.3).

1.3. The right to information

Part 16.17 of Article 16 of the Constitution of Mongolia guaranteed the "right to seek and receive information". Even though the Constitution did not include the right to impart information literally, it ensured the freedom to "seek, receive and impart" information "regardless of frontiers[1]" in aforementioned international human rights instruments.

The Law on Public Radio and Television (PSB Law) passed in 2005 guaranteed the rights of journalists of Mongolian National Public Radio and Television (MNB) by its Article 34.1 stated that "Workers of the Public Radio and Television shall have the right to obtain information except other information relating to secrecy of state, organization and privacy, and make it generally available". When the Parliament passed the Law on Information Transparency and Right to Information in 2011, it not only guaranteed the media and journalists to access to information, but it also guaranteed the citizens' right to information.

According to the article 6 of the above-mentioned Law, state organizations are obliged to disclose information related to their activities, budget, finance, procurement and service received by state and local budget. Any citizen and/or legal entity retains the right to request information in any form of media desired and officials are legally obliged to respond to freedom of information requests within seven working days at maximum, if there is inevitable need the period can be extended by 7 working days. If information is available, the citizen and legal entities must be given access immediately.

The types of exemptions specified under Article 18 of the Law on Information Transparency and Right to Information are, however, very broad and include: (1) if there are well-grounded reasons that the public release of the concerned information might be detrimental to the national security and public interest of Mongolia (18.1.1), (2) if the concerned information is related to matters under review by the Mongol Bank, the Financial Regulatory Commission, or by the state administrative organizations in charge of competition or specialized inspection (18.1.2), (3) if it is necessary to protect state secrets, organizations and/or individuals during the process of inquiry, investigation and prosecution (18.1.3). The Law also protects intellectual property (Article 19), protection of personal secrets (Article 20) and secrets of any organization or business entity (article 21). It is prohibited to disclose intellectual property related information without the permission by the owner (19.1). Article 17 of the Law sets forth a complaint mechanism for citizens and legal entities whose rights are violated. They can lodge a complaint to the officials in higher positions and organizations of higher instances as well as to the National Human Rights Commission and the Administrative Court.

In accordance with the Law, the Government has adopted the following two procedures: "Regulation on charges, exemption and reduced charges for information

1 See Article 19 (2) of ICCPR.

services" approved in January 2013 and "General regulation to ensure information transparency" approved in December 2013.

Article 9 of the Law on Information Transparency and Right to Information "Transparency of budget and finance" and article 10 "Transparency on procurement, purchase of goods and service by state and local budget" were abolished by enactment of the Law on Glass Account which came into effect from 1 January 2015. However, this change creates doubt regarding transparency and disclosure obligations of certain organizations or certain information.

The Law on Glass Account imposes an obligation to those relevant organizations to disclose their information on their website pages including a contact person's name, telephone and email address. Every transaction above 5,000,000 MNT /5 million/ must be disclosed publicly.

According to the Law on Regulation of Public and Private Interests and Prevention of Conflict of Interests in Public Service, public officials must provide interests declaration. Under the Law against Corruption, they are also obliged to declare their personal as well as family assets, income and loans. As such, these kinds of information are accessible.

1.4. Election and media

Under the Article 14 of the Law on General Organization of Election[2], the Media Council shall work during the election. In accordance with Article 14.2 "The Media Council shall consist of equal representatives of professional institute of press and media, NGO and political party, coalition" and "Media Council shall control and monitor the equilibrium of election media advertisement of political party, coalition, candidate; and shall review and make comments on complaints lodged by political party, coalition, candidate, legal entity and citizens regarding above matter and present them to the Committee" (14.3). However, this could not become an effective mechanism in previous elections.

The revised Law on the Parliamentarian Election was passed on 15th December, 2011. The revised Law on Presidential Election was passed on 21st December, 2012. Article 35 of the Law is about election campaign and the media. The part 9.4 of the Article 9 of this Law stated that "A media outlet or its official is obligated to disseminate accurate and objective information on election activities". In line with revised provisions, in the case of breach of this legislation by media or by official, he or she will be imposed a fine.

Article 35 of the Law on Parliamentary Election and Article 39 of the Law on Presidential Election stipulated the requirements in regards to broadcasting of election advertisements that total air time of election campaign broadcast shall not be in excess of two hours per day during Parliamentary election and one hour per day in Presidential election. In addition, according to those laws, equal air time and equal opportunity shall be given to each candidate. Once the election campaign is launched, transfer of schedule and air time referred to other candidates is prohibited. Also organizing any type of selection activity aimed at establishing a political ranking is prohibited. Media outlets

2 Adopted on 12 January, 2006.

that have violated provisions of the Law on Parliamentary Election shall be subject to a fine equal to 15 to 20 amounts of minimum salary.

Based on the conclusion of the Authority for Fair Competition and Protection of Consumer's Rights, the CRC will make a decision concerning the suspension of licenses of those broadcasting stations in violation of the law for three months as stipulated in the Article 39.10 of the new Law on Presidential Election. The law obliges both broadcast and print media to allocate equal time to the dissemination of objective and true information, and it also prohibits content containing libel and insult during the election media campaign.

Every election year, the General Election Committee revises and adopts the "Procedure for election observation and reporting". Strict prohibitions to libel and defamation in all of elections laws are unnecessary restrictions.

1.5. Freedom of expression and restrictions

Part 3.3 of Article 3 of the Criminal Code of Mongolia states that "No one may be subjected to criminal liability for his/her opinion and beliefs". Even though there are opinions and beliefs, but there is no means to express them, this right can not be fully implemented.

The restrictions on freedom of expression can only be accepted if they are based on the concept of the Constitution and international instruments and when they pass the following three part tests:

First. Only prescribed by law

Second. Have a legitimate aim

Third. Truly necessary and proportionate

Even though restrictions beyond these grounds shall not be allowed, there are still some unnecessary restrictions which violate fundamental human rights.

1.6. Restriction on the right to information

Since the enactment of the Law on Information Transparency and Right to Access Information, laws on state secrecy, organization secrecy and individual's secrecy have not been amended. There are number of provisions on secrecy in other laws as well. Even though the Parliament discussed the draft Law on the List of State Secrets in January 2013, it did not pass the law.

The Law on the State Secrecy was passed in 1995 and was amended on 2nd January, 2004 recently. Article 11 of the Law stated: "The category of confidentiality of state secrets shall depend on the seriousness to harm state security and interests that occur as the result of their divulgence", and state secrets fall into the following categories: most confidential, confidential and classified.

Under the Law on the State Secrecy, the state secrets are categorized in five areas. In addition, the Law on the List of State Secrets protects 60 types of information including the national-security related 19 items, defense 14, economic, science and technology 5, intelligence 15, and others 7. 70 percent of the total information is protected for 40-60 years or for indefinite periods.

Article 87.1 of the Criminal Code specified a crime related to the "disclosure of a state secret" which includes "Disclosure of data, documents, objects or activities which constitute a state secret by a person who was entrusted such data or who has learnt them by virtue of his/her job or position, if such act does not constitute the crimes of high treason or espionage, shall be punishable by imprisonment for a term of up to 5 years", article 87.2 stated that "The same crime if it has caused damage in a great amount shall be punishable by imprisonment for a term of 5 to 8 years".

The Law on the Privacy of Organizations requires organizations to establish a regime of secrecy and to develop internal procedures to protect such secrets (Article 5.1). Article 6 of the Law prohibited organizations to withhold information if the information pertains to activities, products, services, techniques and technologies which affect the public health or environment, or contains information on poisonous or radioactive substances held by an organization which may cause public harm or harm the environment should its procedures on storage and protection be breached. The information also cannot be hold if it is about a crime or if it should be disclosed to the public in accordance with law.

Above provisions are general and contain no specific details. This is used as justification for rejecting journalists' access to information and state censorship against investigative journalism.

1.7. Defamation law

Individual's honor is protected in both the Civil and Criminal Codes of Mongolia. State, non-state, business and all kinds of organizations can redress their name, honor and reputation by using aforementioned laws. According to the Criminal Code, "defamation and slander" are considered a crime and provisions on "slander" (Article 110) and "defamation" (Article 111) shall be punishable by incarceration for a term of up to 6 months or imprisonment for a term of 2 to 5 years. In line with article 231 of the Criminal Code, insult of a state official or a public order public inspector shall be punishable by incarceration for a term of 1 to 3 months. According to the Criminal Code, "state official" refers to judge, prosecutor, inquirer, investigator, police, law enforcement official, and state inspector with a specific mandate guaranteed by law.

The provisions of the Criminal Code were interpreted by the Supreme Court of Mongolia on October 2007 through the explanations on terms such as reputation, honor, humiliate, purpose of degrading, libel, public, and previously convicted for crime.

There are provisions of protection for citizen's name, honor, and dignity and business reputation in Civil Code. Article 21.1 of the Civil Code prohibited the illegal use of the given names of citizens. According to the Code, if the person, who defamed citizen's name, honor, dignity and business reputation, fails to prove the defamation accuracy (21.2), if the defamation of others' name, honor, and dignity and business reputation is due to incomplete information about the documents (21.3), the guilty person shall be liable to refute the defamation via media and in the form, it was originally disseminated, or in other forms. Citizen considering harm incurred due to the dissemination of any personal information defined by law as

confidential (21.4) and any publication or public demonstration without its consent of an individual image in a form of photo, movie, video recording, portrait or any other form (21.5), shall be entitled to demand the harm elimination.

According to the Article 497 of the Civil Code "A legal person who caused damage to others' rights, life, health, dignity, business reputation or property deliberately or due to negligent action (inaction) shall compensate for that damage".

According to the Article 511 of the Civil Code "If the party responsible to distributing information damaging honor, dignity and business reputation of others fails to prove that it is true, it shall be liable to compensate the non-material damage in monetary or other form separately from the material damage".

One problem with these civil defamation provisions is that they allow public bodies to bring defamation legal action. Another problem is the fact that the Civil Code places the onus on the person who disseminated the allegedly defamatory statement to prove that the information was "accurate" or that it was "truthful". This poses a significant burden on the defendant and has a chilling effect on freedom of expression.

The UN Human Rights Committee discussed the report of the Mongolian Government on the ICCPR by its session No 101 held on March 14-21, 2011 in New York, USA. The Human Rights Committee gave the following recommendation to the Mongolian Government: The State party should consider decriminalizing defamation and ensure that measures are taken to protect journalists from threats and attacks. It should also ensure that all allegations of such threats and attacks are immediately and thoroughly investigated and that the perpetrators are prosecuted".

(http://www.ccprcentre.org/doc/HRC/Mongolia/CCPR.C.MNG.CO.5_en.pdf)

1.8. Content restrictions

A number of laws in effect in Mongolia contain content restrictions including the Law on Protection for Child Right, the Law on Prevention from Crime, Law to Control Circulation of Narcotic Drugs and Psychotropic Substances, the Law against Prostitution, the Law against Alcoholism, the Law on Combating Trafficking in Persons, and the Law on Copyright and Related Rights.

We recognize that these restrictions are made in order to protect the public interests. However, we concern that these provisions can create a condition where these restrictions can be overused due to lack of general definition in terminology and scope. This can also be harmful for journalists.

The Communications Regulatory Committee (CRC) has adopted "General Condition and Requirement for Regulation on Television and Radio" and "General Condition and Requirement for Regulation on Digital Content Service" in its meeting of 17 February 2011. The Committee started to implement above two regulations since March 1, 2011 and made revisions in 2013 and 2014 to make content regulation.

These regulation acts did not have any impact assessment by the Ministry of Justice and nor did register in state registration. According to the Rule for decision

on administrative norms adopted by the Government resolution No. 119, "any decision unregistered in state registration considered invalid and citizen, enterprises and organizations will not be held responsible for failure of adhering such decision". In contrast, these regulations are being effective in reality and applied for controlling over content of radio, television and websites; and invalidating their special licenses; and ceasing access to them. Currently there is no content regulator for print media.

As for radio and television, they are obligated to respect pubic interest (5.1) and at least 50 percent of the weekly programming shall be produced locally in Mongolia, or produced by Mongolians or by legal entities registered in Mongolia (5.4).

During past years, laws adopted by the State Great Khural and bills contain provisions to oblige media outlets, impose unnecessary restrictions and prohibitions which give an opportunity of increasing public organizations'' censorship. For instance, the Law on Culture was amended on 12 February 2015 and the Law will come into effect from 1st January 2016. The provision "Restrictions on operation run by public and other organizations and citizens in the frame of culture" was amended. Even the main context of this regulation associated with government policy to support national content, it could turn into strict restriction on media and exert pressure.

The following bodies have control over contents including the Authority for Fair Competition and Customer, Authority of Intellectual Property, Coordinating Council for Crime Prevention, police, courts, intelligence authority, General Authority for Specialized Inspection. This illustrates that there is a state censorship on media.

1.9. Other regulations

Media Ownership and Concentration

Even though the media ownership has various forms in Mongolia, the law does not clearly indicate ownership diversity. For instance, relevant laws recognize the public and private ownership, but the community ownership is not recognized at policy, legal and regulatory levels.

For the first time, a provision on "Transparency of ownership and affiliation of media outlet" was incorporated into the "Concept of National Security of Mongolia" which was adopted in 2010.

The Action Plan of the Mongolian Government for 2012-2016 adopted by the Parliament resolution No. 37 in 2012 included that "It shall disclose the ownership and revenue of the media; enhance the independence of media organizations; and guarantee the freedom to publish."

The Provision 4 titled "Ownership Transparency" of the "General Conditions and Requirements for Television and Radio Service" obliges television and radio stations to inform the CRC on the shareholder percentage of owner and the investors, names and contact details including address and telephone of the license holders, structure and management of the legal entity, citizenship of the managers every year.

It also regulated that a number of the television channels owned by one foreign country shall not exceed 30 percent of the total number of foreign channels (9.6).

At the initial stage, the CRC made information on ownership of service providers of television, radio and cable stations (C□□V, IP□V, Mobile TV) in Ulaanbaatar publicly available on its website.

Due to lack of transparency on media ownership and concealment of sales information and customers' rate in market, it becomes difficult to define a concentration in realistic way.

Part 21.1.3 of Article 21 of the Law on Investment passed in 2013 incorporated a new regulation. It stated that "a permission is required if a foreign state-owned legal entity happen to hold 33% or above of total share issued by Mongolian legal entity operating in the field of media, information and communication".

It is open to own a various media outlet in many ways including open and hidden way. Thus, it is extremely hard to identify a real owner of media outlet as information on ownership and investor given by entities is questionable.

Media ownership concentration in Mongolia seems to go further. Specifically a media concentration among big business and political group is surging or they are selling a media outlet to one another.

Although the Law on Prohibiting Unfair Competition should apply to the media, there are currently no cases of using the Law. As for above condition and requirement, the CRC new regulation (9.8) stated that "If it is defined as dominating in the market, the procedures related to the competition regulation in communication sector shall be applied."

The Law on Media Freedom prohibits the state ownership, but in reality, a number of media outlets are established by local governments in violation of the law. The state owned all media outlets operate mainly to promote a policy of that state organization.

Registration

All media outlets are required to register in Mongolia and they must submit their registration application form within 10 days after their establishment. In accordance with the General Law on the State Registration, Civil Code and other relevant laws and rules, media was registered as either company or as an NGO. Radio and television broadcasting stations can only be registered after their license is granted in accordance with the Article 15.16.1 of the Law on Licensing for Business Activity. In order to apply for a license they must receive permission from their local governor. For the permission, media outlets must submit the following documents: their publication, programmed policy, frequency, structure, powers and duties of the governing body and editor-in-chief, and their financial information. In addition, they must also submit a contract signed with a printing company.

Advertisement

Advertisements through media outlet and other means are regulated by the Law on Advertisement. Currently there is no code of conduct regarding the advertisement

in Mongolia. Even though it is necessary to have a code of conduct for advertisement, there is no proper understanding about such code among advertisers as well as disseminator.

Advertisement of state organizations is an important source of revenue for the Mongolian media. However, the information on this expenditure is not publicly available. There is no legal provision on administering and allocating advertising money and allocation is mainly decided by managers of state organizations. There is no mechanism for monitoring the allocation for state information and advertisement budget.

Article 11 of the Law on Advertisement and Article 13 of the Law on Public Service Radio and Television stipulated that advertisement shall be distinct from the journalistic content. However, these laws are not being implemented in practice. For example, during a high rating program of a commercial broadcaster, it airs an advertisement of 8 to 10 minutes for 2 to 4 times as mentioned in the report on "Research on Customers of Media" by the Press Institute.

Media market is still immature in Mongolia. Media outlets are operating through supported and subsidized by politics and businesses, for advertisement profit rather than fair competition.

Broadcasting

Mongolia has no separate legislation on broadcasting. Information Technology, Post, and Telecommunications Authority developed a draft Law on Broadcasting and received comments on it.

In conformity with international legal standards, a competent regulating body of media sector shall be independent from government and shall regulate a frequency spectrum. Under the Article 8 of the Law on Telecommunications, the Communications Regulatory Committee was established in 1996. The Law on Telecommunications does not specifically and explicitly guarantee the independence of the Communications Regulatory Committee. In contrast, Article 4 of the Law on Radio Waves stated that radio waves are State property and the Government solely reserves the right to allocate radio frequencies, while Article 5.2 of the Law refers to the Committee as "the government implementing body" suggesting that it is not intended to be independent. Moreover, Article 10 of the Law on Radio Waves stated that any organization wish to apply for license need to obtain a reference from governors of province, the capital city, soum (smallest administration division) and district at first. Therefore, it does not ensure independence in the allocation of radio wave frequencies.

In line with the "General Condition and Requirement for Television and Radio Service", it is required for television broadcasting service providers via cable channel to obtain a broadcasting license. Previously, these televisions have operated based on the contract with a cable channel.

In addition, broadcasters shall adhere to the legislation on competition and principles of non-discrimination and transparency as reflected in chapter 9 of aforementioned regulation.

Content of public service broadcasting is regulated by the Law on Public Radio and Television.

Internet

There is no state regulation to restrict internet users in Mongolia to access any domestic and foreign websites and to join a social media. Until 2011, there was not any requirement for anyone to create and operate website or to open up their own blogs to get registered or licensed by the state. In accordance with Article 15.16 of the Law on Licensing for Business Activity amended in 2010, it stated about "issuing a license for content service". Therefore, the CRC adopted the "General Requirement for Regulation on Digital Content Service" in 2011. According to the regulation, "content" means any product that transfers characters, signals, texts, pictures, graphics, sounds, tones, moving images and other types of information that is being transmitted through a communications network into electronic form. It also says that e-mail, bulk and spam, communication between individuals (for instance, via telephone, fax, IP etc.,) shall not be considered as content.

The Mongolian Government adopted a resolution No1 on "Unified System of Comments in Websites" during its Cabinet Meeting on 5 January 2013, neither without prior public consultation nor with a Parliamentary decision. As per this resolution, the CRC was assigned to develop a regulatory procedure on requirements for news websites and issuing domain names. The National Data Center will ensure the technical reliability of this Unified System of Comments and the General Authority for State Registration will register the information of users who post comments on websites based on their civil data and the database of mobile phone users. The resolution on restricting the right to online anonymity is still in effect.

The Joint Declaration adopted by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the Organization of American States (OAS) Special Rapporteur on Freedom of Expression on 21 December, 2005 stated that, "No one should be required to register with or obtain permission from any public body to operate an Internet service provider, website, blog or other online information dissemination system, including Internet broadcasting. This does not apply to registration with a domain name authority for purely technical reasons or rules of general application which apply without distinction to any kind of commercial operation."

However, CRC regulations have been imposing restrictions. "General Condition and Requirement for Regulation on Digital Content Service" was amended on 25 September 2014. Within the amended regulation, "Service provider of news and information website operating in Mongolia shall register in the Communications Regulatory Committee (3.5). Shall pay 80.000 MNT for application and registration fee and 20.000 MNT for sealing fee if wish to obtain registration certificate."

If the registered web sites offer the user-generated content and comments, the followings must be introduced:

- It is obligatory to use filtering soft ware of CRC: www.happywebs.mn;
- IP address of the customers shall be publicly visible under the user-generated content;

- Provide customers to login with any username and email address and leave comments;
- Keep that login in relation to those comments for at least 6 months.

In the case of violations of the above mentioned requirements by any website providers, the CRC has the right to restrict their access from Mongolia.

Based on official decision and conclusion on violation of laws by websites/ internet service providers received from relevant authorities, the CRC has the right to demand them to eliminate such violations within 24 hours and to immediately restrict their website access without giving a prior notice when necessary. Depending on the nature of violations, the CRC reserves the right to hold violators economic responsibility or commission them timely task; or to inform relevant organizations to impose administrative accountability on them; to notify them to terminate or cancel their licenses, or to cancel the licenses.

Confidential Source of Journalists

As a result of wide range of discussions held concerning establishment of the media self-regulatory mechanism and active cooperation among media outlets and professional associations on this matter in recent years, the Media Council was established on 28 January 2015. The Media Council will consist of Board Members (15 members), Ethical Committee of Television and Radio (15 members), Ethical Committee of Newspaper, Journal and Website (15 members), Staff Secretariat, and Executive Director. Starting from 20 April 2015, the Council will receive and resolve complaints regarding a professional ethics and other relevant issues.

The Media Council adopted the ""Media Ethic Principles" on 14 April 2015.

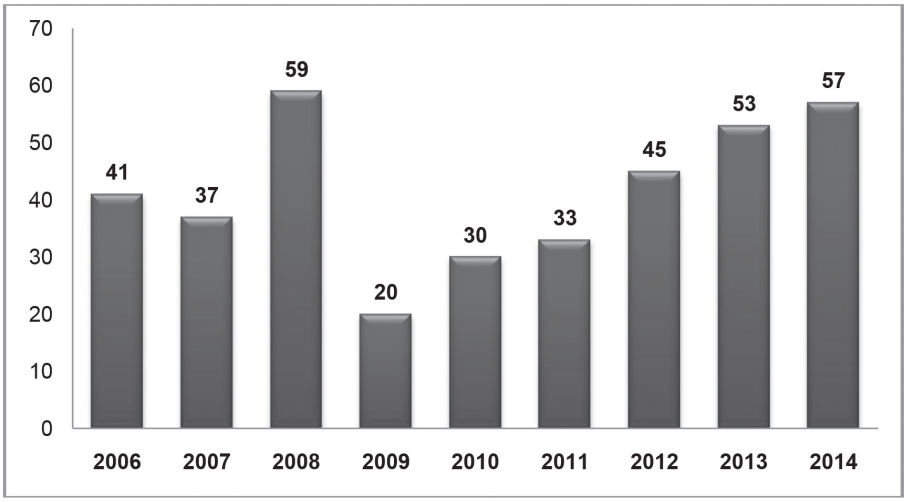
TWO. VIOLATIONS OF FREEDOM OF EXPRESSION IN 2012–2014

Globe International Center has been monitoring violations of freedom of expression and journalistic professional rights since October 2005. Up to January, 2015, we have registered 375 violations of free expression in total.

Violations of journalists' rights

Types of violation	2006	2007	2008	2009	2010	2011	2012	2013	2014	Total
Assaults	3	3	6	-	-	1	5	-	4	22
Threats/pressure/insults, including to family members	16	7	23	13	10	8	5	6	9	97
Denial of information / violation to obtain and disseminate information	8	10	13	2	-	7	7	8	11	66
Damage/confiscation of equipment	3	3	2	-	2	2	4	2	2	20
Court, police and other pressure and force by institutions/civil defamation	2	8	5	3	5	3	5	6	8	45
Demands to reveal information source	3	1	5	1	6	3	4	11	9	43
Censorship of publications/bans or attempts to ban program broadcast	2	1	3	1	2	3	9	9	4	34
Criminal defamation/detention/ arrest	4	4	2	0	5	6	6	10(1)	8(2)	48
Total	41	37	59	20	30	33	45	53	57	375

Free expression violations data by year



In 2012, GIC registered 45 violations affecting professional work involving 22 journalists and media outlets. If any right is violated, it will affect other rights.

54,5 per cent of those who approached us are working at daily newspapers, 23 per cent are working for television stations and 13,6 per cent of those working for websites. Most of the violations were registered in Ulaanbaatar, the other 32 per cent were from the provinces.

In 2013-2014 GIC has registered 110 violations of free expression and journalistic professional rights involving 57 journalists, media outlets, NGOs and citizen journalists.

18 cases or 31,6 per cent of violations involved daily newspapers, 16 cases or 28,1 per cent – TV stations, 19 cases or 33,3 per cent – websites and 4 cases or 7% involved NGOs and citizen journalists. Most of these violations (79 per cent) occurred in Ulaanbaatar and only 21 per cent were registered in the provinces. Compared to last years, number of those who approached GIC has been decreased.

61.4 per cent of those who violated freedom of expression and journalists' rights were authorities, public officials or government organizations.

Types of free expression violations (2013-2014):

- Assaults - 4 (3,6%)
- Threats/pressure/insults, including to family members - 15 (13,6%)
- Denial of information / violation to obtain and disseminate information – 19 (17,3%)
- Damage/confiscation of equipment – 4 (3,6%)
- Court, police and other pressure and force by institutions/civil defamation – 14 (12,7%)

- Demands to reveal information source - 20 (18,3%)
- Censorship of publications/bans or attempts to ban program broadcast – 13 (11,8%)
- Criminal defamation/detention/ arrest - 21 (19,1%)

Mongolian journalists are highly self-censoring and fear further possible reprisals, attacks and assaults. Bearing this in mind, we were not able to include all cases in this report.

Globe International Center highlights the following violations of journalists` professional rights in 2012–2014

- L.Bayaraa, journalist of Uls Turiin Toim daily newspaper published an article on May 21, 2012, headlined "A secret election plan of MP D.Odkhuu to be lost." D.Odkhuu believing that he had been defamed by the article, filed a criminal claim. On July 4, 2012, Bayangol District`s prosecutor opened a criminal defamation case against the journalist. The journalist had no opportunity to acquaint with his case. On that day when the case was being transferred to the court, he had been detained for 3 hours without a court`s decision. On July 23, 2012 judge of Bayangol District ordered to detain the journalist on the grounds that he arrived 20 minutes late for the trial. The journalist was detained for 24 hours. On July 26, 2012, the journalist was sentenced to pay compensation 70 times higher than the minimum wage (approximately 105USD) or 9.828.000MNT. The newspaper published a retraction.
- On the night of July 28, 2012 at around 1.00 am when the voting for the Parliamentary election was being completed and the television crew were airing the preliminary results, B.Ganzorig, executive director of Khuvsgul news LLC, which is the investing company of Sky television, entered the premises of the TV station with some people. He has beaten and injured 4 journalists and 4 cameramen on the reason that TV crew has aired one-sided news and has not served the interests of the investor, who was running for the election. He had worked for election campaign of candidate from Khvsgul aimag L.Munkhbaatar. TV crew was verbally attacked and beaten; some of them were seriously injured. B.Ganzorig was sentenced to 3.5 years in prison.
- Ts.Erdenetsetseg, female journalist of Udriin Shuudan daily newspaper published an article "Vehicles' plate number business is growing properly" on November 9, 2012's edition. The article was about illegal selling of "lucky" numbers by public officials misusing their power. Head of Department of Ministry of Road and Transportation B.Jargal complained that he had been defamed by the article and filed a criminal lawsuit against the journalist in January 2013. On June 21, 2013 the first instance court dismissed the charges against journalist. But after reviewing the case the appellate court decided to transfer the case for re-investigation. On June 12, 2014 the journalist was found guilty of defamation and ordered to pay 7.160.400MNT and appellate court once again found the journalist guilty.

On October 10, 2014 the Supreme Court dismissed the criminal lawsuit against the journalist.

- On August 18, 2014 Districts' first instance criminal court No1 sentenced Ts.Bat for defaming Minister of Road and Transportation A.Gansukh. Bat was sentenced to jail for three months and 10 days in prison according to Article 111.2 of Criminal Code. He had been investigated for 8 months and considered to defame Minister A.Gansukh during 3 months over 5000 his tweets. "A Mongolian court's sentencing of a blogger to prison for defaming a high-ranking political figure through social media is a cause for concern" the OSCE Representative on Freedom of the Media, Dunja Mijatovic, said on August 26, 2014[3]. On September 9, 2014 the case was transferred for re-investigation. Ts.Bat was released on a bail after 22 days of imprisonment.
- S.Ankhbayar, journalist from Uvs province faces criminal defamation charges following the critical posts through his Facebook account accusing of Ch.Chimed, Chairman of the Citizens Representative Khural of Uvs province. In his posts that are the subject of the charges, he revealed illegal meetings' decisions, illegal allocation of land permissions and expenditure of public money. He is under investigation since December, 2014.
- On September 13, 2012 journalists from TV8 station were assaulted while covering incidents between Mongolian worker and Korean employer, following citizens' call. The company guards forbade journalists holding camera to enter the premises. Korean and Mongolian persons together seized TV8 journalist's camera while she was covering the incident. Then she was beaten and her camera was lost.
- At the night from 3 to 4 June, 2014 TV8 station crew was assaulted by around ten guards of night club 'Leaders" situated in Bayanzurkh District. They were covering on illegal operation of night clubs following local residents' complaints. The television journalist and camera operators were beaten severely and their camera was destroyed. Owner of night club XO verbally attacked them and police officers who worked on the issue operating with the TV crew. He locked all of them in a room and deleted all the images in the camera. Camera operator got head injury. The TV camera was destroyed.
- D.Bolormaa, journalist from Zuunii Medee newspaper had faced criminal defamation charges following complaints of B.Narankhuu, Director of Mon Uran company. The first instance court dismissed the case on 9 September 2012. However the appellate court sentenced the journalist to pay compensation 61 times higher than the minimum wage or 8.5 mln. MNT. In May 2013 the Supreme Court found the journalist once again guilty. It is quite interesting that the case has been decided intensively after B.Narankhuu became Member of the Parliament in June 2012.
- In May 2013 the journalist from Ugluunii Sonin R.Saruultogs published about illegal operations of the Ambassador of Mongolia B.Davaadorj to

3 http://www.osce.org/fom/122969

Germany. The criminal defamation charges were launched against the journalist according to the Article 111.2 of the Criminal Code. She has been investigated for one year. Even the Prosecutor dismissed the case; the Prosecutor General transferred the case to another investigator. It is concerning issue that she had been investigated by Division against Serious Crimes of State Investigation Unit. On July 29, 2014 the first instance court dismissed the case against the journalist.

- On August 5-6, 2014 News.mn website had published articles titled "Who were behind the colonels?' and "There is only 'blue sky' above the Independent Authority against Corruption". The day after or on 6 August the website started to operate unevenly. Website administration had no possibility to control the operation, the news titles were changed into vulgar expressions. They had to block the site as they were only content producers, and other company was responsible for technical issues. In the evening, when they were launching the site, two publications related to colonels and Independent Authority against Corruption were removed and titles of five news were changed. Website administration approached to the Cyber Security Department of the General Intelligence Agency. Unfortunately, after two days they expressed their incompetence to reveal suspects
- On July 3, 2014, a journalist posted a story on the site based on photo documentation with the headline, "Khaan Jims resort to be owned by Prime Minister pours its pollution into the Tuul River". The day after the article was posted, the website's managerial personnel received a call from a CRC official. He demanded the removal of the article from the website stating, "I'm calling because of a complaint from Khaan Jims resort." Then he proceeded to threaten the company: "It is a defamatory article. You should post a retraction. Otherwise your website will be blocked." Three hours after the phone call the CRC listed the website in its blacklist and blocked it. CRC did not claim responsibility for the above action and the website staff did not receive any official letter or requirements, according to the website personnel. OSCE Representative on Freedom of the Media Dunja Mijatovic expressed concern about the blocking of the news website Amjilt.com.[4]
- The former Minister of Road and Transportation, A. Gansukh, filed a criminal lawsuit against Mr. L. Davaapil for defaming him through social media. A. Gansukh stated in an interview that the government had saved 3.6 billion MNT during MIAT, a Mongolian airlines reform process. He tweeted about this. Davaapil then asked him through Twitter "For how much money did you make an agreement with Samsung for the construction of a 1 km railroad. That money you swindled in the result of the agreement is much more than the saved money you mentioned." A first instance court hearing was held in January 2015 during which the accused was ordered to pay a 9.7 mln. MNT fine in compensation, in accordance with the Criminal Code, provision 111.2; the amount is 51 times higher than the minimum wage. The appellate court dismissed the case against Davaapil in February 2015.

4 http://www.osce.org/fom/121076

THREE. SURVEY ON CIVIL AND CRIMINAL DEFAMATION CASES

Globe International Center has conducted research and analysis on court decisions relating to civil claims of honor, reputation, business reputation, and criminal cases of libel and defamation in 2012, 2013 and 2014. Furthermore, the research looks into the use of Civil and Criminal Codes by public authorities and officials. The research employs data available at judicial website www.shuukh.mn.

Provisions 21, 27, 497, 511 of Civil Code protect the name, honor, reputation and business reputation of the person and remedy for harm. Criminal Code in provisions 110 and 111, defines a crime of dissemination of libel and insult defaming the persons.

Journalists and media organizations were accused of inflicting harm on honor, reputation and business reputation of the person in 20 cases out of 43 civil lawsuits resolved by court in 2012; 17 out of 37 in 2013; and 20 out of 45 in 2014. They were accused of libel and defamation in four criminal cases out of eight in 2012; three out of nine in 2013; and nine out of 12 in 2014.

Politicians, high level state officials and government bodies made 56% of plaintiffs in 2012 and 2013 together. 34% of plaintiffs were private organizations and 10% were individuals. In 2014, 30% of plaintiffs were government bodies and high level state officials whereas 35% were private companies, 20% were non-government organizations and individuals, in 15% of the cases plaintiffs are unidentified.

Court found the defendants guilty in seven civil cases in 2012, in eight cases in 2013 and 2014 respectively. As defendants journalists and media organizations did not have lawyers in 13 cases out of 20 in 2012-2013.

Maximum amount of damage claimed for harmed honor, reputation and business reputation was 200 million tugrugs in 2012 whereas in 2013 a high level state official claimed 500 million for damage. Maximum amount of damage claimed for harmed honor, reputation and business reputation reached 500 million tugrugs in 2014 and maximum amount awarded by court was 45 million tugrugs. Private companies reached reconciliation agreement with media organizations to have their publicity printed or broadcasted instead of awarded damage being paid in monetary form.

As to criminal penalties, fine amounting to 9,828,000 tugrugs (equaling to minimum wages increased by 70 times) was the highest amount of fine in 2012.

The amount rose to 14,040,000 tugrugs or minimum wages increased by 100 times. In 2014, criminal penalty included 40 days of detention in accordance with provision 111.2 of the Criminal Code and fine of 9,792,000 tugrugs or minimum wages increased by 51 times.

In 1999-2014, 56.2 percent out of total 687 civil and criminal defamation cases were filed against media and journalists.

Comparative data on the trials of defamation cases

Years	Civil		Criminal	
	Total	Against media	Total	Against media
1999	30	-	3	-
2000	39	-	-	-
2001	31	11	4	-
2002	44	37	2	2
2003	28	18	1	1
2004	40	40	1	1
2005	29	25	1	1
2006	36	31	3	3
2007	33	33	-	-
2008	39	25	5	5
2009	44	17	1	-
2010	67	37	2	-
2011	43	23	7	3
2012	43	20	8	4
2013	37	17	9	3
2014	45	20	12	9
Total	**628**	**354**	**59**	**32**

*** *** *** ***

Mongolian journalists are highly self-censoring and fear reprisals, attacks and assaults. Bearing this in mind, we were not able to report the actual number of violations against journalist's rights and freedom of expression. Most violations remain hidden and journalists accept them as normal incidents.

Revealing any pressure and/or challenges faced by journalists while performing their professional duties is a contribution to the protection of themselves and their colleagues' rights, as well as an opportunity to integrate voices for their common deeds and common goals and to notify authorities.

Finally, media freedom belongs to you, the Mongolian citizen who reads this report. A more independent media is your right, access to information is your right. Therefore, your contribution to ensuring media freedom is important.

Annex 1

Call to the Parliament and Government of Mongolia

Delivered to the Parliament and Government on the occasion of the World Press Freedom Day 2013

Today, the world is marking the 20th anniversary of the WPFD. Windhoek Declaration has been adopted in May 3, 1991 and it was first officially proclaimed during the United Nations General Assembly in 1993. The UN calls its State Parties to focus the WPFD 2013 on the theme of "Safe to Speak: Securing Freedom of Expression in All Media" and puts the spotlight in particular on the issues of safety of journalists, combating impunity for crimes against freedom of expression, and securing a free and open Internet as the precondition for safety online.

The Windhoek Declaration defines "By an independent press, we mean a press independent from governmental, political or economic control or from control of materials and infrastructure essential for the production and dissemination of newspapers, magazines and periodicals".

We applaud that Mongolia has achieved the great accomplishments towards development of free and independent press and guarantee media freedom. Particularly, we cheer that new version of the Criminal Law, which will be publicly discussed next week; repealed criminal defamation and we consider Mongolia is taking honorable and progressive action in meeting its duty before the international community. We hope it will passed by the Parliament of Mongolia without any changes by its Fall session and the political parties presently seated in the Parliament such as Mongolian People's Party, Justice Coalition, Civil Will and Green Party and many members of the ruling Democratic Party take their pledges to repeal criminal defamation during Globe International Center's decriminalization defamation campaign ASK! during the 2012 Parliamentarian Elections.

"On this World Press Freedom Day, we call on Governments, societies and individuals to do their utmost to protect the safety of all journalists, offline and online. Everyone has a voice; all must be able to speak freely and in safety" says the Joint Message from Mr. BAN Ki-moon, Secretary-General of the UN and Ms. Irina Bokova, Director- General of UNESCO on the occasion of the WPFD.

They also stressed that "Every day, freedom of expression faces new threats. Because they help ensure transparency and accountability in public affairs, journalists are frequent targets of violence".

We dispraise that today, in Mongolia, citizens' freedom to express and speak without fear is under threat and the Government is seeking the strong restriction of the self-expression online

So we call the Parliament and Government of Mongolia:

1. To dissolve the Government resolution No 1 from January 5,2013 titled "About Unified system on web site comments" because we consider it restricts the citizens' right to criticize and right anonymity and determine censorship
2. To amend the General conditions and requirements and general conditions and requirement on digital content adopted by the CRC in 2011 in consistence with the UN and international standards, particularly provisions on the registration and using filtering soft ware
3. To amend the Telecommunication Law to provide the full independence. In doing so, remove the article 8.3 that PM appoints the CRC chairman and other leadership and provide public participation and transparency in the processes of the issuing and dissolving licenses, conduct control over the content and making its related decisions
4. To make the necessary amendments to the content regulations in consistent to Article 19 which states restrictions must be legal, justified and proportional
5. Provide legislation on protection of journalistic confidential sources and accept the right to anonymity as individuals' privacy.
6. Recognise the community media at policy, legal and regulatory levels and enable environment for development

No 25 of the Concluding observations of the UN Human Rights Committee adopted by 101st session of 14 March-1 April 2011 on the Mongolian Government report on the ICCPR noted "The Committee is concerned about information received on frequent threats and attacks on journalists and/or their family members" and the State party "should also ensure that all allegations of such threats and attacks are immediately and thoroughly investigated, and that the perpetrators are prosecuted".

We recall it we are concerned that impunity for crimes against freedom of expression remains normal.

Globe International Center
Mongolian Journalists' Association
Association of the Daily Newspapers of Mongolia
Mongolian Newspaper Association
Mongolian Television Federation
Association of Mongolian Web sites
Press Institute of Mongolia

May 3, 2013, Ulaanbaatar, Mongolia

Annex 2

The submission "Freedoms of opinion and expression" which prepared by Globe International Center within the framework of Human Rights NGO Forum in the 2nd cycle of the UPR and submitted to the UN Human Rights Council on September 15, 2014.

FREEDOMS OF OPINION AND EXPRESSION

This submission was produced by "Globe International Center"[5], a member of the HR NGO Forum. The topics of the draft submission were discussed at a civil society meeting held on August 2, 2014.

The topic of this particular submission was not amongst those included in the recommendations of the UN Human Rights Council, but the selection of this topic is justified for the reason that even after the 2010 NGO submission to the UNHRC, the situation concerning the freedoms of opinion and expression for Mongolian citizens has become alarming due to current political, legal and regulatory conditions, particularly since the Government has taken steps towards restricting digital freedoms and public officials have increased their pace in filing criminal defamation cases.

A. International Obligations of Mongolia

Mongolia is a signatory to the Universal Human Rights Declaration and became party to the International Covenant on Civil and Political Rights (ICCPR) in 1974. According to the terms of the covenant, the international accords stipulated in the ICCPR are valid as domestic law and take precedence over any and all domestic laws in any circumstance that proves to show a contradiction between the two sets of laws. A legal precedent for courts to use the ICCPR has been set since the covenant was officially translated and published in 2005, in the first issue of the magazine "Turiin medeelel" (State Information).

The UN Human Rights Committee's 101st session in New York, March 14 - April 1, 2011, discussed the Mongolian government's report on the implementation of the ICCPR, and in the concluding observations noted that "(t)he State party should consider decriminalizing defamation and ensure that measures are taken to protect journalists from threats and attacks. It should also ensure that all allegations of such threats and attacks are immediately and thoroughly investigated, and that the perpetrators are prosecuted."

In accordance with Article 19 of the ICCPR[6] and Article 16.17 of the Constitution of Mongolia, restrictions on the freedoms of opinion and expression should only be imposed by law. However, the reality is different in Mongolia.

5 Globe International Center has been promoting freedoms of opinion and expression since its establishment in 1999 and it is a member of the IFEX, Forum Asia and GFMD

6 Article 19(3) of the ICCPR

B. Constitution and Domestic Legislation

Mongolia has guaranteed its citizens' freedoms of opinion and expression, the right to publish and the right to information, according to Articles 16.16 and 16.17 of the Constitution of Mongolia, chartered in 1992. Parliament enacted a Law on Media Freedom (1998), a Law on Public Radio and Television (2005), a Law on Information Transparency and the Right to Information (2011) and media and information freedoms and the media sector are regulated by hundreds of other laws, such as the law on Advertising and the Law on Telecommunications etc. All types of censorship are banned by the Law on Media Freedom.

Civil and criminal defamation is part of Mongolia's civil law, criminal law and election laws. For example, the 2012 Law on Presidential Elections contains many defamation provisions (33.5.4, 33.7.12, 33.11) and the Authority for Fair Competition and Consumers Rights, government agency, has the power to take complete control over the content of election coverage and, upon their decision, the authority to terminate the operations of broadcast stations for a period of up to three months. This mandate also applies to information web sites and mobile phones. It is concerned that government censorship revoked direct government censorship. In accordance with Mongolia's Civil Law, authors and journalists must prove the truth of their publications and programs.

The Mongolian government adopted its main policies on traditional and online media in 2011and, since then, the Communications Regulatory Committee (CRC) has adopted over 30 internal regulations including the General Condition and Requirement on Television and Radio Broadcasting Service," and the "General Condition and Requirement on Digital Content," which apply to news and information websites, content aggregators and content supplying services. The regulatory acts also set standards on issuing, terminating and with drawing licenses and standards on studio equipments. Since 2011, the CRC has become the only regulatory body on media in Mongolia.

On January 5, 2013, the Government adopted Resolution No. 1, "A Unified System for Website Comments." Based on this resolution, the CRC adopted the "Procedure on the Regulation of the Comments on Websites" on February 27, 2013, labeled decision No 5.

It is regretful that the above documents and Government resolutions stand in contradiction to the regulations and principles outlined in Mongolia's Constitution and codified international standards, and no success has been made even after holding numerous discussions and exchanging many ideas in the society.

C. Issues

C.1. Digital Freedom and the Right to Anonymity

Official Registration and Filtering

The principles of freedoms of opinion and expression should apply equally to online media as well as in any other sphere of civil life. However, according to provision

7.1 of the "General Condition and Requirement on the Digital Content," web sites serving more than 3,000 visitors a day during a month, must register with the CRC and, according to provision 7.3, they must use a government specified filtering system

> The filtering program can be found at http://www.happywebs.mnandcontains a total of 108 words, 86 in Cyrillic and 22 in Latin. It operates by changing "filtered" words into asterisk. For example, if a user writes "sex" or "terrorist" in Latin, it will directly be changed into (***).

By obliging websites to be registered and to use the filtering program, the Government's action violates the international law to which it is a party.

The Right to Anonymity

The above-mentioned Government Resolution obliges the Justice Minister to take measures to identify users who post comments that are deemed libelous, insulting, seductive, obscene and or threatening in order to impose upon them legal liability. The procedure on the rsolution implementation obligates private Internet providers and mobile phone operators to help government bodies to identify persons suspected to be in violation of the laws and to collect information about them. News and information websites place the IP addresses of their users on the tops of the comments generated by the user. Mongolia does not have legal protections for whistleblowers or for journalists' confidential sources, and intends to prohibit journalists to remain anonymous.

Content Restriction and Censorship

The CRC controls the content of the news and information websites, content aggregators and content suppliers. The scope of legal restrictions concerning content is far too broad in its language and not well defined. For example, cited content comes under such general phrases as, "cruel religious doctrine," or, "pornography."Control of content is taken by public bodies, such as the General Police Authority, the Authority on Intelectual Property, the Authority for Fair Competition and Customers and, based on their official statements and letters, the CRC has the power to close down or block the services of the provider in question.

> Since 2012, a total of 172 websites have been blocked in Mongolia due to copy rights violations. The CRC publicizes the list of blocked websites at www.black-list.mn.

The latest instance of government intervening to block a website occurred when the Prime Minister's private companywas criticized. This reveals that the obvious and overt motive behind blocking and closing down websites "in violation" of the law does not concern copyright issues, rather it is directly an issue of censorship. In accordance with the stipulated rules, the CRC should warn and send prior notice to the service providers based on statements and letters.

On July 3, 2014, the news website amjilt.com reported that the "PM's company Khaan Jims" was polluting the Tuul river, as evidenced and documented by photos. The following day, a female officer from the CRC called to the web site and explained that "she was calling due to complaints made by Khaan Jims. She instructed amjilt.com to remove the article and post a retraction; otherwise, the website would be placed on the blacklist within an hour. After three hours of the call taking place, the website was blocked in Mongolia. The website is still not operational[7].

[7] The media NGOs in Mongolia protested this course of action and OSCE[8] has issued a press release. However, Khaan Jims produced and aired a one-hour paid program at the same time. We are insistent that Khaan Jims action was a serious incursion that breached both the public's right to know and media freedom.

Independence of the CRC and legitimate restriction of free expression

The CRC has the power to both issue and revoke licenses, but this process lacks transparency and public participation. International standards and domestic law dictate that the regulatory body must be independent. In reality however, it is a government controlled body. The CRC belongs to the known as Authority c ıformation Technology, Post and Communications, government agency. The chairman and commissioners of the CRC are appointed and dismissed by the Prime Minister and it reports to the Government. At the moment, 7 commissioners of the CRC represent the government bodies.

[9]Since Mongolia does not have a general broadcast law, regulations are taken from internal rules and procedures Of the CRC. In doing so, restrictions are obviously contradictory to the principles (of Article 19 of the ICCPR, which state that, "restrictions must be provided by law" and "must conform to the strict tests of necessity and proportionality. Moreover, the CRC regulatory documents breach the Government Resolution, No. 119 issued on May 19, 2010, on the "Rule on issuing Public Administrative Regulations" which states that, "it must conform to the standards set forth by law," and, "it must not impose new duties which are not stated in the law, nor must it set prohibitive regulations not imposed by law." Furthermore, "it must not include sanctions" and "decision makers must do regulatory impact assessment according to the Rule."After the registration with the Unified Registration System of the Ministry of Justice, the public administrative regulation, which is in compliance with basic requirements of the Rule, will be enforced. But public administrative regulations of CRC have not been registered.[910] Therefore, CRC's actions in the termination of and cancellation of licenses based on their inspections and examinations and CRC's control and usage of its authority, particularly for censoring online media, is a serious breach of the Constitution and the Law on Media Freedom.

7 http://globeinter.org.mn/?cmd=Record&id=1131&menuid=367
8 http://www.osce.org/fom/121076

9 Letter of the Ministry of Justice, 29.08.2014, Ref. 4/3496

10 http://globeinter.org.mn/?cmd=Record&id=1074&menuid=367

Recommendations

1. Dissolve the 2013 Government Resolution No. 1 and abolish government control over opinions and expressions;
2. Dissolve the so-called "Conditions and requirements" and regulatory rules;
3. Amend the relevant laws to provide the CRC with full independence, public participation, transparency and pubic control and repeal the current system in which the PM appoints and dismisses representatives to the CRC;
4. Repeal the restrictions on free opinions and expressions in digital platforms and dissolve the decisions made on registration and filtering;
5. Amend the relevant laws on content restriction to make them consistent with the Article 19 principles.

C2. Use of the criminal defamation

Mongolia's Criminal Law includes insult (Article 110) and libel (Article 111) as criminal offences and stated sanctions provide for fines, arrest and detainment for a period of up to six months or imprisonment for 2-5 years. The authorities use these laws to disclose whistleblowers and confidential sources and to threaten journalists and other citizens.

> At the trial in 2013, the Chingeltei District Court heard arguments for the criminal defamation case launched by PM N. Altankhuyag. The editor-in-chief and two other journalists from the defendant publication were fined 20 mln. MNT (app.11,000 USD) or a three- month sentence to prison if the fine was not paid. The Supreme Court persisted with the decisions of the appealing courts and the editor-in-chief and journalists were fined over 14 mln. MNT (app.7,800USD)[10].

Criminal defamation has become alarming for social media users.

> On August 18, 2014, the Initial court found Ts. Bat, a Twitter blogger, guilty for insult and libel against A.Gansukh, the Minister of Road and Transportation. Ts.Bat was arrested and detained for 3 months and 10 days. In the appeal, on September 9, 2014, the court decided to further investigate the case and Ts. Bat was released on bail.[11]

In accordance with free expression monitoring reports by Globe International Center, there were 27 criminal defamation cases between 2005 and 2012 and only in 2013-2014, the number reached 13 All the plaintiffs of criminal defamation cases in Mongolia are elected authorities, powerful pubic officials and public organizations.

We applaud the law on Crime drafted by the Ministry of Justice and submitted to Parliament which decriminalizes defamation. Media professionals are concerned that the MPs will block the legislation.

Recommendations

1. By encouraging the draft law on Crime which repeals criminal defamation, we call on the Government to be consistently committed to and to be a leader in respecting free expression;
2. Courts should use international laws at trials that concern cases on free expression and they should raise awareness and educate lawyers, judges, defense lawyers and prosecutors on Article 19 and UN HRC comments No. 34;
3. Protect privacy, guarantee the right to anonymity and allow the journalists remain anonymous;
4. Provide legal protections for whistleblowers and journalists' confidential sources.

11 http://www.osce.org/fom/122969