



DEMOCRACY
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MEDIA FREEDOM MONITORING REPORT

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Partners:



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MEDIA FREEDOM MONITORING REPORT

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ONE / EXECUTIVE SUMMARY

This report analyses Mongolian law and practice, including the safety and security of journalists, in comparison with international standards relating to freedom of expression. Although Mongolia has made key steps forward in terms of respect for freedom of expression, information, and media, much remains to be done to ensure full consistency with international law.

This report analyses Mongolian law in eight substantive sections in Chapter 3. The first and second sections look at the guarantees for freedom of expression and information in the Constitution of Mongolia and domestic laws regulating media and journalism, as well as the protection of confidential sources. Mongolian law does not protect the right of journalists to not reveal their confidential sources, with the exception of journalists employed by the public broadcasting network. This right is necessary to protect the flow of information from sources to journalists.

One serious problem in Mongolia is the poor implementation of the Law on Information Transparency and the Right to Information, and the broader regime of exemptions and a range of restrictive provisions within the Law on State and Official Secrecy and the internal procedures of state bodies.

Section 3 analyses the Mongolian laws on defamation, criminal, civil and administrative violations. Police officers are authorised to review and handle defamation cases under the Law on Administrative Offense. There are a number of problems with the law on civil defamation, in particular, the lack of adequate defences. There is no reasonable defence available when a publication covers cases in which impugned statements may be false but it was, nevertheless, reasonable in all circumstances to publish them.

Section 4 looks at a set of restrictions on freedom of expression placing limits on the content of what is published or broadcast, which applies to obscene materials, religious extremism, statements regarding legal proceedings, and a variety of other issues, such as promoting war or hatred on the basis of race. In most cases, these restrictions pursue a legitimate aim; the problem is that they are either excessively broad or very vague in nature and have no narrow definitions.

Section 5 deals with the regulatory system. The regulatory body is established by the Law on Communications, and is not independent of government. Mongolia has failed to recognise community media on policy and regulatory levels. Mongolia is missing a general broadcast law, as well as laws on media ownership transparency and concentration, and to fill this gap, the state's regulatory body approves administrative acts which overlap existing laws and licenses that can be terminated or withdrawn according to conclusions drawn from statements made by government agencies. These agencies are open to abuse, as officials may take advantage of them to make political statements, especially during elections. Section 6 looks at restrictions and harsh sanctions to media freedom during the elections. Therefore, we recommend that all such obligations be removed from Mongolian law. Section 7 provides information on the National Human Rights Commission, which is legally recognised as an independent human rights mechanism. Unfortunately, its power in handling complaints is limited.

In four substantive sections, Chapter 4 analyses the findings of monitoring. Section 1 provides information on the media landscape and, how by the end of 2018, a total of 355 media organisations served Mongolia's population of little over 3.2 million. Section 2 looks at the state of the safety of journalists, as revealed in the results of a survey, as well as individual and focus group interviews including issues of censorship, digital security, etc. Two out of three journalists said they faced threats, pressure, and harassment because of their publications and programs.

The monitoring findings also show that, as employers, media organisations do not have sufficient safety protection policies and measures in place, and journalists do not publicize their challenges or seek legal aid because their legal awareness is poor.

Section 3 gives an analysis of the practical use of defamation laws, both civil and administrative offences. By April 2018, some 58 defamation suits had been decided on by the district courts in Ulaanbaatar, the

nation's capital, and reviewed by city district policies, in accordance with the Law on Administrative Offence. We are of the view that defamation laws should be exclusively civil in nature, since this provides adequate protection for reputations and, therefore, recommend that the criminal defamation provisions applying to elections be repealed in their entirety.

Section 4 looks at the level of awareness of judges on freedom of expression and their experience in using ICCPR Article 19, determined through individual interviews conducted with six judges

The monitoring produced a set of recommendations for the State Great Khural (Parliament) and Cabinet, as well as for media and civil society organisations.

The project conducted an assessment of the implementation of Article 19 of the ICCPR, using 32 of the Human Rights Indicators of the UN OHCHR¹, but this report does not include all of the data collected and some data is undergoing further assessment and monitoring.

The monitoring carried out included most of the structural indicators used to assess the legislative framework affecting freedom of expression in Mongolia, and to expand the study of the safety of journalists, the Team used eight of the UNESCO Journalists' Safety Indicators.

1 https://www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf

TWO / INTRODUCTION

Globe International Centre (GIC), in partnership with the Media Council of Mongolia and the Mongolian Bar Association, undertook the monitoring of media freedom in Mongolia as part of the Promoting Human and Labour Rights through GSP+ project. This global programme led by Democracy Reporting International (DRI) is funded by the European Union, and GIC serves as DRI's implementing partner in Mongolia. The project is being undertaken in eight countries, in addition to Mongolia: Armenia, Bolivia, Cabo Verde, Kyrgyzstan, Pakistan, Paraguay, the Philippines, and Sri Lanka. The program aims to support civil society organisations in their efforts to raise awareness and advocate for the full implementation of fundamental rights.

Mongolia benefits from EU economic incentives thanks to a trade mechanism called the Generalised Scheme of Preferences Plus (GSP+). In addition to providing economic incentives, the GSP+ requests that beneficiary countries make progress in their compliance with 27 UN Conventions related to human rights, labour rights, the environment, and good governance. This component of the scheme is particularly relevant in today's context, where respect for human rights and democracy cannot be taken for granted; it is crucial to make use of any opportunity to empower individuals and organisations, and to promote a culture of human rights.

Of the many conventions covered by the GSP+, GIC used the opportunity created by this programme to focus on the International Covenant on Civil and Political Rights (ICCPR), specifically on Article 19, in order to contribute to the improvement of the situation of freedoms of opinion and expression and the full implementation of the article's provisions. Article 19 guarantees the right to "seek, receive and impart information and ideas through any media and regardless of frontiers". Mongolia ratified the ICCPR in 1974.

The guarantee of freedom of expression applies to everyone, and a key concept behind the role of this freedom in the media is ensuring the diversity of media and, hence, of sources of information and ideas. Media freedom depends on independence from government control. Another key concept flowing from the guarantee of freedom of expression is that any bodies with regulatory powers over the media, such as broadcast licensing bodies, must be protected against political and commercial interference.

The monitoring conducted was based primarily on a developed strategy and plan, and monitoring topics were selected following consultations with local experts. Globe International Centre provided technical assistance to the Monitoring Teams of the two project partners through several team meetings and a Mentoring Workshop.

THREE / ASSESSMENT OF THE LEGAL, REGULATORY AND POLICY FRAMEWORK

3.1 INTERNATIONAL STANDARDS AND THE CONSTITUTION

The freedoms of expression and information are protected in the Constitution of Mongolia, which states:

The citizens of Mongolia enjoy the following rights and freedoms:

16. Freedom of thought, opinion, expression, speech, press, and peaceful assembly. Procedures for organizing demonstrations and other assemblies are determined by law.
17. The right to seek and receive information except that which the state and its bodies are legally bound to protect as secret. In order to protect human rights, dignity, and reputation of persons and to ensure national defence, security, and public order, the information which is not subject to disclosure must be classified and protected by law².

Article 10 of the Constitution provides that Mongolia respects international law:

1. Mongolia adheres to the universally recognized norms and principles of international law and pursues a peaceful foreign policy.
2. Mongolia fulfils in good faith its obligations under international treaties to which it is a Party.
3. 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.
4. Mongolia may not abide by any international treaty or other instruments incompatible with its Constitution³.

Under international law, freedom of expression includes the right to “seek, receive and impart” information “regardless of frontiers”⁴. However, Article 16.17 of the Mongolian constitution protects the right to “seek and receive” information, but it does not include the right to “impart” information. Furthermore, the right is not guaranteed “regardless of frontiers”.

Further, under international law, any restriction on freedom of expression must be prescribed by law, pursue a legitimate aim, and be necessary in a democratic society⁵. Part 16.17 of Article 16 of the Constitution of Mongolia requires that: “In order to protect the human rights, dignity and reputation of persons and to ensure national defence, security and public order, the information which is not subject to disclosure shall be classified and protected by law.” However, existing legislation fails to meet international standards for defining restrictions that are “necessary in a democratic society”. This is, in practice, the most important limitation on the power of the government to restrict freedom of expression, and its absence from the Constitution is a serious omission.

In addition to problems with the legal framework, as will be discussed later in the report, Mongolia faces persistent difficulties in implementing Article 19. In 2015, the country accepted the UPR recommendations of eight countries on Freedom of Expression. The UN Human Rights Committee’s 120th session in Geneva reviewed Mongolia’s sixth periodic report on the ICCPR, on 6-7 July 2017. The UPR and ICCPR recommendations focused on bringing domestic legislation in line with the ICCPR to ensure journalists’ safety.

2 Constitution of Mongolia, https://www.conscourt.gov.mn/?page_id=842&lang=en

3 Constitution of Mongolia, https://www.conscourt.gov.mn/?page_id=842&lang=en

4 See Article 19(2) of the ICCPR.

5 See Article 19(3) of the ICCPR and Article 10(2) of the ECHR.

3.2 OTHER MONGOLIAN LAWS AND REGULATIONS AFFECTING FREEDOM OF EXPRESSION

According to the Criminal Code of Mongolia, “No one may be subjected to criminal liability for his/her opinion and beliefs.”⁶ A violation of this right can result in a 450 to 2,700 unit⁷ fine, 240 to 720 hours of community service, or a one to six month restriction on the right to travel⁸.

Parliament enacted the Law on Media Freedom in 1998, Article 2 of which prohibits the passage of any laws restricting media freedom. Article 3 prohibits state control of the media: “Media shall take responsibility for their publications and programs. The State shall not impose control or censor the content of public information.” The article also specifies that the state cannot establish an organization to control published and broadcast information, or finance such an organization’s activities. Article 4 of the law prohibits government ownership of mass media.

The Law on Public Radio and Television came into force on 27 January 2005. It creates the legal grounds for public television and radio, which are under the control of and financed by the public.

The 2011 National Security Concept includes a provision to: “Enhance the autonomous and independent status of the media, improve responsibility, professional competence and ethical conduct norms of media personnel and maintain social stability.”⁹

The government policies that pledge the legal protection of journalists’ safety include: An Action Plan on Implementation of the UPR Recommendations (April 2016)¹⁰; National Anti-Corruption Program (November 2016)¹¹; and the Action Plan on the Implementation of the National Plan (2017)¹². Despite these policies being ratified, there has been a lack of implementation.

3.2.1 Protection of confidential sources

Under international law, the protection of sources is a key aspect of freedom of expression. According to United Nations Special Rapporteur on Freedom of Expression David Kaye, “Everyone depends upon well-resourced stories in order to develop informed opinions about matters of public interest... [R]eporters often rely upon, and thus promise confidentiality to, sources who risk retaliation or other harm if exposed. Without protection, many voices would remain silent and public uninformed.”¹³

In accordance with the Mongolian Code of Media Ethics, journalists have an ethical duty to protect their confidential sources¹⁴. But domestic legislation does not offer support to all journalists in meeting that standard. The 2005 Law on Public Radio and Television protects journalists with Mongolian National Broadcaster from being forced to disclose their sources (Article 34), but there is no corresponding law that protects journalists not employed by the public broadcaster. Additionally, there have been no reports of Mongolian National Broadcaster journalists using the law.

Notable progress towards the protection of confidential sources was made in the Action Plan for the Implementation of the 2016 National Anti-Corruption Program (NAP), which calls on the government “to enable the legal environment for the protection of whistleblowers and journalists’ confidential sources¹⁵”.

6 Criminal Law, Art 1.4.4 <https://www.legalinfo.mn/law/details/11634>

7 1 unit is MNT 1,000

8 Criminal Code, Art. 14.2.1

9 National Security Concept, Art. 3.3.4.3, <http://www.nsc.gov.mn/sites/default/files/images/National%20Security%20Concept%20of%20Mongolia%20EN.pdf>.

10 <https://www.legalinfo.mn/law/details/12001>

11 <https://www.iaac.mn/page/92?menu=217>

12 <https://www.iaac.mn/page/90?menu=210>

13 UN General Assembly, Promotion and protection of the right to freedom of opinion and expression: note / by the Secretary-General, 8 September 2015, A/70/361, para. 14, <https://www.refworld.org/docid/5629ed934.html>

14 Principle No. 8, Mongolian Code of Media Ethics, <http://www.mediacouncil.mn/p/14>

15 Provision 4.1.5.6, Action Plan for the Implementation of the 2016 National Anti-Corruption Program, Adopted by Government

The NAP also calls for the following measures to be carried out to ensure the independence of media and the protection of journalists' safety:

- To ensure the right of media to obtain and disseminate information.
- To establish legal protection for a journalist who has exposed corruption through an investigation from any threats or harassment, and to ensure the safety of journalists by decriminalizing their activities.
- To improve the legal environment for the protection of media independence and media¹⁶.

However, no action has been taken towards the implementation of the NAP.

3.2 ACCESS TO INFORMATION

The State Great Khural passed the Law on Information Transparency and the Right to Information in June 2011, which obliges public bodies to disclose information relating to their activities, budget, finances, procurement, and services funded by state and local budgets¹⁷. Any citizen and/or legal entity may request information in any format desired, and officials are legally obliged to respond to these freedom of information requests within seven working days, with the possibility of extending the date of delivery for another seven working days if required. If the information is available, citizens and legal entities must be given immediate access.

However, the law provides very broad exceptions to disclosure. Information need not be provided:

1. If there are well-grounded reasons that the public release of the concerned information might be detrimental to national security and the public interest of Mongolia.
2. If the concerned information is related to matters under review by Mongol Bank, the Financial Regulatory Commission, or by the state's administrative organisations in charge of competition or specialized inspection.
3. If it is necessary to protect state secrets, organisations and/or individuals during the process of inquiry, investigation and prosecution¹⁸.

The law also protects intellectual property, personal secrets, and the secrets of any organisation or business entity¹⁹. It also prohibits the disclosure of intellectual property-related information without permission of the owner²⁰. Article 17 of the law allows citizens and legal entities to lodge a complaint to high-ranking officials in organisations of greater state authority, as well as to the National Human Rights Commission and the Administrative Court.

Mongolian Parliament enacted the Law on State and Official Secrets on 1 December 2016. While a positive change was made by reducing the maximum period for the protection of secret information, dropping it from 60 years to 30 years, some provisions in the law are still problematic. For example, Article 5 provides only a vague definition of official secrecy: "Official Secrecy means information that is harmful to the interests of a particular sector of the state, public organisations and other entities in the case of disclosure

Decree No. 14, 2017, <https://www.iaac.mn/page/90?menu=210&lang=mn>

Provision 4.1.8.1, 2, 3, Action Plan for the Implementation of the 2016 National Anti-Corruption Program, Adopted by Government Decree No. 14, 2017, <https://www.iaac.mn/page/90?menu=210&lang=mn>

¹⁷ Art. 6, Law on Information Transparency and the Right to Information, 16 June 2011

¹⁸ Art. 18.1.1, 2, 3, Law on Information Transparency and the Right to Information, 16 June 2011.

¹⁹ Art. 19, 20, 21, Law on Information Transparency and the Right to Information, 16 June 2011.

²⁰ Art. 19.1, Law on Information Transparency and the Right to Information, 16 June 2011.

and loss and that shall be under state protection.²¹ Government Resolution No. 247 of 2017²² provides a list of 33 state sectors, such as foreign relations, defence, law, internal affairs and law enforcement, banking and finance, and environment and tourism.

The scope of secret state information is very broad, including state policy, economy, science and technology, defence, intelligence, counter-intelligence, law enforcement and information security. The State Secret Law gives the government the power to approve procedures for classifying information as secret, as well as transferring, disclosing, and categorizing secret information, and amending or extending the period during which the information will remain secret²³. It furthermore states, “The organization shall develop the list of secret information to be approved by an affiliated Government member, an organization director.”²⁴

For example, the Financial Regulatory Commission’s (FRC) list of secret information protects “all types of information classified internally by the head of the FRC”. This means that even simple information in the public interest can be classified as secret if the FRC director decides that it should not be open to the public.

In the ARTICLE 19 publication “The Public’s Right to Know: Principles on Freedom of Information Legislation”, it’s explained that “Exceptions should be clearly and narrowly drawn and subject to strict ‘harm’ and ‘public interest’ tests.”²⁵ The Law on State and Official Secrets is of public interest and it clearly contradicts the concept and principles of the main right-to-information law, and it also contradicts the Mongolian Constitution’s declaration that the secret information of the state and private organizations must be protected by law. According to the Law on State and Official Secrets, secrecy can be protected by the administrative acts and internal procedures of the government body the information belongs to, and the law allows the state bodies to categorize virtually everything as secret. These administrative acts (e.g., internal rules and procedures) should not contradict or overlap existing legislation.

3.3 DEFAMATION LAW

Article 16.17 of the Constitution, protecting the right to seek and receive information, allows for restrictions on these rights, including the protection of “the dignity and reputation of persons”. International law also recognizes that in a democratic society, freedom of expression may be restricted where necessary to protect a legitimate reputation interest.²⁶ In Mongolia, the legal framework provides for the protection of reputation under the general civil law as well as the Law on Administrative Offence.

Any legislation that restricts freedom of expression in order to protect the reputation of others must have the genuine purpose and demonstrable effect of protecting a legitimate reputation interest. Furthermore, a restriction cannot be justified unless it can be convincingly established that it is necessary for a democratic society. Article 19 has adopted a set of principles on this issue, *Defining Defamation: Principles on Freedom of Expression and Protection of Reputation*²⁷.

21 Article 10.1.5, Law on State and Official Secrets, 1 Dec. 2016

22 <https://www.legalinfo.mn/annex/details/8019?lawid=12878>

23 Article 10.1.5, Law on State Secrets, 1 Dec. 2016

24 Art. 14.1, Law on State Secrets, 1 Dec. 2016

25 ARTICLE 19, “The Public’s Right to Know: Principles on Freedom of Information Legislation”, p. 5, <https://www.article19.org/data/files/pdfs/standards/righttoknow.pdf> (June 1999). The report was endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression in his 2000 Annual Report, Report of the Special Rapporteur, Promotion and protection of the right to freedom of opinion and expression, UN dc.E/CN.4/2000/63, 18/01/2000, para. 43.

26 See Article 19(3) of the ICCPR, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

27 <https://www.article19.org/resources/defining-defamation-principles-on-freedom-of-expression-and-protection-of-reputation/>

3.3.1 Criminal defamation

Defamation was ostensibly decriminalized in the 2015 version of the Criminal Code. Previously, “libel” and “insult” were crimes punishable by imprisonment²⁸. However, 2017 amendments to the Criminal Code added the crime of the distribution of “obviously false information” during an election:

In the case where obviously false information defaming the reputation of political parties, coalitions and candidates participating in the election is distributed, a fine of MNT 450K to 500K, or 24 to 720 hours of community service shall be imposed, or the right to travel shall be restricted from one month to one year (14.8.1.).

Defamation is now part of the Law on Administrative Offence, effective 1 July 2017. Article 16.21, titled Libel, reads:

In the case where false information defaming honour, dignity and business reputation is disclosed to the public, or disseminated through media and social media, a person shall be fined two thousand units and a legal entity shall be fined twenty thousand units²⁹.

This is very dangerous for media and journalists, as well as human rights activists, because it allows politicians, state authorities, and public officials to use the law to suppress criticism. Examples of such cases are provided in the findings from the project’s monitoring.

Another serious problem is that according to the Law on Procedure for Administrative Offences, which was passed on 8 May 2017, district policemen are responsible for reviewing defamation complaints. In fact, removing defamation from the Criminal Code did not decriminalize it. Police are still responsible for investigating cases of defamation, and the Criminal Court is the next instance of appeal. Defamation should not be criminal and Mongolia should amend its laws to ensure that the judicial process relating to defamation no longer retains any criminal components.

3.3.2 Civil defamation law

The Civil Code also contains provisions on defamation:

If the body that disseminated the information defamed a citizen’s name, honour, dignity and business reputation, and cannot prove the truth, then that body shall be liable for disseminating the correction in the same format and via the same tool, or other formats and tools, by demand of that body whose right was violated (21.2).

If the body that defamed [another’s] honour, dignity and business reputation by not fully providing the objective facts, then that body shall be liable [for correcting] it in accordance with rules set up in provision 21.2 (21.3).

The body that violated the right stated in this law shall compensate the harm to the victim in accordance with provision 497, titled “Justification”, to take responsibility for causing harm and provision 511, titled “Removal”, the nonmaterial harm of this law (21.9).

Article³⁰ 511 of the Civil Code states that a person who causes damage to another’s honour, dignity, and business reputation must fully compensate for that damage:

If a body that disseminated information that damages another’s honour, dignity and business reputation is unable to prove it is accurate, that body shall compensate for non-material harm with money or in other forms, regardless of whether or not any material loss has been compensated (511.1).

28 Articles 110, 111, Criminal Code of Mongolia (ADD WHICH YEAR IT WAS AND A LINK IF POSSIBLE)

29 1 unit equals MNT 1,000, so 2,000 units is MNT 2 mln, and 20,000 units equals MNT 20 mln.

30 <https://www.legalinfo.mn/details/747>

The amount of monetary compensation for nonmaterial damage shall be determined within the amount of the plaintiff's claim, taking into account the means by which the information was disseminated, the scope of its dissemination, the moral consequences to the victim, and that the body that caused harm shall be liable for correcting the information in the same format and via the same tool (5.12).

If a body caused damage to another's rights, life, health, honour, dignity, business reputation, or property by illegal action, purposefully or accidentally, that body shall be liable and shall take responsibility for removing the harm (497.1).

The civil defamation law is problematic for several reasons. First, it uses the word "body", which can be a person or organisation, so it allows public bodies to bring defamation suits. Article 7.1 of the Civil Code states that "citizens" or a "legal entity" – which presumably includes both private and public bodies – may bring legal action against a party. While individuals and private legal entities should have the right to sue for defamation, this right should not extend to state bodies³¹.

Another problem is 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; for example, in situations where the defendant has proof of truth but this proof is not admissible in court due to strict evidentiary rules. In Mongolia, it is not recognised that the onus of proof shifts to the plaintiff, especially in cases involving public officials and statements on matters of public concern. The plaintiff should bear the burden of proving the falsity of any statements or imputations of fact alleged to be defamatory.

The next problem is that the legislation fails to provide for a defence of reasonable public interest information. Another problem is that defamation laws do not recognise or categorise public figures, such as politicians, state authorities (including elected bodies), state-owned corporations, and even political parties, to limit bringing legal action for defamation. This is in recognition of the vital importance in a democracy of open criticism of government and public authorities, the limited and public nature of any reputation these bodies have, and the ample means available to public authorities to respond to criticism.

One of weaknesses of the defamation laws is that there are no clear definitions of honour, dignity, and business reputation.

Finally, monetary compensation is highly suspect. While the Civil Code allows plaintiffs to make monetary compensation demands, the fines in the Law on Administrative Offence are high and the law allows the court to impose separate fines on an individual journalist and the media organisation involved in the case. At the same time, according to the Law on Media Freedom, media organisations are responsible for the legality of their publications and programs.

3.4 CONTENT REGULATION

Amendments made to the Law on Culture in 2015 aim to support national content providers by requiring that at least 50 percent of weekly programming be produced locally, in Mongolia (Art. 5.1), or produced by Mongolians or by legal entities registered in Mongolia (5.4). In accordance with provision 8.2.7 of the Law on Public Radio and TV, the public broadcaster shall "strive to ensure a balance of the needs of the public and vulnerable groups in society, such as national minorities, women, children, and disabled citizens". The Constitution of Mongolia guarantees religious freedom, while the 2011 National Security Concept addresses "traditional and other religions", and states that "The government shall support the flourishing of traditional Buddhism and traditional culture" (Provision 3.1.4.8).

A number of Mongolian laws restrict the content of what may be published or broadcasted. In most cases, these laws protect legitimate aims, but they are often either excessively broad or set out in terms which are unnecessarily vague and, hence, open to abuse. Part 19.3 of the Law on Culture makes it a crime to

³¹ Article 19 Principles, Principle 3.

conduct cultural activities that promote wars and aggression, or pose a threat to the sovereignty of Mongolia. Similarly, Article 11.5 of the Law on Crime Prevention prohibits encouraging crimes, including murder, and sharing the details of a crime. Article 19.9 of the amended Criminal Code prohibits the promotion of hostility and discrimination on the basis of race. Article 56.1.5 of the same law prohibits the intentional dissemination of “cruel religious doctrine”. In accordance with provision 29, incitement and war propaganda is a crime. Sanctions are harsh if this crime is committed through media. Other content restrictions include:

- Promoting pornography (Criminal Code, Article 16.8)
- Undertaking cultural activities that promote obscenity (Law on Culture, Article 19.3)
- Disseminating material advertising crimes, pornography or violence towards a child (Law on the Protection of the Rights of the Child, Article 6.5)
- Promoting obscenity in various ways (Law on Measures Against Obscenity, Article 5.1)
- Illegal use and circulation of narcotic drugs and psychotropic substances (Criminal Code, Article 20.7)
- Law on Combating Alcoholism (Article 89.2)
- Law on Combating Trafficking in Persons (Article 8.1)
- Prohibiting actions and activities harmful to a person’s life, health and safety (Law on Advertising, Para 6.5.7)
- Obligating the media to protect people from crime through programmes and content on crime prevention (Law on Crime Prevention, Article 11)

Article 8 of the Law on Child Protection, last amended on 5th December 2016 states: “Child Protection in the Media and Online Space protects children from games, news, information, advertising, and online networks that negatively affect child development, health and upbringing. Instructions on child protection shall be open to the public and permanent control shall be taken over.”

The main problem here is the large number of different provisions in different laws, and the absence of narrow definitions for restricted content. This opens up the possibility for different interpretations of the scope of restrictive materials and, in turn, makes it difficult for individuals to know precisely what is prohibited, leading to self-censorship and excessive caution. It also leads to the risk that different judges will interpret terms very differently, leading to the problems noted above.

Finally, there are serious problems with the way these provisions are implemented. Past cases show that the ambiguity of the legislation is used effectively for blocking and closing down websites and withdrawing the licenses of broadcast media. Some examples are provided in findings from the project’s monitoring.

The appropriate remedy for offences of this sort is to impose fines on the publication and, when warranted, to bring criminal charges against those individuals responsible for any crimes. These measures should prove sufficient to prevent abuse of the law, without resorting to the extreme measure of banning a publication.

These are legitimate goals but provisions are cast too broadly and, in some cases, they are extremely vague. It is now understood that a clear link needs to be established between the material in question and its risk of harm. An example of a provision that is extremely vague is the prohibition on disseminating “cruel religious doctrine”, which would clearly mean different things to different people.

3.5 REGULATORY SYSTEM

The Telecommunications and Information Technology Authority is a policymaking agency that oversees the communications and information sector. The Communications Regulatory Committee (CRC) is the state's only content regulator. Established by Article 8 of the Law on Communications, the CRC consists of a chairperson and six members nominated by the Prime Minister, based on a proposal from the Cabinet minister responsible for the communications sector. The commission is required by law to submit financial and activity reports to the government each year³². The Law on Communications does not explicitly guarantee the independence of the CRC.

The CRC has promulgated two main procedures on regulating and restricting media content: 1) General Conditions and Requirement on Radio and TV, and 2) General Conditions and Requirements for Digital Content, while restrictions should be imposed only by a law, according to Article 19(3) of the ICCPR.

On 20 February 2017, the government adopted Public Policy on Guidelines for the Development of Information Technology and Telecommunications through Resolution No. 47. Provision 3.2.1 of the policy states the goal of the guidelines: "To improve the legal acts in the information technology and telecommunications sector by [bringing it into alignment] with Mongolian laws and international conventions, and following the laws." However, the amended Law on Communications, which was passed by Parliament on 30 May 2019, has not ensured the independence of the appointments of the chair and members of the Communications Regulatory Commission.

The appointment process lacks independence, transparency, and public participation. In accordance with international standards, appointments should be made by a representative body, such as an all-parliamentary committee, and that process should be open and allow for public input.

Neither the Law on Radio Waves nor the Law on Communications makes a clear statement on overall broadcast policy. Regulatory bodies that write legislation should clearly set out the policy objectives underpinning broadcast regulation, which should include promoting respect for freedom of expression, diversity, accuracy, impartiality, and the free flow of information and ideas. Regulatory bodies should be required to take into consideration and promote these policies in all of their work, and to act in the public's interests at all times. This is important for restricting the activities of these bodies and ensuring that they are accountable to the public for ensuring the promotion of public policies in the broadcasting sector.

The implementation of the above mentioned laws is controlled by government bodies, namely the Authority for Fair Competition and Consumer Protection, the Intellectual Property Office, Coordinating Council for Crime Prevention, General Police Authority, General Intelligence Agency, and the General Authority for Specialized Inspection. It is doubtful that these organisations can prevent government censorship since public participation, or civil society oversight, is missing from issuing conclusions and statements.

3.5.1 Media ownership and concentration

Mongolia is missing legislation on media ownership transparency and media concentration. In 2016, Press Institute of Mongolia conducted a study on media ownership, carried out in cooperation with Reporters Sans Frontieres (RSF). The results of the study showed that 74 percent of the media outlets which were most popular among the Mongolian audience, were owned by politicians, state officials, and business groups close to politics³³.

32 Art. 8.11, Law on Communications

33 www.mongolia.mom-rsf.org/mn/

3.6 RESTRICTIONS ON MEDIA FREEDOM DURING ELECTIONS

On 25 December 2015, amendments to the Election Law were enacted, integrating regulations for parliamentary and presidential elections. Chapter 9 regulates election campaigns. Article 68.3 specifies the means and types of campaign advertising permitted, including printed materials and their distribution to voters (68.3.1); the use of radio and television programs (68.3.6); and the use of websites (68.3.7). Concerning restrictions on printed campaign content, it should not exceed three printed pages in daily papers, other newspapers, or magazines (77.17).

Article 82 includes narrow regulations on the use of radio and television. The public broadcaster airs election programs in accordance with an approved schedule, which can be determined five days prior to the start of election campaigning, and no fees can be charged for inclusion in the broadcasts. In accordance with the amended Election Law, equal airtime must be given to individual candidates running for parliamentary and local elections, which also applies to political parties and coalitions participating in elections. Regarding the presidential election, equal airtime shall be given to each candidate. Besides equal airtime, other legal requirements are equal conditions and equal opportunities for all candidates. Radio and television stations other than the public broadcaster are required to air election programs based on other agreements. The total airtime for paid election programs must not exceed 60 minutes a day. Only fifteen minutes, or up to 25 percent of a one hour program, can be allocated to a political party or single candidate.

The current Election Law³⁴ includes the regulation of Internet space according to Article 83, with Article 83.3 allowing the distribution of campaign materials through e-mail. Provision 83.4 requires that the names of those who paid for advertising and the party's election campaign headquarters running a website must be mentioned.

More restrictions are imposed by Article 70, titled "Prohibition of Illegal Campaigns", namely, prohibitions concerning media:

- To distribute information that is defamatory, insulting, or false, and conducting any type of activity to determine political ranking via media outlets, online space and messages (70.1.6)
- To call people not to vote (70.5.7)
- To print, publish, or air songs and pictures related to religion in election broadcast programs and materials (70.5.9)
- To sign an agreement [with an entity] and pledge to release any type of information or news about any parties participating in the election, or to not release such information during an election campaign (70.7)

Sanctions against media are included in various parts of the Election Law. For example:

- If a court decision finds the bodies guilty of dissemination, publishing, and airing disinformation or false information about parties, coalitions, and candidates, they shall reimburse the expenses spent on the campaign (70.8).
- In the case of a breach of provision 70.1.6 by a website, the CRC shall terminate its license for six months, based on the conclusions of the government administrative organization responsible for fair competition.
- Radio and television stations breaching the law shall be given a warning once, and in repeated instances, its operations will be stopped until Election Day by the organization that issued the license (82.19).

34 <https://www.legalinfo.mn/law/details/351?lawid=35>

- In the case of breaches specified in this chapter, the license of the broadcaster shall be terminated for six months from the day the breach occurred (82.21).
- If it is not possible to identify the bodies and media individuals who breached this provision, the website will be blocked by the regulatory body in Mongolian territory until the end of voting (83.7).
- Procedures for election media campaigns on radio and television, and monitoring shall be adopted by the General Election Commission and Communications Regulatory Committee (CRC) in accordance with Article 82.17 of this Law. The CRC shall conduct monitoring on election advertising and may take measures to prevent violations of the Law and stop breaches in cooperation with the police, election organisations, and specialized non-governmental organisations (82.18).

The above sanctions are implemented by the CRC based on statements issued by the Authority for Fair Competition and Consumer Protection. These sanctions and punitive measures enable government censorship and contradict the Media Freedom Law, which bans all types of censorship.

Media plays a pivotal role in elections. The degree of regulation of the media and the independence of the regulatory body are important in determining the actual conditions under which the media operate. The current Mongolian regulation of elections is obviously contradictory to the international standards.

Paragraph 43 of General Comment No 34³⁵ on Article 19: Freedoms of Opinion and Expression of the ICCPR says:

“Any restrictions on the operation of websites, blogs or any other internet-based, electronic or other such information dissemination system, including systems to support such communication, such as internet service providers or search engines, are only permissible to the extent that they are compatible with paragraph 3³⁶. Permissible restrictions generally should be content-specific; generic bans on the operation of certain sites and systems are not compatible with paragraph 3. It is also inconsistent with paragraph 3 to prohibit a site or an information dissemination system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government among restrictions on political discourse that have given the Committee cause for concern... Blocking access during election periods to sources, including local and international media.³⁷”

Mongolia will hold a parliamentary election in 2020 and a presidential election in 2021. Parliament has initiated legislation on separating the integrated Election Law, and drafts of a law on parliamentary elections, a law on presidential elections, and a law on local elections are being discussed. The current drafts of these bills make no changes to policies on media campaigns and election coverage.

35 <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

36 <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

37 ICCPR, Article 19(3), <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

3.7 MEDIA SELF-REGULATION

Media Council of Mongolia (MCM) was established on 28 January 2015, and is the first and only self-regulatory body in Mongolia established by a group of media organisations, professional associations, and media NGOs³⁸. MCM's Media Code of Ethics was approved during a joint session of the MCM's ethics committees on 14 April 2015. MCM has two ethics committees: a committee of 15 members in radio and TV, and a committee of 15 members in print and online media. The committees handle complaints filed when the Code of Ethics approved by the committees has been breached. In 2015, 19 complaints were received, but that number has grown five times higher in recent years, with the number of complaints reaching 277. In 2018, MCM received 100 complaints: 14 percent related to print and online media, and 86 percent related to broadcast media. MCM pursues complaints only if they have breached the Code of Ethics: 44 of the complaints filed in 2018 were returned to the complainants following an initial review, seven complaints were withdrawn, it was determined that no ethical breaches were made in 24 cases, and there were 25 cases of media outlets breaching the MCM Code of Ethics.

It is not common practice in Mongolia for media organisations to have official internal rules or a code of conduct. It is known that a few news websites and television stations, such as *www.gogo.mn*, *www.ikon.mn* and Eagle News, have official guidelines for editorial conduct and ethics.

3.8 INDEPENDENT HUMAN RIGHTS MECHANISM

The National Human Rights Commission (NHRC) is an organization that was founded "to promote [and] safeguard human rights, and take control over the implementation of the provisions on human rights and freedoms in the Constitution of Mongolia, laws and international conventions."³⁹ The Law on the National Human Rights Commission determines the power of the NHRC to comment and consult on any human rights issues in Mongolia (13.1.1), and to advise and comment on the consistency of laws and administrative acts with human rights principles (13.1.2). Within this framework, the commission conducts research on human rights issues and carries out activities to collect and provide information on the human rights situation in Mongolia.

The NHRC has no power to conduct independent investigations, so they advise and make suggestions if laws and administrative acts are inconsistent with primary human rights principles (13.1.2).

Mongolia does not have an information commissioner but citizens can appeal to the National Human Rights Commission before sending their complaints to the courts, in accordance with part 17.1 of the Law on Information Transparency and Right to Information.

The NHRC had received a total of 443 complaints from citizens and organisations by 5 October 2018. Two of them were about violations of the freedom of expression and right to publish, and three were about access to information. Two complaints were about violations of the freedom to demonstrate. There were no complaints about politically motivated intervention in the activities of media and journalists, nor of attacks, threats, or attempts at harassment⁴⁰.

38 <http://www.mediacouncil.mn/p/14>

39 Art. 3.1, Law on the National Human Rights Commission of Mongolia (7 December 2000). <https://www.legalinfo.mn/law/details/360>

40 Letter from the NHRC to the MBA, 09/10/2018

FOUR / FINDINGS OF THE MONITORING

4.1 MEDIA LANDSCAPE

The Mongolian Press Institute⁴¹ reports that, at the end of 2018, 355 media organisations were operating in the country, serving a population of a little over 3.2 million. This includes 88 newspapers, 71 magazines, 48 radio stations, 127 television stations, and 100 news and information websites. Privately-owned commercial media dominated the Mongolian market, amounting to 78 percent of total media ownership.

Over 4,460 media workers are employed, 49 percent of whom work for news and current affairs programs.

Table 1. Ownership of Media⁴²

| | Newspapers | Magazines | Radio | TV | News websites |
|------------------------------|-------------|-------------|-------------|-------------|---------------|
| Private | 72% | 63% | 78% | 91% | 92% |
| NGOs and civic movements | 11% | 25% | 10% | 6% | 6% |
| Political parties/coalitions | 2% | 0% | 0% | 0% | 0% |
| Government bodies | 15% | 12% | 12% | 3% | 2% |
| Total | 100% | 100% | 100% | 100% | 100% |

The Mongolian Media Today study carried out by the Press Institute and RSF shows that “in fact, 29 out of a total of 39 investigated media outlets have political affiliations through their founders and / or owners”⁴³.

The Law on Media Freedom prohibits government ownership of media. However, 15 percent of newspapers, 12 percent of magazines, 12 percent of radio stations, 3 percent of TV channels, and two percent of news websites belong to government bodies⁴⁴.

The Communications Regulatory Commission oversees information about license holders⁴⁵. However, “license holders” are not necessarily the same as media owners. In fact, the names of media owners are not made available, even though the CRC and its procedures oblige media organisations to report on ownership in the first quarter of each calendar year⁴⁶.

According to CRC reports, the total number of Internet users in Mongolia reached 4,295,400 at the end of 2018⁴⁷. Seventy-two percent of these users use the Internet every day, and most users are under 34 years old. Eighty percent of users living in the capital and 66 percent of users living in the provinces access the Internet daily⁴⁸.

Two licenses were issued for religious broadcasting. Buddhist radio station Lavain Egshig is run by

41 Mongolian Media Today, Press Institute, 2018

42 The same as above

43 <https://mongolia.mom-rsf.org/en/owner/>

44 Mongolian Media Today, Press Institute, 2018

45 The information is on their website, <http://www.crc.gov.mn>.

46 <http://www.crc.gov.mn/k/2L2>

47 National Statistical Office, www.1212.mn

48 “Mongolian Media Today”, Press Institute, 2018. <http://crc.gov.mn/k/4x/5y>.

Gandantegchinlen Monastery, the central organisation of Mongolian Buddhism. TV9 Mongolia holds a license as a non-profit and religious channel. However, the percentage of religious content in its programming is not clear, and a Press Institute and Reporters Without Borders study found that Mongolian People's Revolutionary Party Chair N.Enkhbayar invested in TV9 and that its content largely favours the party. In 2016, the CRC reported that Media Holding LLC holds the TV9 license. The founders of the company are Eskon LLC and N.Enkhtuya, sister of N.Enkhbayar, former President of Mongolia⁴⁹.

Regarding language minorities, Jana Daur newspaper and Shyla magazine are published in Kazakh, and there is a Kazakh language local public radio station in the Kazakh-majority province of Bayan-Ulgii. Newspaper Mongol Zaman, Derbes TV, Sayan TV, TV4, and news website Ulgii serve their users in both the Kazakh and Mongolian languages.

However, Mongolia fails to sufficiently support community media at the policy and regulatory levels. The community radio stations serving national and ethnic minorities were established with the support of UNESCO and the Open Society Foundations. The stations are currently non-operational due to the absence of financial and other public support, and their licenses have expired. To re-apply for their licenses, they must meet the same requirements as commercial broadcasters.

As reported by UNESCO, "separate application processes should be conducted for issuing community and commercial broadcasting licenses and the procedures, " additionally, "The procedures and requirement for the former should be significantly less onerous."⁵⁰

With support from UNESCO, MNB began broadcasting in the Kazakh and Tuvan languages, as well as Buryat Mongolian in 2011. However, airtime for the minority language broadcasting has significantly decreased. In 2015, 30 percent of weekly programming on MNB2 was allocated for language minorities. Currently, 30 minutes of news is aired five times a week on news channel Mongoliin Medee (Mongolian News) of MNB, equal to 5.6 percent of the news channel's total airtime.

The prime time news on MNB includes a sign language interpreter for deaf and hearing impaired viewers.

As explained above, the CRC is the only regulatory body for broadcast and online media with the power to grant and withdraw licenses. It also regulates mobile phone operators and Internet service providers. In total, 134 websites were blocked in the territory of Mongolia based on conclusions drawn by the police and State Inspector of the Intellectual Property Office that they breached the Law on Obscenity or the Law on Copyright and other related rights. For the same reason, the CRC terminated the licenses of three cable and TV broadcasting entities; two licenses were revoked and one was withdrawn⁵¹.

The state must proceed carefully when revoking licenses or blocking websites to avoid infringing on the freedom of expression.

49 <https://mongolia.mom-rsf.org/mn/translation-media/detail/outlet/tv9/>

50 <https://en.unesco.org/community-media-sustainability/policy-series>

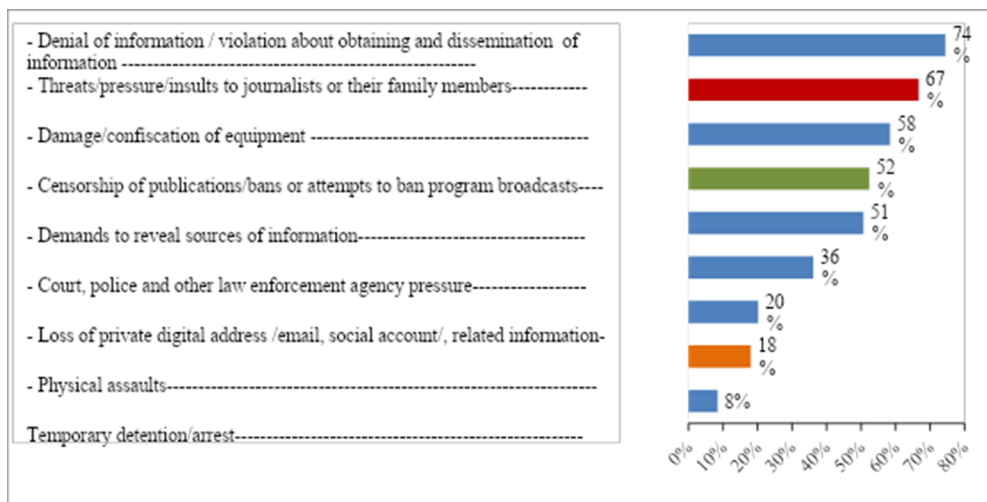
51 Letter 02/1664 of the CRC to the MCM, 7 November 2018

4.2 SAFETY OF JOURNALISTS

UNESCO highlights: “Freedom of expression is a fundamental element of the Universal Declaration of Human Rights, and is widely seen as underpinning other democratic freedoms such as the right to form political parties, the right to share political ideas, the right to scrutinise the actions of public officials, and so on. In this sense, it also supports good governance and democratic accountability. For this reason, media are considered to require special protections to enable them to operate freely. It follows therefore that journalists need to be free and safe to provide the content that is carried on media platforms. This content represents an exercise of the public expression of our collective rights.⁵²”

Regardless of legal guarantees of freedom of expression and existing policies, monitoring findings show that 67 percent of journalists experienced some form of threats, pressure, or insults in regard to their work. Monitoring also identified several cases of journalists being subject to harassment and violence, such as beatings and intimidation. Four out of every five journalists contacted felt that Mongolia’s implementation of ICCPR Article 19 is not satisfactory. On average, journalists reported experiencing such violations three to four times over the course of their careers.

Graph 1. Violation of the professional activities of journalists.

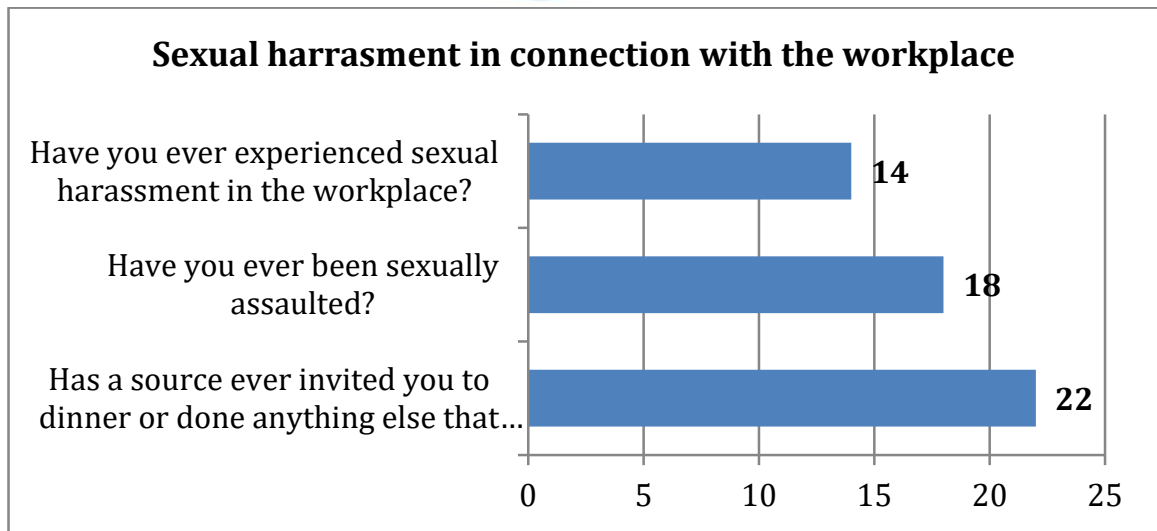


The above violations were experienced mostly by journalists under the age of 35 who are, or were, employed by TV stations, news websites, and newspapers.

For the first time, monitoring generated gender disaggregated data on attacks against women journalists who face sexual harassment, physical attacks, and sexual assault. Women under 25 experience such attacks more often than older women, and women in general are twice as likely to face gender-based attacks than men. The monitoring also assessed sexual harassment in the workplace.

52 UNESCO, Journalists’ Safety Indicators: National Level, Based on the UNESCO Media Development Indicators (28 July 2015), p. 2, <https://unesdoc.unesco.org/ark:/48223/pf0000260893>

Graph 2. Sexual harassment



One out of five journalists experienced late-night dinner invitations, unwelcome private chats, phone calls, date proposals, sexual suggestions, and other types of abuse from their sources. On average, women journalists reported facing such harassment four times during their carrier.

Also, one out of five journalists experienced physical assault, such as being pushed, hit, or otherwise injured. On average, journalists reported facing physical assault three times during their carrier.

Сэтгүүлчид халдсан асуудлаар "Ийгл ньюс" телевиз Цагдаагийн байгууллагад хандлаа

Eagle News / 2018-07-30 20:48:30 / 42



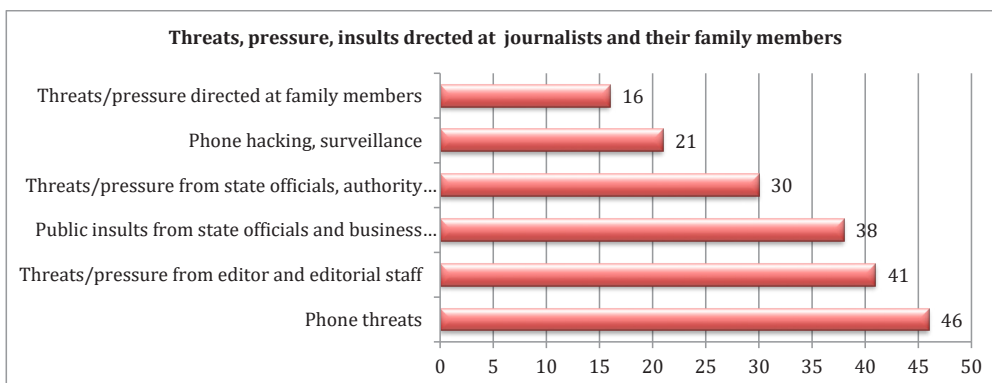
СЭТГҮҮЛЧИЙН БИЕД ХАЛДСАН АЖИЛТАНД ХЭДХЯ ХАРИУЦЛАГА ТООЦ

- Өнгөрсөн баасан гаригт Монгол, Туркийн хамтарсан сургуулийн дэд захирал Вэйсел Акчайг хулгайлсан гэх үйлдэл гарсан. Тухайн үйл явдлыг газар дээрээс нь сурвалжилж, ажлаа хийснийх нь төлөө "Ийгл ньюс" телевизийн сэтгүүлч Б.Батцэцэгийн биед хуулийн ажилтан халдаж, санаатайгаар зодож танхайрсан үйлдэл гаргажээ. Мэдээллийг газар дээрээс нь шуурхай сурвалжлан, олон нийтэд хүргэх албан үүргээ гүйцэтгэж байхад нь сэтгүүлчийн биед халдсан хэрэгт харамсал илэрхийлж, Хууль зүй, дотоод хэргийн яам (ХЗДХЯ)-нд шаардлага хүргүүлж байна. Шаардлагыг биелүүлээгүй нөхцөлд МСНЭ нь Монгол Улсын хэвлэлийн эрх чөлөөний тухай хуульд заасан мэдээллийн ил тод байдал ба мэдээлэл авах эрхийн тухай хууль болон бусад хууль тогтоомжийн дагуу хариуцлага тооцох, дараагийн шат шатны арга хэмжээ авч ажиллах болно. Улмаар сэтгүүлчийн мэргэжлийн эрх ашгийг хамгаалах, жагсаал цуглаан зохион байгуулах арга хэмжээ авахаа мэдэгдэж байна. Сэтгүүлч Б.Батцэцэгийн биед халдсан хуулийн ажилтны мэдээллийг ХЗДХЯ-наас гаргуулж авах, тухайн ажилтанд хуулийн дагуу хариуцлага тооцох шаардлага хүргүүлж байна.

An officer from the General Police Department struck Eagle TV's B.Battsetseg in the jaw and pulled her hair while she was reporting on the abduction of Turkish national Veysel Akzay, the general director of the Turkish-Mongolian Empathy Worldwide Educational Institution, in July 2018. Eagle News filed a complaint with the police. Unfortunately, at the time of this report's publication, there had been no response.

Graph 3. Threats, pressure, insults directed at journalists and their families

As for editors and other editorial staff, they reported facing intimidation, harassment, and telephone surveillance. Women journalists and their families tend to be threatened more often than men. Men tend to be threatened by law enforcement agencies, more powerful authorities, or physically imposing individuals presumably hired to deliver threats.



Of the journalists surveyed, many said they and their families regularly face verbal threats. The most common threats are ones that come over the phone and are directed at all levels of media organisations—journalists and editors. They also face public insults and pressure from high-ranking officials. The survey showed that journalists under 25 are more likely to experience threats and insults.

4.2.1 Damage to equipment

Fifty-eight percent of journalists reported having experienced damage or confiscation of their equipment or attempts to damage or confiscate their equipment at least once. This happens more often to young journalists.

Table 2. Damage of equipment, by number, age

| Age | Up to 25 | 26-30 | 31-35 | 36-40 | 41-45 | 46-50 | Above 51 |
|------------|----------|-------|-------|-------|-------|-------|----------|
| Occurrence | 5 | 4 | 4 | 3 | 1 | 3 | 1 |

The damage to women’s equipment is slightly higher than men, at a ratio of 4 to 3.

Journalists and camera operators do not file complaints with the police if the damage is minor and their equipment is still operational, as such complaints often lead nowhere.

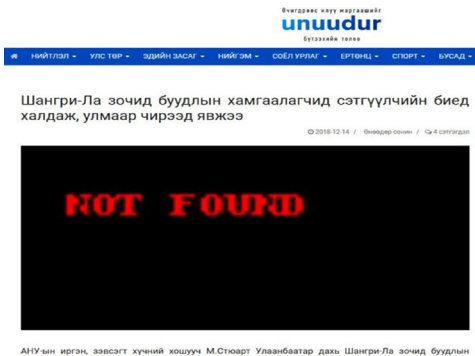
When we went to report on the firing of women over 50 years old at UB Railway, in the presence of an auditor, their senior legal specialist hit our camera operator and confiscated our camera. Two to three people were hitting our camera operator. However, the prosecutor dismissed the case and blamed our camera operator.

33-year-old female

Instead of a direct physical assault or damage to equipment, they take memory cards and delete the material on them, and then they give it back. Without evidence, it is complicated to evaluate the loss and complaints get

dismissed. Such things happen frequently. Once it is over, we try to focus on the future. It is difficult to complain, also difficult not to.

37-year-old male



United States citizen Major Stewart A. McGurk was found dead in the Shangri-La Hotel Ulaanbaatar, reportedly having committed suicide. E.Battsetseg (journalist) and S.Batsaikhan (photojournalist) with Government News newspaper were assaulted by Shangri-La Hotel security while conducting their journalistic work. They were searched, photos on their phones were deleted, and a camera was confiscated. The photojournalist was detained.

When we first released the information about City Council Representative A's brother B's inappropriate behaviour in a public space, that he was waving a wooden sword, our editor, director, journalist, and other staff's four phone lines rang non-stop for a whole day. We could not take calls or go to Facebook, as numerous people were asking us to take back the information. Then A came to the office with B to threaten us to take down the information. Our office hired security, and I was under personal protection. In the end, they threatened our head company and the post was deleted. This is the only instance of threats being made against all of the staff and the editor.

33-year-old female

4.2.2 Denial of public information

Regardless of constitutional and legal guarantees of the right to receive information, journalists face many difficulties accessing public information. As discussed in the first part of this report, Mongolian access to information regulations do not meet international standards on maximum disclosure and limited scope of exemptions and, in practice, denial of access is the norm. As the monitoring results show, this weakens the media's ability to perform its role of informing the public. Seven out of ten journalists have been denied access to public information by government officials at least once in their careers. As mentioned previously, the Financial Regulatory Commission's list of secret information protects "all types of information classified internally by the head of the FRC". This means that even simple information in the public interest can be classified as secret if the FRC director decides that it should not be open to the public.

There is a law on state and official secrets, but it is a new way to block information; citing the law is the organization's internal procedure. Depending on the procedure, the organization censors information, which contradicts the law.

57-year-old male

The press officers of state bodies are turned into information blockers rather than information disseminators. They are not aware of the law on access to information. Secrecy is respected much more than the public interest. There are internal rules and procedures on secrecy protection that contradict the access to information law.

32-year-old female

4.2.3 Censorship

Despite all types of censorship being banned by the Law on Media Freedom, it is widely practiced in Mongolia in the form of bans or attempts to ban publications and programme broadcasts. The most common attempt to control media in Mongolia is editorial censorship, which was experienced by 52 percent of the journalists surveyed.

Suppression of public speech emerges as controlled media content, as evidenced by the monitoring findings. For example, around three out of five journalists had experienced prior restraint. Prior restraint in relation to such a subjective concept as restricted content is highly problematic in regards to freedom of expression. One out of two journalists had been offered money, gifts, and other items to prevent publication or to censor material before being released.

Self-censorship occurs within media organisations through editorial censorship and has a serious impact on the professional autonomy of newsrooms. Self-censorship is even more dangerous to independent media because it is not visible; it is reflected in forms of legal and economic censorship.

During a focus group discussion, journalists revealed that threatening phone calls being made after publications, programs, and information are released are common, and are considered to be part of their normal working conditions. On the other hand, instead of threats and insults, the methods used for putting pressure on journalists are changing; it is more common now to apply pressure via acquaintances and requests.

Another reason for content being controlled is that the majority of media organisations are under political and corporate control. Business groups and politicians establish media outlets to serve as propaganda platforms, to push their own agendas, and to have their own voice serving their interests. This increases the risk of editorial censorship increasing and being encouraged.

Not only politicians, but business groups and their interests influence media. The initial goal of creating a media outlet for such groups is to increase their own influence. It affects editorial independence.

35-year-old female

4.2.4 Demands to reveal confidential sources

Courts, law enforcement officers, and state authorities regularly ask journalists to reveal their sources. The ability to protect confidential sources is both a right and an ethical duty of journalists, and is critical in their role as contributors to the public’s right to receive information. Fifty-one percent of journalists surveyed reported receiving requests to reveal sources; most of those journalists were under 25 years old. Cases of demands to reveal sources of information occur regardless of the gender of journalists. On average, a journalist faces such demands four times during their carrier.

A deeper study of source protection should be conducted in the future, which can be used for advocacy for the legal protection of a journalist’s confidential sources.

Table 4. Demands to reveal sources of information by age

| Age | Up to 25 | 26-30 | 31-35 | 36-40 | 41-45 | 46-50 | Above 51 |
|-----|----------|-------|-------|-------|-------|-------|----------|
|-----|----------|-------|-------|-------|-------|-------|----------|

In practice, it is often the public officials mentioned in the journalists’ reports that ask about sources. Judges also require journalists to provide evidence, which eventually leads to the disclosure of sources.

After any publication, the mentioned party always asks who ordered the material, who gave me money...

55-year-old female

4.2.5 Digital Security

Reporters Without Borders recognizes the digital security challenges faced by journalists today: “Media face obstacles in various ways in the digital realm, such as experiencing communications surveillance, content blocking, or defamation of journalists over social media... Cyber-surveillance is a bigger threat than ever”⁵³. UNESCO notes: “Intermediary organizations have increasing responsibilities in terms of privacy issues, digital security, etc., and media organizations have a particular responsibility providing the necessary support and training.”⁵⁴ According to UNESCO Journalists’ Safety Indicators, “intermediary organisations, including search engines, Internet Service Providers (ISP), email/software/application providers, or social networks, play an increasing role as gatekeepers and conveyors of content and thus have increasing responsibilities in terms of privacy issues, digital data security, etc.”⁵⁵

One out of three journalists reported receiving training and support from information technology companies on the prevention of cyber-attacks.

The General Intelligence Agency previously conducted trainings. It seems there are opportunities to receive training from professional organisations.

Some journalists who have such acquaintances more actively receive information on how you can recognize when your phone is listened to, change your Facebook password once every two weeks.

33-year-old female

For the first time, monitoring generated baseline information on digital security. The findings show that 57 percent of journalists use some kind of software protection against cyber-attacks. Twenty percent lost their email and social network addresses, and related information. This happened more often to women journalists than their male colleagues. In one case, a website was shut down due to a cyber-attack.

On 7 December 2015, we played two videos about [former Minister of Justice] Kh.Temuujin’s activities. Just after the release of the second video, our website was hacked in the afternoon. We followed up about the case with all required authorities. We even complained to Parliament, however, no one took action. We discovered two IP addresses; behind one of them, there were 3,000 registered users, behind the second one, 4,000 registered users. Later, unofficially, we heard that two young people were identified, but we were never told about it. No one would just simply hack a website by accident. There must be some reason behind it.

55-year-old female

53 <https://rsf.org/en/news/seven-digital-security-habits-journalists-should-adopt>

54 <https://en.unesco.org/themes/safety-of-journalists/journalists-safety-indicators>

55 <https://en.unesco.org/themes/safety-of-journalists/journalists-safety-indicators>

4.2.6 Support of media organisations for journalists' safety

Media organisations are responsible for ensuring the safety of their journalists, whether full employees or freelancers. They must conduct adequate risk assessments, develop and implement risk management plans, and train journalists on their rights. The following table outlines monitoring findings on how media organisations support journalists' safety.

Table 4. Risky assignments

| Questions | Yes | No | Don't know |
|------------------------------------------------------------------------------------------------------------|-----|-----|------------|
| As a journalist, do you have the right to refuse risky assignments? | 65% | 24% | 21% |
| Does your organization have a safety policy paper for staff? | 26% | 45% | 29% |
| Does your media organisation provide prior briefing on the possible risks of the assignment's environment? | 43% | 39% | 18% |
| Does your employer specify proper conditions in an employment contract? | 39% | 33% | 28% |

In some cases, journalists consider risky assignments to be part of their professional responsibility to serve the public interest; they accept it as their duty.

In 2016, our editor assigned a journalist and a camera operator to report on a possible bomb threat at the Central Tower office building, [allegedly] installed by a U.S. citizen. The journalist refused to go, saying, "I cannot go. What if the bomb explodes and I die?" Then, the head of division ordered me to go instead. At the time, I was seven months pregnant. I went to the location. Even though it was risky and I had a right to refuse, I still proceeded with the task, as I thought I had a public duty.

30-year-old female

Prior briefing on the possible risks of journalistic work is weak and labour contracts generally do not include provisions on safety. Media organisations also lack policies on the protection of their journalists' safety.

If you look at a labour contract, there isn't a single word or sentence mentioning safety. There are only clauses on skipping work, complying with internal procedures, and organizational confidentiality. Insurance might cover only social insurance.

57-year-old male

Some organisations hire security firms for times when their journalists face threats. Journalists also rely on family members or close friends to help protect them from risks.

We talk internally with our editors about whether or not to outsource security during high risk or dangerous times related to publications and programs. When found necessary, a body guard is provided.

33-year-old female

As for me, my safety is handled by my husband. He drives me to and

from work. During especially serious cases, he never leaves me. That is the situation.

35-year-old female

Bigger media outlets organize training on workplace safety conducted by professional organisations, with follow up in-house training for newcomers.

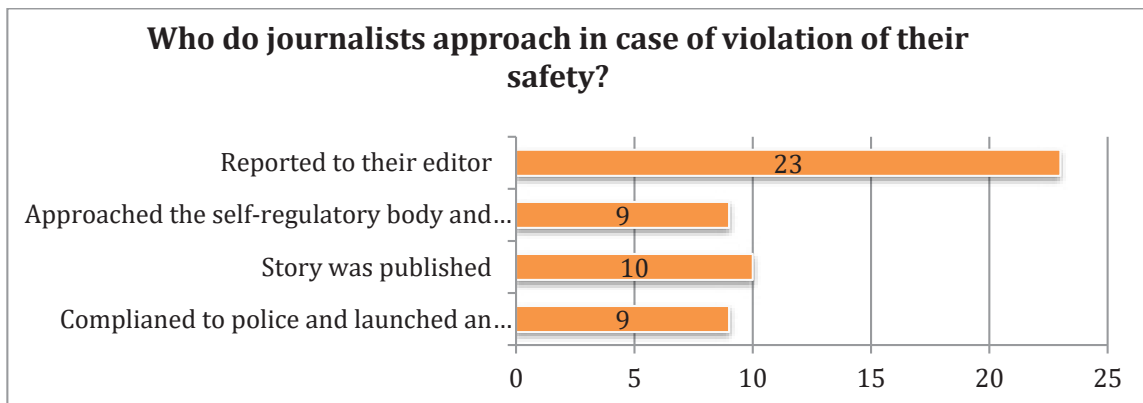
Workplace safety training is organized with assistance from professional organisations. General managers and division heads attend those trainings and receive certificates. Then, they provide training to other staff. However, there is no training on the safety of journalists.

31-year-old female

When asked if media outlets provide insurance for journalists with risky assignments, only 20 percent of respondents reported that they do. Cost was the reason most often cited for employers not providing insurance.

Only 23 percent of journalists who experienced violations of their safety reported to their managers, and 10 percent published their stories. The following graph shows that, in most cases, journalists approach media NGOs and CSOs, but rarely do the police initiate criminal investigations.

Graphic 4. Who do journalists approach when their safety is violated?



If journalists and media organisations think a case is not serious, such as receiving a threatening call, they do not approach law enforcement. This derives from the widespread notion that following up on cases in which violations are considered “insignificant” is a waste of time.

If the case is not serious, no one would bother with it, because it requires time and work. There is no one who has the time to follow up with such a case. We cover our own losses and move on if there are no serious physical damages or if the equipment is not totally damaged.

55-year-old female

We write a complaint for the police, call several times, and then drop the case. Police also drop cases based on the absence of witnesses.

40-year-old female

When we face difficult situations, there is an internal discussion about whether or not to hire security. Editors, when required, would provide security. If not, then the case is left alone.

33-year-old female

The journalists surveyed also agree that they lack legal knowledge, which may be one reason why they prefer not to approach lawyers and civil society organisations.

Legal knowledge is essential for journalists. Due to the lack of knowledge, we have a vague understanding of when our rights are violated. Even after recognizing this, we fail to approach related organisations to resolve the issue.

32-year-old female

We have contracted a law firm for police and court cases, so we do not approach NGOs and CSOs.

35-year-old female

There are very few media outlets with legal advisors. When journalists are in trouble, they seek out free defence lawyers. But free of charge means less effort. It would be beneficial if all media organisations provided legal training to their journalists.

32-year-old female**4.3 USE OF DEFAMATION LAWS**

From 1 July 2017 to March 2018, in 46 out of 56 defamation cases reviewed during the monitoring, journalists received fines under the Law on Administrative Offense. An online database of court rulings shows that from January 2017 until April 2018, 49 court rulings were issued in lawsuits claiming defamation of honour, dignity, and business reputation, in accordance with the Civil Code. Twelve of those suits were filed against media.

One survey question asked, "In regard to your publication or program, have you been called to court or to the police?" Thirty-six percent of journalists answered "yes". Cases involving legal action were launched by politicians, public officials, and business entities. Journalists interviewed believe Article 6.21 of the Law on Administrative Offence is cause for being called to the police so frequently, as the law gives police the authority to investigate defamation. Some journalists think the Law on Administrative Offence was advanced by politicians to protect their own interests.

The police act like an organization whose role it is to serve politicians and their wishes. With the Law on Administrative Offence, the fine for individuals is 20 times less than the fine for a legal entity, so media outlets prefer that journalists be fined.

32-year-old female

A media organization, as a legal entity, should pay MNT 20 million under the Law on Administrative Offence. But instead of paying this amount, they suggest that the journalist take the blame and receive a MNT 2 million fine.

32-year-old female

We publish politicians' speeches and we are called to speak to the police. They file defamation complaints about the publication of their own words said during Parliament sessions.

55-year-old female

To avoid fines, media organisations and journalists often choose to settle with the other party by removing the offending information. In cases when an editor is found to be guilty of defamation, to avoid a MNT 20 million fine, the editor chooses to put the blame on the shoulders of a journalist who, under the law, is required to pay “only” MNT 2 million.

Elected politicians, authorities, and public officials actively use the defamation law in response to critical articles. To avoid being sued for defamation, many publications are forced to practice some form of self-censorship.

Below are descriptions of two defamation cases launched by Members of Parliament.

Case 1: Female journalist Ts.Bulganzaya, iNews.mn

Ts.Bulganzaya was found guilty of defamation and fined MNT 2 million for defaming Member of Parliament (MP) Kh.Nyambaatar. In an article published on the iNews.mn website on 27 June 2018, MP Kh.Nyambaatar was called “a puppet” and a “law exchanger”. The case was initially filed with a district police department. Later, in August 2018, the case was transferred to the General Police Department’s Public Order and Safety Protection Division. The division was made responsible for dealing with cases involving high-ranking officials, by order of the Capital Prosecutor. An expert from the Mongolian National University of Education (MNUE) was appointed to the case.

The appointed language expert, Dr. Sh.Battugs, a professor and head of the MNUE Mongolian Language Department, concluded: “The expressions a ‘puppet’ and ‘law exchanger/trader’ do not contain a direct insult and are not defamatory. It is a private opinion expressed on the basis of the particular event, his actions and facts.” However, the expert’s opinion was not taken into consideration and the journalist was fined MNT 2 million under Article 6.21 of the Law on Administrative Offences.

She appealed the ruling and the Capital City Criminal Appeals Court dismissed the appeal and upheld the conviction (26 December 2018), concluding that the MP was slandered.

Case 2. S.Budragchaa, Mongoliin Medee (Mongolian News)

S.Budragchaa wrote a series of four articles titled “A director of the Capital City Archive S.Gavaa is under investigation from the Independent Authority Against Corruption.” In articles published from January through April 2018, he wrote: “The Capital City Archive’s software was sold to public bodies for double their price... The archive, for the purpose of preserving documents, rented a space for MNT 5 million at the director’s mother-in-law’s workplace... A director of the Capital City Archive, S.Gavaa, took a contract to provide consultation services in the amount of MNT 2 million.” Police fined the journalist MNT 2 million for defamation. The decision was appealed in the First Instance Criminal Court, however, the court upheld the decision (12 October 2018). The court decision did not take into account all the evidence provided. For example, a working group established by order A/133 of the Chair of the Ulaanbaatar Mayor’s Office found that S.Gavaa misused a large amount of public funds and required that he re-pay the funds. Based on these circumstances, the journalist appealed the fine once more. On 30 April 2019, the Appeals Court overturned the ruling and returned it to the First Instance Court to review the lack of evidence submitted by the plaintiff and the absence of a legal justification for the ruling.

As mentioned previously, the Law on Administrative Offences contributes to serious economic censorship. For small media organisations in the provinces that are struggling to survive in a poor media market with no advertising revenue, such a fine could directly lead to closure.

4.3.1 Civil defamation

After analysing civil defamation cases heard by first instance district courts in Ulaanbaatar, it seems the number of defamation cases is unlikely to decrease⁵⁶. The number of cases against media and journalists increased to 19 in 2018, compared to 12 in 2017.

In the vast majority of cases, the defendants are either found to be in breach of the law, or they admit to being in breach and cases are settled. Defendants were cleared of the charges of defamation in only one case we were able to access. In seven cases, courts ruled that the honour, dignity, or business reputation of the plaintiff be recovered by a retraction and correction made public in the same format the material in question was originally presented, and by the same means of distribution. In four cases, the parties settled, and one case was dismissed.

Monetary compensation for civil defamation is significantly increasing. In half of the 12 civil defamation cases reviewed by the MBA, the total monetary demand was MNT 104.7 million (approx. USD 40,000), with an average fine of MNT 17.4 million per case. Courts dismissed MNT 75 million in claims, and in other cases, the parties settled.

Below is an example of the use of a civil defamation case against the daily newspaper Unuudur (Today)⁵⁷, showing how plaintiffs use excessive monetary claims to threaten publications, creating a climate of editorial self-censorship.

MP B.Undarmaa sued Unuudur on 6 June 2018 for MNT 100 million (approx. EUR 33,300) for publishing what she claimed was a story that defamed her reputation. The damage amount was based on the following calculations:

- *MNT 42 million (approx. EUR 14,000) for the articles "MP B.Undarmaa has not declared her company in her income statement" and "MP B.Undarmaa received a license with false documents"*
- *MNT 15 million (EUR 5,000) for the stories published online*
- *MNT 25 million (approx. EUR 8,300) for the dissemination of the articles via other websites*
- *MNT 8 million (approx. EUR 2,700) for legal fees*

The newspaper was confident that they had sufficient evidence to support the statements made in the stories, but they appealed to the Supreme Court in June 2019, which awarded her compensation of MNT 5 million to recover her honour and dignity. The newspaper will make a final appeal to the Judicial General Council.

The case illustrates the sort of economic threat of huge damage awards that newspapers face. Even when the final award turns out to be relatively modest, the threat of paying large sums for damages means that newspapers may engage in self-censorship, just in case the courts order them to pay the full amount.

The following are five other civil defamation court cases involving media from 3 May to 1 October 2018. It should be noted that this review is based only on the information available from the court's public database.

In 33 percent of the civil defamation cases reviewed for the monitoring, the plaintiffs were politicians,

⁵⁶ Cases monitored include only those available on the court's open access database.

⁵⁷ 2018 Media Freedom Report 2018, Globe International Center https://www.gic.mn/public/docs/freedom_report/media_freedom_report_2018_mn.pdf

high-ranking authorities, and officials from government administrations. The rest of the plaintiffs were businesses and private individuals.

Case 1: First Instance Court of Sukhbaatar District, Ulaanbaatar

Claim: An article titled "Will U.O. be dismissed?" was published by www.shuurhai.mn on 7 July 2017. The author wrote about the director of the Central Geological Laboratory, U.O., newly appointed by the Managing Board of the Mongolian People's Party. The article claimed he "wrecked a whole family", alluding to destroying the stability of the organization; "He lacks professional experience and knowledge"; "He is making a mess"; and "He organized the illegal meeting by pressuring and oppressing the staff."

Date of trial: 14 March 2018

Plaintiff: U.O., Director of the Central Laboratory of Geology

Defendant: Kh.Baatar, journalist of Shuurhai.mn

Damages: Recover honour, MNT 10 million

Ruling: The court found that the defendant violated U.O.'s honour and business reputation, and ordered the media company to issue a retraction and correction in the same form and same medium, as well as for the defendant to issue a statement recognising his mistake. As the plaintiff did not submit any evidence for non-material compensation for harm, the monetary demand was dismissed.

Case 2: First Instance Court of Bayangol District, Ulaanbaatar

Claim: Факт.мн (Fact.mn) news website posted a report on 16 December 2016, entitled "Good Price Market sells expired products"

Date of Trial: 27 July 2017

Plaintiff: Ulemj Grocery LLC

Defendant: B.Munkhzul, Fact.mn

Damages: Recover damaged business reputation damaged, oblige defendant to issue a retraction and correction, no monetary demand

Ruling: Based on the parties' comments, notes on the review of comments on the website and Facebook page, and statements from witnesses, the court decided: i) to recover the business reputation of Ulemj Grocery LLC, B.M. was required to post a retraction and correction on Fact.mn and its Facebook page; and ii) to dismiss the plaintiff's demand to impose responsibility on OKH LLC and the website, by reason that the website could not be a defendant and the owners and managers should take responsibility, in accordance with provision 3.1 of the Law on Media Freedom and provisions 27.6 and 21.2 of the Civil Code.

Case 3: First Instance Court of Khan Uul District, Ulaanbaatar

Claim: Tsagiin Khurd, the primetime newscast of Mongolian National Broadcaster, aired a five-minute segment on 8 November 2016, at 8:16 p.m., entitled, "Demand from the Temporary Committee of MNB Workers' Group to its National Board calling for the resignation of General Director Ts.Oyundari". In Ms. Oyundari's opinion, the action against her was initiated by the TV director Ch.Battsengel.

Plaintiff: Ts.Oyundari, General Director, MNB

Defendant: Ch.Battsengel, TV Director, MNB

Damages: Recover honour, dignity, and business reputation, and retract the illegal claim, MNT 10 million

Ruling: The case was dismissed. The court decided that the Temporary Committee of the MNB Workers' Group was the initiating party. In the news report, it was clear and there was no legal justification for Ts.Battsengel to claim that the defendant was responsible for the story, based on parts 21.2, 21.3, 21.9, 497.1 and 511.1 of the Civil Code, and provisions 9.3 and 9.4 of the Law on Radio and TV.

Case 4. First Instance Court of Sukhbaatar District, Ulaanbaatar

Claim: The newspaper Ugluunii Sonin (Morning News) published an article "Did he pull oil into Oyu Tolgoi?" about the former PM selling oil to the mining company on 12 December 2016. The article was distributed on www.morningnews.mn.

Date of Trial: 23 June 2017

Plaintiff: N.Altankhuayag, former Prime Minister

Defendant: Ugluunii Sonin

Damages: Recover honour, dignity, and business reputation, MNT 10 million

Ruling: In a settlement, the parties agreed that the defendant would issue a retraction and correction in order to recover the honour and business reputation of N.Altankhuayag. The retraction and correction were to be distributed in the same format and by same medium where the false information was originally disseminated, and a correction should be posted in a visible corner of www.morningnews.mn, as well as on the front page of Ugluunii Sonin. The amount of monetary compensation was decreased to MNT 2 million, to be paid by 31 October 2017, in reference to provisions 106.5 and 123.1 of the Law on Administrative Court Procedure.

Case 5: First Instance Court of Sukhbaatar District, Ulaanbaatar

Claim: Залуу.ком (Zaluu.com) news website published the story “A large amount of money arrived in the account of the wife of N.Altankhuyag on 21 November 2016” accompanied by photos.

Date of Trial: 12 January 2017

Plaintiff: Kh.Selenge, wife of N.Altankhuyag, former Prime Minister

Defendant: Edimuun LLC, Zaluu.com

Damages: Remove the article and photos, issue a retraction, and issue an apology at a press conference, MNT 10 million

Ruling: Edimuun LLC was found liable based on the comments and published material presented as evidence. The court ruled for the defendant to remove the article and photos, issue an apology to Kh.Selenge on the website, and to post a retraction and correction for two months and four days, in accordance with provision 3.1 of the Law on Media Freedom and part 21.2 of the Civil Code. The monetary demand was dismissed.

In deciding these cases, the following provisions of the Civil Code were used most often:

- Article 21: Provides that a person who damages another’s honour, dignity, or business reputation must compensate for that damage.
- Article 21.2: The defendant in a defamation case who cannot prove the truth of what was published must retract the information in the same format and via the same medium in which it was disseminated.
- Article 21.3: If the damage to honour, dignity, and business reputation occurred because objective facts were not fully distributed, the defendant must deny the information, as stated in Article 21.2.
- Article 21.9: Any person who violates a right stated in this law shall compensate the harm to the victim or interested person, in accordance with articles 497 and 511.
- Article 491.1: A person who damages another’s rights, life, health, honour, dignity, business reputation, and property through an illegal action, purposefully or accidentally, must remove the harm.
- Article 511.1: A person who distributes defamatory information that damages honour, dignity, and business reputation, and who cannot prove that the information is correct, must provide monetary or other compensation.

Courts also often refer to Article 3.2 of the Law on Media Freedom: “The media shall take the responsibility for its publications and programs.”

Court rulings are commonly based on evidence found within the offending published material and programs: i) determining the author and person responsible for the content; ii) deciding if the parties have any misunderstandings about the content; iii) reviewing the published material or program, as well as comments from the parties; and iv) identifying any evidence of psychological harm caused and how compensation should be calculated.

Main comments on the cases reviewed, in consideration of international standards:

1. Courts do not determine whether or not dissemination was reasonable in the circumstances of a particular case, especially in terms of the veracity of the

information. The courts should take into account the importance of freedom of expression with respect to matters of public concern and the right of the public to receive timely information relating to such matters. For the media, acting in accordance with accepted professional standards should normally satisfy the terms of a reasonability test.

2. Courts do not take into consideration the fact that defamation laws are abused by those in power to limit criticism and to stifle public debate.
3. Sanctions are not sufficiently justified, particularly in terms of redressing any harm to an individual's reputations and determining the amount of monetary compensation.
4. Courts are exclusively guided by domestic laws and do not consider the constitutional guarantees of international laws and conventions to be as effective as domestic laws.
5. Plaintiffs have the opportunity to submit their complaints to the Media Council before filing a case with the court.

4.4 JUDICIAL AWARENESS OF MEDIA FREEDOM

Monitoring included discussions with judges about their opinions on media freedom. Many judges expressed opinions similar to this one: "All people have the right and opportunity to freely express their opinions. However, this right should be exercised within the scope of the law, not defaming or insulting someone. There is no right without boundaries." Below are summaries of the opinions expressed by judges during individual and focus group interviews:

1) *Safety of journalists*

- If media and journalists are independent from political and business interests, act independently and professionally, and if they are being ethical and following laws, they should be protected from any type of danger.
- No one would attack a journalist if all of their activities were law abiding.
- If the information source is clear and what they report is true, there is no legal liability for a journalist. When a journalist slanders and defames someone's reputation without a proper source, judges have to consider legal responsibility.

2) *Media and courts*

- People with different opinions attempt to influence court proceedings and decisions through media. However, court proceedings are restricted by the scope and boundaries of the law. Thus, it is impossible to influence judges and the court's decisions through media.
- Media stories can negatively affect a judge's reputation. However, judges do not tend to officially complain. Judges need to validate their rulings, such as disclosing documentation related to a case, which is considered unacceptable.

The interviews with judges show that there is no practice of using the International Covenant on Civil and Political Rights in their court decisions. Moreover, judges did not provide specific responses to a question on the interdependence of provisions in the Constitution of Mongolia, the Criminal Code, the Administrative Offences Law, and the International Covenant on Civil and Political Rights.

Everyone has the right to freedom of expression through the Constitution and other laws, but there is a problem with the use of this right without restrictions. Some politicians and authorities may seem guilty of wrongdoing, but without any evidence, it turns it into slander.

Judge

If there is an issue and it is debated from two different angles, then it can be considered the expression of opinions. But if the issue is an attack on someone, then can it be considered the expression of an opinion?

Judge

All are equal before the law. However, it is not acceptable when the licenses of media outlets are suspended, terminated without an official legal decision. If a media outlet is found guilty by law, there is a need to approach the court to receive an official ruling. Only after guilt is declared can the issues of license suspension and termination be discussed.

Judge

A judge does not give interviews to media regarding a trial. This situation is commonly taken advantage of. For example, a politician may give an interview to the media explaining how their case was tried in court, but the public is unaware of the real documents and evidence produced during the trial. Judges should only make independent decisions based on documents in the case file.

Judge

Social networks tend to disseminate too much information of a one-sided nature. Comments and suggestions below, such information is of an ignorant and uninformed nature. The Constitution ensures human rights; one person's rights can be restricted by another person's rights. Slander is a crime. Thus, there is a need to make the public aware that the freedom to express an opinion differs from slander.

Judge

Judges see the media's ethical responsibilities in the following terms:

1. Not disseminating information violates citizens' right to know.
2. Disseminating false information violates citizen's right to accurate information.
3. Not releasing accurate information creates conditions that make it difficult to distinguish false information from true information.

Judges are confident that information must be true and verified by a reliable source. One may have committed a crime, but there is still a need for evidence and sources. It is not appropriate to assume or prematurely pass judgement in the absence of evidence, or to provide misleading information.

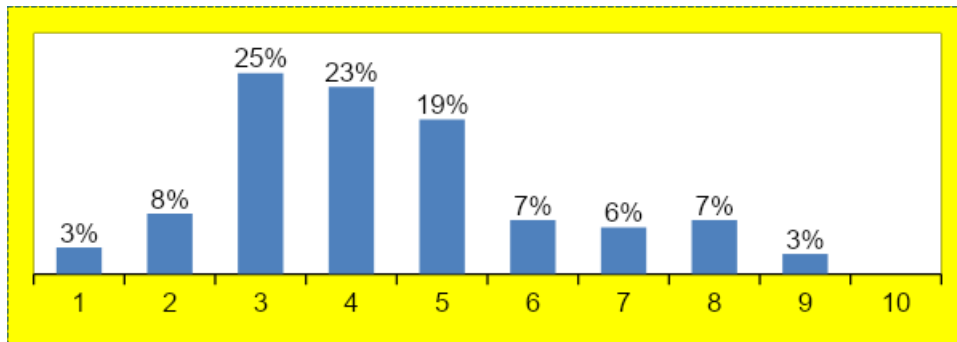
Application of the International Covenant on Civil and Political Rights

The judges interviewed had no practical experience using the International Covenant on Civil and Political Rights in their court decisions. They see that there is a need for increased use of the covenant. Judges rarely apply international standards to their rulings. They mainly use domestic legislation, but will incorporate the terms of international treaties in civil disputes if a disputed contract requires such an application. Many judges said international treaties do not fit the country's social conditions, economic conditions, lifestyle, culture, and traditions. There is also the danger of misapplication if an official translation is not used.

Among all of the respondents, 76 percent said they used international treaties in their practice. Seventy-one percent of respondents said they used them only in limited circumstances. As for the ICCPR, only 18 percent of judges used it in cases they encountered.

The judges were asked to assess their own knowledge of international treaties on a score of one to ten, with 10 representing a high degree of knowledge. The results below show that, on average, their knowledge was under 5 and that not a single respondent felt fully informed about international law.

Graphic 7. Self-assessment of knowledge on international treaties and conventions



FIVE / MONITORING METHODOLOGY

The monitoring topics were selected after consultation with local experts. GIC provided technical assistance to the monitoring teams from the Mongolian Bar Association (MBA) and Media Council of Mongolia (MCM) through team meetings and mentoring workshops.

The monitoring was conducted from August 2018 to April 2019, as a general assessment of the implementation of Article 19 of the ICCPR with respect to media freedom. A total of 32 indicators drawn from the Human Rights Indicators of the OHCHR were used⁵⁸.

The monitoring partners divided the indicators. The Mongolian Bar Association was responsible for all the structural indicators, in order to assess the legislative framework affecting freedom of expression. The MBA reviewed laws passed between 2017 and 2018. The Great State Khural of Mongolia passed a total of 103 laws, 68 in 2017 and 35 in 2018. Twenty-four of these laws contain regulations related to information, mainly duties imposed on public bodies to inform the public on various matters affected by new legislation. No laws strictly restricting freedom of expression, information, and media were passed within the last two years, except for an amendment to the Criminal Code concerning defamation during elections and Article 6.21 on libel in the Law on Administrative Offences.

The Media Council of Mongolia looked more closely at process and outcome indicators, in order to enhance the study of the safety of journalists. The team members selected eight indicators from the UNESCO Journalists' Safety Indicators⁵⁹.

The monitoring partners formed their teams and, in accordance with a detailed schedule, they started monitoring with desk research and data collected through surveys, as well as individual and focus group interviews. It should be noted that not all of the information gathered for all of the indicators were used for this report; some data has been set aside for further analysis.

At each phase of the monitoring, the project partners discussed the progress and preliminary results of the review of each study and survey. DRI Consultant Emily Patterson worked with Monitoring Team members before the report was finalized.

During the monitoring, we faced some difficulties, namely:

- Given the absence of available data for Article 19 indicators, the process of data collection was delayed.
- Government bodies required official letters for the information requests, even though citizens have the right to request and receive information orally and in writing, as well as via telephone.
- Information for some indicators were open, but not elaborated upon for the use of research.
- There were plans to engage ten judges in the focus group meetings, but they were not ready for the open discussions, so arrangements took longer than expected. Finally, six judges agreed to an individual meeting.

The survey involved 300 journalists. Nineteen journalists were involved in the interviews: 11 took part in individual meetings and eight journalists took part in a focus group meeting.

58 https://www.ohchr.org/Documents/Issues/HRIndicators/SDG_Indicators_Tables.pdf, Table

59 Journalists' Safety Indicators, UNESCO IPDC, www.unesco.org

SIX / CONCLUSION

Despite the promulgation of the 1992 Constitution, which establishes the main institutional framework for Mongolia, there are significant concerns and limitations that impinge upon the full exercising of civil and political rights. Mongolia has ratified all 27 of the GSP+ conventions and the country demonstrates a good level of meeting its reporting obligations. However, the country has ongoing difficulties in implementing their provisions. Mongolia appears to be consolidating democracy, but the lack of awareness on the fundamental rights and freedoms to which citizens are entitled, as well as failures concerning the rule of law, are threatening the full implementation of Mongolia's obligations before the international community.

Mongolia has much work to do to ensure full media freedom. Laws on defamation and access to information hamper media's ability to report fully on matters of public interest and public figures engaged in public business. A deeper understanding of international standards on media freedom and the valuable role media play in society are required for true progress to be made.

The 2018 Joint Staff Working Document referred to the Human Rights Committee's Concluding Observations on Mongolia's 2017 sixth periodic report on ICCPR implementation⁶⁰. Taking this lead, the monitoring focused on the effective application of ICCPR provisions before domestic courts, broad legal restrictions on freedom of expression, and media freedom.

The Government of Mongolia has made no positive developments until now. Particularly problematic is the fact that the Ministry of Justice and Home Affairs plans to re-criminalize defamation in amendments to the Criminal Code.

Mongolia lacks laws and policies important to guaranteeing media freedom, such as a general broadcast law including the recognition of community media, laws on media ownership transparency and concentration, and laws on the protection of sources.

Numerous legal restrictions on the right to freedom of expression still exist, and many of these provisions are actively applied. The most serious are defamation laws, which are criminal, civil, and administrative in nature, and employed with great frequency against the media. There is no doubt that many media outlets engage in irresponsible reporting, but this cannot justify the current state of defamation laws in Mongolia. The protection of one's reputation is treated primarily, or exclusively, as a private interest.

A key area for reform is media regulation. Regulation of broadcast media is undertaken by a body which is not sufficiently protected against political interference. The independence of any body with regulatory or governing powers over the media must be guaranteed by law and respected in practice.

A number of oppressive restrictions on the content of what may be published or broadcast remain in place in Mongolia. Strict rules prohibit publication of media content and these have been used to ban a number of publications.

The most serious problem is the regime of secrecy that is provided by law and backed up by an overriding official reluctance to disclose information, in contradiction to the main law guaranteeing access to public information.

As the Report shows, journalists face numerous physical risks when reporting. There have been several cases of attacks and harassment. And, generally, journalists and their employers lack legal knowledge on their rights and are not aware of internal media policies on safety and security issues.

Censorship is common in Mongolia. Unfortunately, its most common form is editorial self-censorship. Journalists and editors often strive to avoid offending advertisers and investors, are fearful of certain powerful actors, and face pressure to follow the editorial policy determined by the owners of their media outlets.

60 Brussels, 19.1.2018, SWD (28) final

Awareness of the nature of freedom of expression and international standards by judges and law enforcement officers is very poor. They are generally unaware of the concept of defamation and, hence, apply defamation laws to unjustifiably restrict freedom of expression.

There is an urgent need for a comprehensive program of reform to bring Mongolian laws restricting freedom of expression and information in line with international standards, and to ensure full respect for these fundamental rights. There is also a need to strengthen the National Human Rights Commission and amend the law to enhance its power in handling complaints on freedoms of expression and information and media.

Numerous drafts of amendments to the Media Freedom Law have been developed, but the State Great Khural has failed to enact them. The ruling Mongolian People's Party's Government Action Plan includes the passage of a new version of the Law on Media Freedom, and the Ministry of Justice and Home Affairs established a legislative working group, but there have been no developments at the time of writing.

Politicians and legislators frequently make statements about initiating a law on social media.

A draft of a broadcast law was submitted to Parliament in 2017, but it is still pending review.

In December 2018, 15 media NGOs and professional associations, such as the Confederation of Mongolian Journalists, Association of Daily Newspapers, Press Institute, Media Council of Mongolia, Globe International Center, and others, sent a letter to the Ministry of Justice and Home Affairs calling for the abolition of Article 6.21 on libel in the Law on Administrative Offense, but no response was received.

SEVEN / RECOMMENDATIONS

7.1 TO PARLIAMENT AND CABINET

7.1.1 Strengthening efforts to practically implement Article 19 of the ICCPR

- 1.2) Strengthen efforts to train judges to effectively use the ICCPR, particularly Article 19, in their practices in hearing cases concerning the freedoms of expression, information and media in domestic courts.
- 1.3) The government should appoint an agency responsible for the monitoring of the implementation of the Law on Information Transparency and Right to Information, and continuously educate the public on the use of the law.
- 1.4) Support is needed for the Ministry of Justice and Home Affairs and General Police Department in providing permanent training for police officers who handle defamation complaints, to improve their skills and educate them on journalism activities, carried out in cooperation with specialized civil society organisations.
- 1.5) Build up the capacity of officers investigating the crimes defined in the Criminal Code, such as “interrupting the right to seek and receive information” and “attacks on freedom of expression and to publish”, and make clear the appertaining body responsible for the investigation of such cases.
- 1.6) Legislators and authorities who have designated what qualifies as “secret information” should take care to consider the terminology of secrecy, in accordance with the Law on State and Official Secrets, and ensure that the public can still access information.

7.1.2 Aligning existing domestic laws with international standards

To ensure that laws and regulations related to freedom of expression fully comply with Mongolia’s obligations under the ICCPR, more specifically:

- 2.1) Adopt laws for the legal protection of journalists’ confidential sources.
- 2.2) Fully decriminalize defamation and put in place safeguards ensuring that criticism of or reporting on the activities of state and regional authorities does not lead to persecution or harassment. Ensure that journalists, media workers, and civil society activists are able to practice their activities freely, without any fear of punishment, in accordance with international standards.
- 2.3) Ensure the independence of the regulatory body and make the process of appointing the chair and commissioners independent, transparent and open to public participation.
- 2.4) Make amendments to the Law on Information Transparency and Right to Information by narrowing the broad regime of exceptions stated in provisions 18-24 of Article 4.
- 2.5) The Civil Code should be amended to provide for the defence of information of public interest and concern, and plaintiffs should bear the burden of proving the falsity of any statements accused of being defamatory.
- 2.6) Initiate legislation on recognizing and categorizing public figures, so that they are tolerant to open criticism and understand that they are under public scrutiny by their own choice. As a temporary measure, government agencies should

restrict their right of reply through codes of ethics or administrative acts.

2.7) The content laws should be consistent with the right to freedom of expression and provide clear definitions of prohibited content, such as obscenity, libel, and extreme religious doctrine. While the good intentions of laws and regulations are in favour of the public interest, such broad terminologies are abused and manipulated by government agencies that take control of media content.

2.8) Article 16.21 of the Law on Administrative Offence should be abolished

7.2 TO MEDIA AND CIVIL SOCIETY ORGANISATIONS

7.2.1 Media organisations should create a safe environment for their staff, in particular:

- 3.1) Constantly monitor safety issues of the staff and develop a safety policy
- 3.2) Create contracts that include proper terms of employment with respect to safety and personal risk
- 3.3) Conduct risk awareness training before journalists are sent on dangerous assignments
- 3.4) Recognize that women and young journalists are vulnerable to greater problems and risks in exercising their professional duties
- 3.5) Educate staff on their legal rights.
- 3.6) Conduct a deeper study of the source protection that should be applied in the future, which can be used to advocate for the legal protection of journalists' confidential sources.
- 3.7) Continuously review and carefully analyse digital security issues

7.2.2 Civil society and media NGOs should strengthen advocacy activities, in particular:

- 2.1) Monitor the safety and security of journalists, involving deeper research on the safety issues faced by women journalists.
- 2.2) Intensively advocate for effective policies practiced by employers and authorities.
- 2.3) Provide information sources and promote good practices, including journalistic professionalism and ethics.
- 2.4) Provide advice and practical tips for journalists, particularly for women and young media workers on dangerous assignments.
- 2.5) Efficiently cooperate and provide necessary assistance, and provide resources for issues concerning the safety and security of journalists.
- 2.6) Conduct deeper monitoring of digital security and reinforce discussions with intermediaries and other relevant media actors.

