

MEDIA FREEDOM
Mongolia Report

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Title

INTRODUCTION

I. GUARANTEES OF FREE EXPRESSION

Constitution of Mongolia
Mongolia`s Obligation to International Law

- 1.1. Freedom of Expression and Media
 - Media Freedom law
 - Law on the Public Radio and Television
 - Criminal Law
- 1.2. Restrictions of Freedom of Expression
 - State Secrecy
 - Organizational Privacy
 - National Defamation Law
 - Other Restrictions
- 1.3. Freedom of Information
- 1.4. Protection of Sources

II. VIOLATIONS OF RIGHTS OF INDEPENDENT MEDIA AND JOURNALISTS

- 2.1. Attacks against journalists
- 2.2. Denial of Information
- 2.3. Protection of Sources
- 2.4. Safety of Journalists
- 2.5. Media Ownership
- 2.6. Use of Criminal Defamation Law

III. CONCLUSION

IV. WHAT SHOULD BE DONE IN THE FUTURE?

APPENDIX

1. Public Service Broadcasting in the Transition: Monitoring Report
2. Case Studies: Criminal Defamation
 - 2.1. The Dashrentsen Case Study
 - 2.2. The Ganhuyag Case Study
3. Case Studies: Assaults against Journalists
 - 3.1. The Datjav Case Study
 - 3.2. The Tsevegmid Case Study
4. The IFJ Media Releases
5. Against Censorship!!!

INTRODUCTION

We are presenting our first media freedom report to you. We express many thanks to Open Society Forum and Mongolia and Network Media Programmed of Open Society Institute for the opportunity to make this report available.

Freedom of expression, particularly freedom of media, is essential to a democratic society. Free and independent press is not a gift from the politicians and authorities. Media freedom is a fundamental human right. The Government duty before their citizens is measured by how the government creates necessary political, economic and legal environments which support free press. Media and journalists do not serve the government and authorities. They serve the public and act as a public watch dog, monitoring the control of power.

This report aims to give the present picture of media freedom and show the abilities of Mongolian journalists to exercise their professional rights and fulfill their duties to the public.

This report has four chapters. Chapter I contains information on the national legislation guaranteeing and restricting freedom of expression. Chapter II includes facts and examples of violations of media and journalists' rights which are based on the monitoring results. Free expression violation monitoring was part of our project 'Monitoring Free Expression Violation and Supporting Rights of Independent Media', which was supported by OSF and Network Media Programmed of OSI. It is the first ever monitoring conducted through a national monitoring network based in Ulaanbaatar and the provincial regions: Bayan-Olgii, Darkhan-Uul, Zavkhan, Orkhon, Ovorkhangai, Omnogobi, Khovd, and Khentii. We also used the opinions of journalists and lawyers which were expressed during the meetings, seminars and trainings; official speeches and interviews of elected politicians; and studies on the use of defamatory legislations. The first ever case studies on the court defamation cases and assaults against journalists conducted by Globe International lawyers have also been included in this chapter.

Chapters III and IV contain a conclusion and our recommendations for what we should do in the future.

I. GUARANTEES OF FREE EXPRESSION

Constitution of Mongolia

Freedom of expression is protected in Article 16 of 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 defense, security, and public order, the information which is not subject to disclosure must be classified and protected by law.

Mongolia's Obligation to International Law

Mongolia is a member of the United Nations and a State Party to the International Covenant on Civil and Political Rights (ICCPR). As such, Mongolia is legally bound to protect freedom of expression in accordance with international law.

This is formally recognized in Article 10 of the Constitution of Mongolia which states:

- (1) Mongolia adheres to the universally recognized norms and principles of international law and pursues a peaceful foreign policy.
- (2) Mongolia fulfills 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 Constitution.

Therefore, both international law and the Constitution of Mongolia require domestic law and practice to be consistent with Mongolia's ICCPR treaty obligations on freedom of expression.

This guarantee places international treaties on an equal basis with domestic legislation.

Article 19 of the Universal Declaration on Human Rights (UDHR) guarantees the right to freedom of expression in the following terms:

Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.¹

The UDHR, as a UN General Assembly resolution, is not directly binding on States. However, parts of it, including Article 19, are widely regarded as having acquired legal force as customary international law since its adoption in 1948.

ICCPR, a treaty ratified by over 145 States, including Mongolia,² imposes formal legal obligations on State Parties to respect its provisions and elaborates on many rights included in the UDHR.³ Article 19 of the ICCPR guarantees the right to freedom of expression in terms very similar to those found at Article 19 of the UDHR:

Everyone shall have the right to freedom of opinion.
Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.

1.1 Freedom of Expression and the Media

The guarantee of freedom of expression applies with particular force to the media. It is mass media that makes the exercise of freedom of expression a reality.

The European Court of Human Rights has consistently emphasized the “pre-eminent role of the press in a State governed by the rule of law.”

In order to protect the right to freedom of expression, it is imperative that the media is permitted to operate independently from government control. This ensures the media's role as public watchdog and ensures that the public has access to a wide range of opinions, especially on matters of public interest.

¹ UN General Assembly Resolution 217A (III), adopted 10 December 1948.

² Mongolia ratified the ICCPR on 18 November 1974.

³ UN General Assembly Resolution 2200A (XXI), adopted 16 December 1966, in force 23 March 1976. Mongolia ratified the ICCPR on 18 November 1974.

Media Freedom Law

The Mongolian Parliament passed the Media Freedom Law on 28 August 1998.

Article 1

The purpose of this law is to guarantee freedom to freely express, freedom of speech and freedom to publish stated in the Constitution of Mongolia.

The Media Freedom law of Mongolia

Article 2 of this law prohibits adopting any laws restricting media freedom and freedom of media outlet. Article 3 bans censorship and obliges the media outlet to take responsibility for its publications and programs and Article 4 prohibits state-ownership of mass media.

Law on the Public Radio and Television

The establishment of the public broadcaster is the most important step taken by the Mongolian authorities towards consolidating media freedom over the last years.

The Mongolian Parliament passed the Law on the Public Radio and Television on January 27, 2005 after 7 years of delay. The Parliament Resolution #103 on the implementation of the Media Freedom Law was issued on 28 August 1998 and provided for the dissolution of state-owned broadcasting and re-structuring it into public service.

The Law on Public Radio and TV came into force on 1 July 2005. The former Mongolian National Radio and TV was dissolved and a new public broadcaster, Mongolian National Broadcasting (MNB), was registered with the Ministry of Justice and Home Affairs on February 8th, 2005.

Globe International's Monitoring Report on the transitional process of the PSB is attached to this report as Appendix # 1.

Criminal Law

The Criminal Law passed in 2002 states that it is a crime to interrupt lawful professional activities.

Article 139

The person interrupted the lawful and professional activities of the journalist in order to disseminate or not to disseminate any information, which affects his or her own or other's interest, shall be fined 31 - 50 times increased amount of the lowest level of salary, or shall be arrested for a period of 1- 3 months.

The Criminal Law of Mongolia

Globe International organized a meeting with 10 lawyers on 23 November 2005 in order to discuss how to efficiently use the above provisions. Unfortunately, lawyers came to conclusion that these provisions are not clear, so it would not work in practice and therefore, interpretation of the Supreme Court is needed.

D.Orosoo, a lawyer from the National Legal Center, and D.Bolorchuluun, an advocate, told us they tried to use this article for a case of journalists who were arrested and detained for 24 hours along with demonstrators during the public demonstration organized by the Fair Land Privatization Movement in 2002. The demonstration was blocked by 1,000 policemen. Unfortunately, the General Prosecutor's Office denied and ignored their complaints stating the incident had no criminal character. The

policemen insisted that it was late night and they were unable to recognize: “who was a journalist”. Secondly, they were not intending to arrest only journalists. If the officials purposefully obstructed the journalists, they should have been sentenced by the Article 139 of Criminal Law. Since policemen arrested the journalists without any purpose, there is no reason to bring them for criminal charge. Later, during the round table: “Judicial protection of media freedom”, a Globe International leader raised this issue and asked the prosecutor to explain their denial. The prosecutor said he denied it because the public demonstration was unlawful.

Article 139.2

If the crime committed by using official position, the person shall be fined 51 - 100 times increased amount of the lowest level of salary, or shall be arrested for a period of over 3 months or up to 6 months

The Criminal Law of Mongolia

1.2 Restrictions of Freedom of Expression

State Secret

In Mongolia state secrets are protected by a general Law on State Secrecy and a Law on the List of Secret Information. The Law on State Secrecy was passed in 1995 and it was amended on January 2nd, 2002.

Article 3 titled “The perception about state secrets” provides for definition: “State secrets” shall be reports, documents, substances, items and proceedings which were defined as state secrets according to Mongolian legislation, and contain in themselves information, divulgence of which will cause harm to national security in forms of definitions, illustrations, signs, technological solutions and are related to matters of foreign policy, economics, science, technology, defense, intelligence, counter-intelligence and secret operations of Mongolia.

Article 11 states: “The category of confidentiality of state secrets shall depend on the seriousness to harm state security and interests that occur as the result of their divulgence” and state secrets fall into the following categories: Most confidential, confidential and classified.

Article 5 sets out five areas of secrecy – national security; defense; economy, science and technology; secret operations and counter-intelligence; and procedures on the execution of criminals with capital charges and the Law on the List of State Secrets protect 59 types of information. 69.5 % of the information is protected for 40-60 years and for indefinite periods.

6 types of information fall are categorized as most confidential, 24 as confidential and 7 as classified, but 25 types of information do not belong to any of the categories.

The amendment made on April 23rd, 2005 provides for an indefinite period of protection for “entire information and documents related to the terrorism”.

It is a crime, punishable by up to 8 years imprisonment, if the disclosure of state secrets is especially harmful.

It is prohibited to disclose confidential correspondence relating to the work of the Prime Minister and members of the Cabinet (Law on the Cabinet of Mongolia, Article 25.4) and the President. (Law on the President of Mongolia, Article 16.5).

Fortunately, there are no reports of journalists punished for disclosing state secrecy, but there are records of threatening arrest.

Organizational Privacy

The Law on Privacy of Organizations passed on May 16, 1995 extends the regime of secrecy to private organizations. This law effectively requires organizations to establish a regime of secrecy and to develop internal procedures to protect such secrets (Article 5.1). The impact of this is somewhat mitigated by Article 6 of the law, which lists a number of areas which may not be kept confidential. It is prohibited to withhold information, if the information pertains to activities, products, services, techniques, and technologies which affect the public health or environment, or contains information on poisonous or radioactive substances held by an organization which may cause public harm or harm the environment should its procedures on storage and protection be breached. The information also cannot be protected if it is about a crime or if it should be revealed to the public in accordance with law.

Article 164 of the Criminal Law makes it a crime punishable by a fine or arrest for a period of 3 to 6 months, if financial secrets or secrets on activities are unlawfully obtained or disclosed. If the harm is big it is punishable by imprisonment for up to 3 years.

National Defamation Law

Article 16.17 of the Constitution, protecting the right to seek and receive information, allows for restrictions on these rights, including “to protect ... the dignity and reputation of persons.”

Reputations are protected in both the civil and criminal laws of Mongolia.

Article 110: Insult

A criminal charge of a fine for 20-50 times of an increased amount of the lowest level of salary or arrest for a period of 1-3 months shall be imposed, if others' honor and reputation is insulted before the public or through media.

The Criminal Law of Mongolia

Article 111: Libel

111.1 A criminal charge of a fine for 20-50 times of an increased amount of the lowest level of salary or arrest for a period of 1-3 months shall be imposed, if a clear statement on libel is distributed with a purpose to defame a person's honor and reputation.

111.2 A criminal charge of a fine for 51- 150 times of an increased amount of the lowest level of salary or arrest for a period of over 3 months or up to 6 months shall be imposed, if libel is distributed through media or if the crime on insult and libel is committed by a person who was criminally charged before.

The Criminal law of Mongolia

Before the Criminal Law was passed in 1994 the Supreme Court of Mongolia issued a Suggestion on the Usage of Articles 7 and 392 of the Civil Law. Provision 13 of the Suggestion states: “Public criticism on the concept and activities of state and government institutions and its officials does not mean defamation of the institutions and officials, but it can be considered, if the criticism is over standards concerning the defamation of another’s honor or if it leads to such a situation.”

The Civil Law was amended in 2002 and protects a citizen’s name, honor, reputation and business reputation.

21.2

If a person who distributed information defamed a citizen's name, honor, reputation and business reputation cannot prove its truth he or she shall be imposed to correct it through forms or means that such information was distributed, or other forms or means as demanded by a person whose right was violated.

The Civil Law of Mongolia

The Civil Law also states that a person has the right to illuminate the damage caused if a citizen's image was published or shown to the public through photo, film, video, painting or other forms without permission (21.5).

Other Restrictions

In Mongolia there are many laws restricting freedoms of expression and information. In accordance with Globe International and an Article 19 Legal Analysis conducted in 2001, there were 91 such laws and law provisions. Below are a few examples by which journalists can be criminally charged in the breach of the Criminal Law:

In accordance with the Criminal Law, a criminal charge of a fine and arrest for up to 3 months shall be imposed, 'if privacy is disclosed' (136.1), 'if obscenity is advertised' (123), 'if citizen's correspondents are violated' (135), 'if extreme religious ideas are advertised or distributed' (144.1), and 'if facts of criminal cases are disclosed without the permission of inspectors, detectives, prosecutors and judges (257.1).

In the case of advertising war or calling war, a criminal charge of arrest for 1-3 months shall be imposed. If this case was committed by using mass media or by state officials, a criminal charge of imprisonment for 2-5 years shall be imposed.

231: Insulting state officials and public inspectors for social order

231.1 A criminal charge of a fine for 5-50 times of an increased amount of the lowest level of salary, or forceful works for 100-150 hours, or arrest for a period of 1-3 months shall be imposed, if state officials and public inspectors for social order are insulted before the public in relation to their duties.

Criminal Law

Explanatory Note:

State officials, as detailed in this law, are judges, prosecutors, inspectors, detectives, policemen, customs and tax officers, and other state inspectors who have special powers by law.

1.3 Freedom of Information

Mongolia is missing a Freedom of Information law. Globe International has launched a programme to distribute the idea, concept, principles and international standards of Freedom of Information in 2002 with the support of the Mongolian Foundation for Open Society (the present Open Society Forum), the US Embassy and AUSAID. In 2004 the first draft law was submitted to the Ministry of Justice and Home Affairs.

The discussion of the law was in the agenda of the Mongolian Parliament in November 2005, but has been delayed until now. In October 2006, the Cabinet of Ministers discussed the final draft of the law. Unfortunately, it was postponed by reason that it should be discussed in its complexity along with laws on information security and information technology.

Mongolia does not have legislation providing for a comprehensive guarantee of the right to information. There are a number of provisions dealing with the right to information in specific circumstances through various laws. These include the following openness obligations:

-Resolutions of the Cabinet and decrees of the Prime Minister must be published in the Government News Bulletin (Law on the Cabinet of Mongolia, Article 31.1);

-Organisations may not keep confidential information that discloses health or environmental risks or crimes (Law on Privacy of Organisations, Article 6);

-Candidates for local elections have the right to obtain necessary information from their local administrations (Law on Elections of Citizens Representatives Khurals of Aimags, the Capital City, Soums and Districts, Article 25.1);

-The State Privatisation Committee must make public information on state-owned legal entities before a process of privatisation (Law on Central and Local Government Property, Article 6.1);

-Meetings of the State Ikh Khural shall be open and decisions must be published through the media (Law on the Procedures of Meetings of the State Ikh Khural, Article 4.9); and

-Laws and decisions of the State Ikh Khural, orders of the President, resolutions of the Cabinet, and legal acts issued by Ministries must be published in the Government News Bulletin (Law on the Procedures of Meetings of the State Ikh Khural, Article 46.1).

While these measures are positive, they do not go nearly far enough and in practice it is very difficult for ordinary citizens without special connections to access information held by public authorities. It is now accepted that comprehensive legislation is necessary to ensure practical respect for this important right.

1.4 Protection of Sources

In Mongolia there is no legislation guaranteeing the protection or confidentiality of sources of journalists. The previously mentioned suggestion of the Supreme Court approved in its meeting on May 25th 1994, accepted that 'journalists have the right to protect their information sources' (Provision 8).

Provision 4 of Code of Conducts of Journalists adopted by Confederation of Mongolian Journalists on March 11, 2005 states:

The journalist shall protect the source of information obtained in confidence in any case.

II. VIOLATIONS OF RIGHTS OF INDEPENDENT MEDIA AND JOURNALISTS

Globe International has registered 41 violations during Free Expression Violation Monitoring conducted between October 2005 and October 2006.

Even though censorship is banned and the interruption of the professional activities of journalists is a crime in accordance with law, it does not work in Mongolia. The various violations of the journalists' rights are evidence that Mongolian journalists work in difficult conditions and complicated situations.

Some journalists do not want Globe International raise attention to their cases. They are highly self-censored and they are afraid from further possible attacks and assaults. Globe

International is investigating a case in which a journalist was raped by those who were affected by her critical article.

2.1 Attacks against Journalists

Attempts to pressure, influence and intervene in journalistic activities are evidence that censorship is a reality in Mongolia.

Attacks against journalists occur in many ways, such as threats, insults, detainment, arrests and assaults. Statements and public denial in newspaper publications and on broadcast programmes are common ways that the Mongolian authorities create confusion in society.

Even the private sector and ordinary citizens are trying to interrupt news gathering and the reporting of public events.

We are concerned that foreign businessmen are pressuring journalists through high officials. For example, while a female TV producer was producing a documentary on child sexual exploitation and was shooting in the Korean-invested Seoul restaurant, she was threatened by Korean businessmen. Later the TV managers forced her to clean up her edited tapes. A female television reporter produced a news story on an automobile incident committed by rich Koreans who were returning from the Golf Course. She was threatened and forced to remove her story.

B.Bold, a reporter of the daily *Odriin Sonin*, was detained for 2 hours by the police while he was collecting information about the public demonstration protesting against Boroo Gold, which is a 100% Canadian invested gold mining company. B.Bold introduced himself as a journalist and demanded to know who produced an order to block and detain the rebels. His reporter's identification that was shown to the policeman was confiscated and he was detained for 2 hours along with others.

On the night of May 8th, 2006, a television crew with reporters M. Batdorj and T. Orgil and cameramen B.Uuganbayar and L.Bayanbat, all from the independent Eagle TV channel, were assaulted by policemen in the centre of Ulaanbaatar, the capital of Mongolia, in Sukhbaatar Square, while covering actions by Mongolian police who were breaking and tearing down the gers (traditional Mongolian dwellings) of the protesters. Several civil movements have been protesting against the current government since March 2006, the pending stability agreement with Ivanhoe mines (a Canadian mining company), corruption, and the 2006 budget revisions. Starting mid-April, traders of the burned-down SAPU shopping centre who had lost all their stock and were being denied compensation, joined the protesters. Because of an official visit by the South Korean President, city authorities demanded that the protesters remove their gers. However the protesters did not comply and the police came in the middle of the night to break them down.

The Eagle TV reporters were roughed up by police when they tried to shoot footage for the morning news. Police demanded ID from the journalists before they were allowed onto Sukhbaatar Square (a public place) and then told the journalists that they had no right to record the events, forcibly preventing the Eagle TV crew from taping. One police officer repeatedly smashed his fist into the camera and damaged it. Another officer took journalist T.Orgil by the collar and dragged him away from the area controlled by police. T.Orgil said that none of the senior police at the scene would answer his question, "Why do journalists need to get advance permission to record events on a public place like the central Sukhbaatar Square?"

Mongolchuudyn Amidral, a weekly tabloid, published news about the personal life Mrs. Arvin, MP. In the early morning of March 30 2006, Mrs. Arvin went to the post offices together with the policemen and confiscated all the issues of the newspaper. The next day she returned all the copies of the newspaper.

A Mongolian National Broadcasting news crew was attacked near the Students hostel in the western district of the capital city Ulaanbaatar on April 19th 2006. The journalist Sh. Aruintsetseg and

cameraman G. Delger were filming a bus where students were getting in on their way to support a demonstration organized by the civil movements "Healthy society" and "Mongolian Homeland". The crew had just finished interviewing one student who confirmed that he was given 5000 Mongolian Togrogs (about 4\$) by the leaders of civil movements to support the demonstration. The three staff suffered minor injuries and the camera was permanently damaged. They escaped after a UBS television crew arrived soon afterwards and approached while grabbing stones. The UBS crew left their own camera in their van.

The female journalist G. Ganchimeg of the Hovdyn Medee (Hovd News) weekly newspaper, with more than 700 subscribers, was threatened by Mrs. B. Bujinkham, an Hovd agent of the privately-owned Air Mongolia aviation company, after she published an article in the newspaper entitled "Airticket in Our Permanent Toothache" in the issue dated January 1st, 2006. It claimed that the set price for the Ulaanbaatar-Hovd aimag ticket should be 76,500 MNT (about 63 US\$) but that the agent and her cashier charged 10,000MNT (about 8 US\$) more per ticket. Hovd province is located in the Western part of Mongolia and 1500 km from the capital city Ulaanbaatar. Mrs. B. Bujinkham demanded her to "...reveal the source of information or I will take you to court." She also demanded that any such articles be submitted to Air Mongolia before future publication. The journalist wrote her article after an investigation revealed material about an airticket problem which had been a topic of discussion among local people for many years.

Mr. L. Gansukh, Governor of North western Zavkhan province of Mongolia, called to his office all staff of the weekly "Zavkhan" newspaper, including editor-in-chief Mr. B. Ider and the Governor's Office Media Information Department head and spokeswoman D. Natsagmaa, on December 31st, 2005, and yelled at them for some time. His anger was at a notice published in the newspaper's 35th issue (December 20, 2005) regarding a request from the Court General Executive Department (Zavkhan branch) on the compulsory auction of the "Uliastai" hotel. The governor accused D. Ider of publishing the announcement without permission from him and demanded to publish an immediate correction. He also accused his spokeswoman of not censoring the newspaper's content. He further threatened, "If you do not rectify your mistake immediately, I will dismiss you and I can close down your newspaper." He said that he was deeply concerned that confidential information was nationally distributed because the Zavkhan newspaper has a national subscriber network.

Female journalist S. Enkhtuul of the national newspaper Udriin Sonin (Daily news) has been threatened for her published serial articles relating to the sensational bankruptcy of some private savings and credits associations. On June 13th, 2006, after her published article entitled "Are the bankrupted financial associations guiding police to a mafia network?", she was called for the meeting by Mr. B. Tamir, whose name was mentioned in the article, at her office. B. Tamir, together with two young men, invited her to sit in their car and asked her to publish an immediate correction. The journalist refused to sit in the stranger's car. Furthermore she told them that the published article was the result of considerable investigative work. According to journalist Enkhtuul, they said that, "If you do not rectify your mistake immediately, we'll solve this problem our own way". Since then someone has started to call her mobile phone and threatening that, "We have been watching you. The article you published on us was based on false information". Along with these threatening calls, she feels as though she is regularly being followed.

The executives of the Udriin sonin (Daily news) helped change her cell phone number and informed the Police Department of the Sukhbaatar district of the capital, Ulaan Baatar. The Police Department provided a police guard to the journalist on the newspaper editors request.

Two days after this, the chairman of the Government's Financial regulatory committee, who had closely examined all issues relating to private savings and credit associations, was murdered in his office on June 15th, 2006. According to the media, the killer was the owner of a private saving and credit association which was in severe financial trouble.

Thus, the Police Department filed a criminal suit against Mr. B. Tamir, who had threatened the journalist to publish a correction on her published article.

The female journalist M.Odgerel of the “Dornod” newspaper, which has a national subscriber network, has been threatened by Mr. D. Sukhbaatar, the former deputy head of the Dornod province branch of the National Emergency Management Agency, after she published an article headed “Slander worth a million: unlawful action by Mr. Sukhbaatar” on December 25th, 2005, in this newspaper. Since its publication, D.Sukhbaatar has been sending threatening messages to her mobile phone and demanding her to publish a correction.

D.Sukhbaatar was informed about the article before its publication and called the editor-in-chief of this newspaper, Mrs. B.Tuya, demanding that it not be published. Other aimag officials repeatedly rang Tuya with the same demand.

A journalist of the northern Huvsgul province and her coworkers have repeatedly received threats from a businessman concerning a critical publication. U. Gereltuya, editor of the Huvsgul-based newspaper Khuvsguliin Erkh Chuluu (Freedom of Khuvsgul), which has approximately 500 subscribers, said “We repeatedly receive threats and are insulted by businessmen.”

For instance, last year Mr. L.Tumurbaatar, director of Khuvsgul Geology Company and owner of Dalai Eej newspaper, threatened U.Gereltuya concerning a publication which claimed that he was lobbying a judge for selecting his newspaper as the “best media of the year”.

In another case last year, unidentified people in a car passed through the fence of one of the journalist’s houses. “We reported it to the police but they didn’t reveal the criminals. We are still receiving threats concerning our publication,” she said.

On October 27, 2006 daily newspaper reporters G.Erdenebat, B.Khajidmaa, photographer Ya.Aranjinbaatar of “Udriin sonin” and photo reporter Sh.Gerelsaikhan of “Ardiin erkh”, who were covering a civil society demonstration, were detained around 2 hours by policemen.

During the mass arrest policemen assaulted the journalists, destroyed a photo camera, confiscated documents, and didn’t give any chance for the journalists to explain their purpose. One of the detainees, Mr. G.Erdenebat of “Udriin sonin”, said, “No policemen asked us to show documents, instead they disregarded them and threw them away. Ms. B.Khajidmaa, a female journalist, was beaten by policemen with batons, and her face and body were severely injured. The photo camera was destroyed while the policemen were trying to confiscate it. Policemen packed us in the car and brought us to the police station.”

Mr. G.Davaakhuu, head of the public relations office of the General Police Department, said, “We dispersed the demonstration according to the law and we didn’t use any force. Yes, we agree that the journalists were detained, but how can we differentiate journalists from the demonstrators?”

Because of this incident “Udriin sonin” organized a press conference demanding authorities to stop violating the rights of journalists and urged journalists to have solidarity against the violation of journalist’s rights.

The Confederation of Mongolian Journalists also issued a media release. It sharply condemned the incident and stated that this was a violation of the journalists’ rights to deliver the truth of events. In other words, these violations are a method to oppress the right to know truth.

On October 26, civil society representatives, who demanded the release of Mrs.G.Baasan, head of the Free Elder’s Union, set up a tent in the central street of Ulaanbaatar and closed the road traffic at 13 a.m. Law-enforcement organizations repeatedly demanded demonstrators to disperse but they didn’t obey the demands and policemen dispersed them with force that night.

On October 24, Mrs. Baasan was detained by Chingiltei district police department, for reason of assaulting the police.

Colonel J.Vyachaslav, director of the ordinary security prison 439 of the Mongolian General Court Decisions Executive Department in Bulgan province has threatened journalist Mr. J.Munkh-Ochir of the weekly newspaper Zindaa (Rank) for an article entitled “Lacking control of prisoners”, published on the September issue, 2005.

At a province executive meeting at the governor’s administration office on March 13, 2006, Vyachaslav said to the journalist, ”Why have you spread false information to the public? Do you know that for this you must be taken to court and punished? I’ll resolve this problem through the law.”

One month ago, at another such meeting, the province police office director gave details about two recent car accidents in the province which possibly involved prisoners of the above prison whom Vyachaslav had allowed to work as drivers. When journalist Munkh-Ochir heard this, he investigated and met policemen Mr. Ganbat and Mr. Bayarsaikhan, who had been assigned to investigate the accidents. The policemen confirmed that prisoners were involved in both accidents. The journalist then published an article in the newspaper.

“Colonel Vyachaslav was deeply concerned at having his secret and irresponsible behaviour publicly revealed and threatened me,” Munch–Ochir told the Globe International monitor.

2.2 Denial of Information

In its very first session in 1946, the UN General Assembly adopted Resolution 59(I), which stated, “Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated”.

Journalists are acting on behalf of the public in order to disseminate information to them. Unfortunately, denial of information by the public officials in Mongolia is very common.

National Taxation Agency Denied in Information

We regret that the National Taxation Agency denied information to our newspaper. In the past, media reported on the privatization of the Savings Bank. Some media were informed of a decrease of taxes paid by the Bank. In order to clarify the objectivity of the information we approached Mr. B.Batgerel, the inspector of information section, and requested information about the tax payment of 2003-2005. Unfortunately, it was denied. He demanded to request the information in written form and that it must be signed by the chairman. We could not get the information, which is not state secret, by following their procedure. Is that strict rule determined by the leader of the National Taxation Agency or bureaucracy of Mr. B.Batgerel?

Source: ‘Onoodor’ daily newspaper. No 008, 11.01.2006

On 12 June, 2006, S.Munkhdalai, a reporter for the community radio station Noyon Uul, and Uvurkhangai TV journalist G.Puntsagsuren, were denied information by G.Dashtudev, chief secretary of the Crime Prevention Council of the Mongolian Justice and Domestic Ministry. While S.Munkhdalai was taping a meeting about inspections at the council’s Uvurkhangai aimag (province) branch, the secretary twice turned off the recorder and ordered the journalists to leave the meeting. The journalists were denied information by G.Dashtudev, who was speaking about a Justice Ministry report of an inspection in Uvurkhangai aimag, which he said was classified an organizational secret. He ordered that the journalists leave the meeting unless they stopped voice and video recording. S.Munkhdalai, Globe International NGO’s central region monitor, said, “The information classified

secret by G.Dashtudev was that there were herders who could name livestock rustlers who would be liable to legal punishment. He also criticized the Uvurkhantai aimag police staff who didn't act promptly."

On July 27, Mr. M.Yadmaa, governor of Omnogovi province, ordered department heads not to give information to "Altangobi" television while the TV cameraman, Mr. M. Shinekhuu, was reporting on a meeting of the heads of the governor's department offices.

A day before, on July 26, "AltanGobi" television aired a TV program covering the large increase of meat prices and interviewed a meat retailer, Dolgor, who said, "The Governor of the province gave out money from the Governor's Office to his relatives who purchased meat from neighboring provinces, and resold it here."

After the TV program, the Omnogovi province Governor called the salesperson Dolgor to his room and demanded her to make a withdrawal of her interview, and threatened to take her to court if she didn't agree to. The governor of the province also ordered to call the journalist who developed the program, but the TV journalists refused.

Incidentally, Mr. N.Naranbaatar, the chairman of the Governor's Office, also expelled journalists from the meeting on introducing inspection results of the Governor's Office by the Cabinet Secretariat of the Government of Mongolia.

The former governor of the province, Ts.Tserenbayar, also repeatedly violated the journalist's right to access to information. He threatened them, stating "I'm talking about shutting off your TV, you have no right to interview me", then he demanded the accreditation and twice expelled journalists of 'Altan Gobi' television who came to collect information regarding the process of handing over the Governor's post.

Omnogobi province is located 600 kilometers from the capital of Mongolia and has a population of 43.5 thousand. It has two television stations and two newspapers as well as multiple radio stations. The only independent television "Altan Gobi" currently has 16 thousand viewers.

T.Bayartsogt, a reporter for the community radio Orkhon, was restricted to access information about the activities of the Tsavchirt local lime processing company in the north Mongolian aimag of Darkhan-Uul. May 24th, 2006, he entered a company production site. The company manager Sh. Munkhtsetseg invited a group of journalists from central and local media outlets, including TV and radio, to get a look at company operations, but she would not allow Bayartsogt to cover the event for his radio station. The Globe's northern region monitor tried to clarify the reasons for the restriction and why the company manager refused to give information to the Orkhon radio reporter and refused to allow him access to the company building. Munkhtsetseg said, "When I checked the list of names of journalists who had arrived by invitation, I saw the name of the journalist who represents the Orkhon community radio station. Last year this radio aired a radio programme which defamed this company's reputation."

On August 19-20, 2005, Orkhon broadcasted a programme entitled "White Smoke Harms the Environment" twice, which included an interview with an environmental expert and local residents who criticized Tsavchirt and other local companies as harming the environment, claiming that they never rehabilitated the areas from which they extracted lime. Following this programme, the Darkhan-Uul Aimag Department for Environmental Protection fined each of the named companies 100,000-150,000 MNT (US\$80-120).

2.3 Protection of Sources

In Mongolia, it is normal to demand the journalists to reveal their information sources.

The first question asked by complainants affected by critical materials, advocates, and judges is ‘Who gave you this information?’ In most cases the journalists are threatened with arrest, imprisonment, bringing a case before the court, and calling the police. There are cases in which journalists are pressured to reveal their information sources. Usually the journalists are afraid from reporting or alerting their cases.

The female journalist Sh.Otgonjargal of the daily and nationwide distributed newspaper “Unen” (True), with more than 50000 subscribers, was called by a special agent who called himself Batsaikhan (not his real name) of the General Intelligence Agency of Mongolia regarding her published article about the inspection conducted by the National Audit Department on the construction work of a State residence of ceremony and monument of the Chinggis Khaan. A journalist informed the public about embezzlement from the monument construction budget. A special agent strongly demanded her to reveal her source of information and when the journalist refused to come to the Agency for an interview, he threatened to arrest her. The scared journalist called the Globe lawyer for legal advice and defense. According to Globe’s lawyer, a special agent of the GIA hoped to easily get information about this case by threatening the journalist.

She has published a story and informed the public about financial violations on on-going construction works of the Chinggis Khaan memorial complex. The facts have been exposed by the State Auditing Department and the article was published before the auditing had been finalized. She was demanded by an officer of the Intelligence Service to reveal her information source.

A female journalist from Mongolyn Medee, a daily newspaper, was threatened by the police that they would arrest her for 6 hours, if she did not reveal her information source. She covered a murder, and according to the policeman she described the way the murder was committed.

Freelance journalist D.Ganhuyag was demanded many times to reveal his information sources during a criminal investigation of a libel case brought by Mr. O.Chuluunbaatar, the President of Mongol Bank.

The case study is enclosed in the Appendix of this report.

Considering the importance of the protection of journalist’s sources for press freedom in a democratic society and the potentially chilling effect demands to reveal one’s source have on the exercise of that freedom, such a measure cannot be compatible with international standards unless it is justified by overriding benefits to the public interest.

Although suggestions on this topic by the Supreme Court are welcome, we believe legislation providing protection for the right not to reveal confidential sources of information is necessary.

2.4 Safety of Journalists

Journalists receive threats to their personal safety. We are deeply concerned that intolerance towards journalists appears to have increased. The majority of journalists do not want to report or alert their cases because of possible future assaults. Unfortunately, none of the incidents have been investigated by the police.

At Globe International, for example, a male journalist from Erdenet provincial newspaper was beaten by unknown people and his photo camera broken. His kidney and liver were seriously damaged, but he has refused to raise attention to this incident. He reported his case to the police next morning.

On the night of December 19th, 2005, an unknown individual vandalised the vehicle of television journalist G. Batjav near his home in Ulaanbaatar. All of the windows were broken, both mirrors were torn apart and the interior of the car was destroyed. However, no valuables or car parts were taken. Previously, on November 9th, three individuals assaulted Batjav while he was having lunch in a small restaurant in the Sukhbaatar district of Ulaanbaatar.

More information on this case study is enclosed in the Appendix of this report.

On July 6th, 2006, B.Tsevegmid, the editor of Nomin television station in the northern Mongolian province of Orkhon, was beaten at the entrance of her building and had to be hospitalized for treatment. Before being attacked she had received many threats by telephone concerning an investigative television program, "Forbidden to Watch," which covered the Erdenet mining industry employees' privatization vouchers.

On June 11th, "Forbidden to watch" aired the fate of privatization vouchers for 9,000 employees of the Erdenet mining industry. After the television program, unknown people threatened her over the phone. The director of the Erdenet brokerage company, which held the vouchers, also warned the journalist, "It is a very complicated issue, you could be killed".

More information is in the Case Study enclosed in of this report.

2.5 Media Ownership

There are no laws regulating cross media ownership or media concentration, and general broadcast law.

The 1998 Media Freedom Law prohibits the state-ownership of mass media. The only media which remained state-owned was MONTSAME, the only nation-wide news agency. After the 1998 Media Freedom Law MONTSAME had to be converted into public media.

On December 15th, 2005, the Cabinet of Ministers decided to transfer MONTSAME, which is a government agency, to the Ministry of Foreign Affairs and present the decision to the Parliament for discussion.

Mr.B.Dorj, Press officer of the Ministry of Foreign Affairs, said: "The Ministry's position is to use MONTSAME in strengthening overseas information distribution and to have one united policy for overseas information policy. The General Director has not been appointed since 2002. Even though the acting General Director has been working the information policy is lacking. That is why it leads to this decision".

No decisions have been taken as of now.

According to a Press Institute study, there are 325 media outlets operating by the end of 2005. Today, there are 9 daily newspapers and 10 television channels.

Information on media ownership is not open to the public. There are various opinions surrounding the ownership of media outlets, particularly of television channels which are allegedly owned by influential politicians and businessmen.

Ts.Nyandorj, Speaker of the Parliament

I do not understand those comrades who put themselves in the hands of the media. I know all the politicians who are behind the new televisions. It is meaningless to determine their personal influence to the society through media. It will be enough to have 3-4 television in Mongolia. In China there are 5-6 television channels.

Source: Interview published 'Onoodor' daily newspaper, No 228(2882), 29/09.2006

The only person who openly stated his ownership is H.Enkhbayar, the President of Mongolia.

Interview with the President of Mongolia

Reporter: - I would like to ask about TV9. There are complaints that you have paid 60 million togrogs to Bishop Choichamts and obtained the television studio, which was given to Gandan (Buddhist Center) and MPRP (Mongolian People's Revolutionary Party).

H.Enkhbayar: It is not nice talking about this, but I have to explain the truth. I have believed in Buddha since my childhood and I have had a teacher since 1982. Bishop Choijamts and I have been discussing about creating a Buddhist television station since the establishment of Christian Eagle TV broadcasting. The Japanese religious organization Agun Shu gave us a television studio when they invited us to a Buddhist religious ceremony. They said it was given to private individuals named Enkhbayar and Choijamts, so we came to Mongolia with equipment costing 110,000 USD. It does not belong to Gandan, and does not belong to MPRP. It was difficult to directly establish a new television station because there was no channel. The studio equipment was kept in the Betub monastery at first and was later kept in the building of MPRP. Friends of the Party asked for a camera during the Election campaign and it was not given. I had made a promise to my Japanese friends, which is why I would not use the camera. One day Munkh-Orgil (MP) said: 'I have a channel. You have a studio'. That is how TV9 was established.

We handed 60 million togrogs to Bishop Choijamts over ceremonially. Before that I was joking and said to the Bishop: 'Our studio costs 100, 000USD. Right?' He said: 'No. 110, 000 USD'. He has very good memory. That is why he is good in his studies. The Bishop said he will spend the money to build a monastery.

I was told that the Bishop appears on TV9 when he wants. I cannot watch. Ts.Enkhbat, the director, manages well. Some politicians call me saying: 'You are killing MPRP'. I cannot participate in activities of television.

Source: 'Onoodor' daily newspaper. No 104(2758), 05.05.2006

The only foreign invested media is EBC (Eagle Broadcasting Company). EBC is a television news channel, which returned to Mongolia in 2004 after being shutdown for over 2 years, by the Speaker of Parliament Ts. Nyamdorj. It is active in covering citizen's movements and broadcasting citizens' opinions in live.

"Can there be media with foreign investment that is airing advertisements to break up the Mongolian State?There should certainly be a boundary to everything," Ts.Nyamdorj stated on the floor of Parliament.

However, Ts.Nyamdorj's statements were followed by the release of The Press Institute of Mongolia's research report on TV viewers for June, 2006. Eagle TV was the most watched station Monday through Friday and was the overall most watched station, scoring almost double of the closest competitor.

Overseas experiences suggest that diversity of opinions, comments and news sources only results from diversity of ownership. Therefore, we are aware that the government goal should be to protect and promote diversity.

More information on Eagle TV is available at <http://terrycom.net>

2.6 Use of Defamation Laws

Mongolian public officials efficiently use the criminal and civil defamatory legislation to censor the media.

The latest study of the use of the defamation laws by Globe International covered the period between 2001 and 2005. The Courts reviewed 187 defamation cases in total. Of the 178 civil cases and 9 criminal defamation cases, 151 cases were against media and journalists. 146 of those were civil and 5 were criminal cases.

In comparison, a previous study by the Mongolian Foundation for Open Society (1999- 2001) found an average of 31.5 civil and 1.6 criminal cases that were brought forth as defamation cases per year. The results of our study show an average of 29.2 civil and one criminal case that were brought for defamation per year. The number of defamation cases has slightly decreased at 0.9%.

The media won 9.6% of the cases and in 59.6% of the cases they lost. In 31.5 % of the cases the plaintiffs and media reconciled.

According to the study 92 or 63% of the cases occurred because elected bodies, public officials or public institutions sued (4).

Civil cases:

| | |
|--|----|
| <i>Information containing public interest and public concern</i> | 45 |
| <i>Information accusing the politicians, high officials and public officials in wrong-doings, corruption and bribery</i> | 32 |
| <i>Information affecting personal lives</i> | 10 |

Criminal defamation

From 5 criminal cases, MPs were plaintiffs for 4 cases and one case was brought forth by a doctor working in the state-owned hospital. As a result of the courts decisions, two female journalists were arrested and detained from 23 days to 6 months, one case was dismissed and one case which involved 4 journalists resulted in a sentence of a fine. Another case was still ongoing at the end of 2005.

In its second issue of 2006, the weekly Uls Turiin Sonin published an article headed “President, the Millionaire,” in which the writer argued that President Enkhbayar might own a substantial share of the TDB.

The article said that the privatization of the TDB occurred under extraordinary circumstances when President Enkhbayar was prime minister, and that the new TDB owners were allowed to pay the cost of sale later than was stipulated in the sale contract.

The weekly further claimed that the president’s substantial interest might be behind the soon-to-be-built Shangri La office tower, construction of which is licensed to the MCS Company. The Shangri La is in the centre of Ulaanbaatar, and the building site was cleared by destroying a large section of a beautiful public park, prompting such public outrage that a group of demonstrators damaged property in the site a few months ago.

On February 23rd, 2006, the Chingeltei District Court of Ulaanbaatar accepted the demands of the TDB, with some modifications. Mrs. Uyanga was ordered to pay 10 million tugriqs (approximately US\$9,700) to the TDB and to publish a correction in the newspaper.

Also, the Court, accepting documents provided by the TDB, found that President Enkhbayar was not among the named shareholders of the bank.

Mr. G. Dashrentsen, who was accused of criminal defamation in a suit that has been pending in the Mongolian Police Enquiry Department since January 28th, 2006, is now accused of publishing defamatory articles about President Nambariin Enkhbayar.

“After checking through all my published articles in newspapers since May 2005, the president lodged a complaint with the Bayanzurkh district court of Ulaanbaatar through his attorney, Mr. D.Batsukh, on 21 March 2006” he told Globe International.

Dashrentsen said, “The claim to the court stated that as a journalist, I violated article 16 of the Mongolian Law on the President, which states ‘the President’s...name shall be inviolable’”. Dashrentsen added: “Anyone who criticized the President before had to deal in court with someone to whom President Enkhbayar has showed special consideration. This is the first time the president himself has appealed to the civil court with his own complaint.”

The Mongolian media, including Dashrentsen’s colleagues at Udriin Sonin (Daily news), have been covering the issue intensively and have called on other journalists to defend him.

The above 2 cases are civil ones and 2 journalists lost at the Courts.

In the civil defamation case, the Bayanzurkh District Court decided to fine the journalist G. Dashrentsen 300,000 MNT (app.260USD) and ordered him to publish a correction on his publication about Mr. Adisha, a customs officer. Soon afterwards Mr. Adisha was arrested after a police investigation into a customs corruption case.

Mr. G. Dashrentsen also had been under criminal investigation, and has been accused of libel since January 28th, 2006, after a complaint made by the Buddhist lama Purevbat.

More information is in the Case Study enclosed in the Appendix of this report.

In another case, President U.Chuluunbat of the state-owned Mongol Bank filed a criminal defamation suit against Mr. D.Ganhyag, a political researcher, for an article published in the newspaper Mongol Times, in March 2005, headed “Big debt, U.Tsolmon (first lady of Mongolia) and US\$8 million.”

More information in the Case Study is enclosed in the Appendix of this report.

III. CONCLUSION

Mongolia has some positive laws which protect media freedom. However, in reality, rights of media and journalists are often violated. Because of such violations, journalists cannot tell the truth and are thus detrimental to the public interest.

Censorship is banned by law in Mongolia. However, direct and indirect censorship still exist. Demand on journalists to serve the government should not be tolerated, and government control over media does conform to the nature, standards and principles of democracy.

It is common for elected politicians, authorities and public officials to use criminal defamatory legislation as censorship. The public’s legitimate right to be informed does not take precedence over defamation cases in Mongolian courts, so it is difficult to get fair trials in Mongolia.

Authorities use their power to prevent media criticism and neutralize true information. They do this in order to hide their wrong doings and thus deny the public interest their right to know about their activities.

The Mongolian public as well as journalists do not have the right to access information and official documents, which detracts from the democratic principle of transparency and openness. This shows how difficult it is for investigative reporters to find and prove information sources and facts that are hidden.

When media ownership is not transparent, it does not promote pluralism in the society. Instead, it confuses the public and allows for the dissemination of one-sided information and makes the public unable to confront the opinions of unknown media owners. The Mongolian public is becoming unaware of who is telling the truth and is starting to lose their trust in journalists, which is not conducive to social justice.

Being pressured to reveal information sources harms not only informants, but the entire responsibility of the media before the public. Without whistle-blowers, journalists are unable to control the powers. If journalists lose the values of investigative journalism, society will never be healthy.

Any types of attacks, assaults or threats which result because of attempts to tell the truth are serious crimes against journalists. It is regrettable that the Mongolian police and courts do not fulfill their duties to protect Freedom of Media.

IV. WHAT SHOULD BE DONE IN THE FUTURE?

Media freedom does not come easily. We have to fight to obtain it.

First, it is important to reveal all rights violations against media and journalists, document it and inform it to the public. Only in close cooperation with civil society, the public and the media, can we overcome these attacks.

Second, journalists should be aware of when their rights are being violated. By hiding violations they make the situation worse. Journalists should understand that they will be able to decrease the chance of future abuses by disclosing the facts of violations and raising awareness to them.

Third, solidarity is important in our fight. It will play a key role in the creation of more favorable political, economical and legal environments, improve working conditions, and help defend against government attacks. Media freedom should be the main concern of the journalists' and publishers' organizations working in Mongolia.

Fourth, dissemination and distribution of information to the world are important. Media freedom can be a reality in Mongolia with the support of our colleagues around the world, donors, inter-governmental organizations and international human rights organizations.

APPENDIX # 1

ON THE ROAD TO PUBLIC SERVICE BROADCASTING MONITORING REPORT PREAMBLE

The establishment of a public service broadcaster is a significant and important step taken by the Mongolian authorities towards the consolidation of freedom of expression, particularly media freedom over the last 2 years.

Mongolia has been introduced to the idea and concept of public broadcasting in earlier stages of its democratic transition. It has been a concern of the supporters of media freedom, media professionals as well as politicians for 15 years. Several draft laws were developed by a former President, the government and political parties.

The results of the 2004 Parliamentary Elections created a condition for mutual understanding among political leaders for the creation of public service broadcasting and its legal environment.

Globe International, Open Society Forum and Press Institute, with the support of international donors such as Open Society Institute Networks, UNESCO, Konrad Adenauer Foundation, Fredrick Ebert Foundation and others has been advocating the relevant law by distributing the idea, nature, principles and international standards of PSB, law drafting, discussions, and the composition of a governing body. Staff of the former state radio and television also contributed a lot to the social dialogue.

It is the result of the collective efforts of many parties of the civil society.

Globe International provided expertise and consultancy to the law drafts and we must say that some of our suggestions were not included in the existing law.

Globe International has been monitoring the process of transformation since the PRTV law became valid and it is a part of our free expression violation monitoring project funded by Open Society Forum, Mongolia and OSI Media Network Programme.

It is our pleasure to introduce the results of our monitoring. The monitoring has been taken by interviews, meetings, attendance in the board meetings, reviews of media coverage and analysis of relevant documents such as laws, minutes of the Parliament's session, statute, rules and procedures and other existing documents. The information on the PSB development has been featured at our web sites: www.globeinter.org.mn and www.monitoring.mn

Globe International issued a media release on January 11, 2005, when the MNB faced serious conflict. The media release said: "We have been reminding people that the composition and appointment of the NC should be open and transparent. The nominating bodies (President, Parliament and Government) have selected 9 candidates from the list of people proposed by the NGO Assembly. It is not clear who and what NGO proposed the other 6 candidates and by what criteria they have been selected and nominated. Secondly, the PSB legislation protects against conflict of interests, but an owner of private radio has been appointed as an NC member. This critical situation would not have been created, if the NC included a provision on conflict of interests in its selection criteria of a General Director. It is important that the NC, a body obliged to control the implementation of the law, must not violate the law. It is also important for the NC to convene its open meeting and take its decisions before the public. The NC should work under the public's control.

We have tried to provide a more objective and fair picture on what is going on in public broadcasting. We greatly appreciate discussions and comments from our colleagues to make our report more objective.

Chapter I of the present report provides background information, chapter II details the most challenging issues of the transition and chapter III includes recommendations to the relevant parties.

We would be greatly appreciative, if the report serves as a reference document for the further development of a truly public broadcaster in Mongolia.

I. BACKGROUND

The Mongolian Parliament- Ulsyn Ikh Khural- passed a Law on Public Radio and Television on January 27, 2005 after 7 years of delay. The Parliament Resolution # 103 on the implementation of the Media Freedom Law was issued on 28 August 1998 and provided for the dissolution of state-owned broadcasting and re-structuring it into public service.

The Law on Public Radio and TV came into force on 1 July 2005. The former Authority of Mongolian National Radio and TV was dissolved. The new public broadcaster is named Mongolian National Broadcasting (MNB) and registered at the Ministry of Justice and Home Affairs on February 8, 2006.

Mr. Ts. Nyamdorj, speaker of the Mongolian Parliament

"...the public and the state should have a common understanding. The concept of law as well as the concept of this decision provides for the improvement of qualities of the following areas with the establishment of public service broadcasting. First, the independence of the PSB should be guaranteed. Secondly, technology and techniques should be improved. Third is the improvement of the workers' life. Fourth is the improvement of the financial situation. The public will appreciate that the objectives of the law are achieved, if changes on the above directions occur as anticipated".

Minutes of the Parliament Session, 13.10.2006

The newly established PSB is managed by an independent governing body consisting of 15 members that are NGO representatives. The governing body of Mongolian National Broadcasting(MNB) is called the National Council (NC) and it was appointed by the Parliament on 13 October 2005. Four days later, on 17 October 2005, the first historical meeting of the NC was held and it elected Mr.N.Sodnomdorj, president of Mongolian Trade Union and former MP representing the ruling Mongolian People's Revolutionary Party in 2000-2004.

In accordance with the PSB legislation the candidates for the NC are proposed by NGOs. 16 Mongolian NGOs were structured as the NGO Assembly (NGOA) and held its meeting on 14 July 2005. NGOA proposed 32 candidates to the Parliament, President and Government for selection and nomination.

Article 21.6

NGOs, which carry out activities in the direction of history, tradition, custom, culture, art, literature and science shall propose the name of a person who specialised in the concerned direction to the President of Mongolia; NGOs which carry out activities in the direction of law, international relations, journalism, health, education, sport, environment, labor and other directions of society shall propose the name of a person who specialises in the concerned direction to the State Great Ikh Hural; NGOs which carry out activities in the direction of economics, business, technique and technology, and management shall propose name of a person who specialises in the concerned direction to the Government, in order to be included in the composition of the National Council.

The President selected 2 candidates from NGO proposals , 2 from the government and 5 from the Parliament. Finally, 6 remaining candidates have been selected from NGOs, which directly proposed their candidates outside of NGOA.

Mongolian National Broadcasting(MNB)

It could be noted that there are some significant developments in the transition period. The property of the former state owned broadcaster was transferred to the PSB, the official registration has taken place, the Statute and several policy documents have been adopted, some new techniques have been provided, several journalists and other staff have been involved in training and study trips, an oral agreement concerning the technological renovation with Japan has been made, and objectives until 2007 have been defined in 3 main directions such as programming policy, investment and technological renovation.

The MNB has national radio, television and foreign radio broadcasting. Radio broadcasting time is 33 hours a day through 2 channels, one of which is national. They serve foreign audiences with 3 hours of programming everyday .

The television part has only one channel and that broadcasts nationally 16 hours a day.

Also important is that television news is provided by the Mongolian News Agency (MNN), which is a part of the MNB. Radio news is produced by the agency Hurd, which is in the structure of National Radio.

The MNB has around 700 journalists and other staff.

The MNB published its activity report of the first half 2006 in the daily newspaper *Odriin Sonin* on August 4 2006. According to the report, the programme structure has changed as follows:

Radio (%)

| | <i>December 2005</i> | <i>July 2006</i> |
|--------------------------------|----------------------|------------------|
| <i>1. News and information</i> | 28 | 28 |
| <i>2. Current affairs</i> | 11 | 11 |
| <i>3. Education</i> | 4 | 8 |
| <i>4. History&culture</i> | 8 | 10 |
| <i>5. Entertainment</i> | 25 | 28 |
| <i>6. Advertising</i> | 4 | 2* |
| <i>7. Other</i> | 20 | 13 |

PS: * non-commercial advertising

Television (%)

| | | |
|---------------------------------|--------------|-------------|
| <i>1. News and information</i> | <i>11.59</i> | <i>13.9</i> |
| <i>2. Current affairs</i> | <i>10.8</i> | <i>7.9</i> |
| <i>3. Education</i> | <i>8</i> | <i>9.4</i> |
| <i>4. History & culture</i> | <i>21.4</i> | <i>6.4</i> |
| <i>5. Entertainment</i> | <i>12</i> | <i>9.4</i> |
| <i>6. Movies</i> | <i>23.7</i> | <i>25</i> |
| <i>7. Paid programmes</i> | <i>31.7</i> | <i>28.7</i> |

The NC has adopted the temporary structure of the MNB, which has radio, television, a MN news agency, Department of Foreign Relation and Human Resources, Finance and Income Generating Department and Strategy Planning Department.

Provincial public broadcasters

Chapter 5 titled 'Local public radio and television' provides the possibility to establish public radio and television in the provinces (article 32.1) and local public broadcasters may be supported with subsidies from the local budget (33.2). Article 33.3 permits the local public broadcaster to determine licence fees and cooperate with the MNB in their collection.

According to the Law, the citizens in the provinces should pay 2 types of licence fees: for the MNB and local broadcasting. The situation is getting more complicated for those who are subscribers of the local cable station. The citizens are arguing that they should not pay any types of fees because they are able to watch the MNB and local programmes through cable. Cable operators and local representatives of the MNB cannot come to an agreement due to absence of legal grounds.

Our monitors in 7 regions report that in the most of provinces the local television broadcasting is stopped for financial reasons. The local authorities assure that provinces do not have the budget allocated from the state budget for supporting their television.

The First Local Media Forum held on 17-18 February 2006 in Ulaanbaatar called on the management of the privatisation of the existing broadcasting stations in accordance with the Law on the Privatisation of the State and Local Property. Indeed, it is not contradictory to the PSB legislation. Some local television stations are under private management.

In Bayan-Olgii province, where local Kazakhs live, the situation is different. The Parliament Resolution #103 on the implementation of the Media Freedom Law mentioned earlier stated to make Bayan-Olgii radio as part of the public broadcaster. The Bayan-Olgii local Parliament adopted a resolution to convert the radio and television into public broadcasting, and the governor and head of the media center decided to make it a part of the Mongolian National Public Radio, but a director of MNRadio assured that they are not able to provide any financial or technical assistance to Bayan-Olgii Radio. The television broadcasting is temporarily stopped for the same reason as above.

II. TRANSITIONAL CHALLENGES

It should be noted that the Mongolian media has paid much attention to the transitional issues of the MNB. It is good that media informs the public on their matters, but media reports are not very contradictory to each other.

2.1 Independence, the NB and General atmosphere

Many journalists agree that direct state control has been decreased, but indirect control still exists strongly through the NB members and leaders. At least some journalists said that they knew who is representing whom. Many of the staff members say that the entire situation has worsened since the MNB became independent from the government. They complain that they do not feel that any significant changes would encourage the people working at MNB. Their salaries have not been increased, old equipment and techniques remain, the production processes are delayed, and the programme content is not changing. Some of them think it was much better to work in the past. It is regrettable that there is nostalgia about old times.

The attitude of the staff towards the NC is very negative and suspicious. First, they think that NC members are closely affiliated with politicians or authorities. Secondly, they suspect that many NC members have close ties to other commercial broadcasters. A female journalist said: "15 NC members are outsiders who have no idea of what broadcasting and production are. We have not been demanding them to increase our salaries. We have never been rich, but we are committed to our works from our heart. We just want to go ahead. I do not understand why they are here. They never listen to our voices and do not meet us. We see them on television screens. They are so ambitious and never try to understand our problems: They think they are smart and we are foolish"

The first serious dispute was raised during the appointment of a General Director of MNB and it also created serious conflict among NC members. The NC was divided into a majority(10) and a minority (5) accusing each other of political affiliations. J.Zanaa, representative of the minority said to our correspondent: "The NC chairman receives indications over the phone" and O.Mongontuul representing the majority stated: "Nobody is trying to influence us. Some of the NC members should be ethical".

3 months passed while the NC members argued and the minority brought a case on the GD's appointment to the court. The internal NC crisis resulted in the re-election of the NC chairman and the first chairman was replaced by Mr. H.Chilaajav, a former radio journalist and the present executive director of the Mongolian Writers Union.

2.2 Struggle between the National Board and Temporary Committee(TC)

The staff of Mongolian National Radio and TV assembled a Collective Board on 23 November 2005 and sent a notification to the NC. They stated: "We are seriously worried that the selection process of the general director looks democratic, but indeed is under political direction. If the future of the main media, which is responsible before the society, is decided under a political desire, it will harm democratic values, the rule of law and the society's expectations. We hope that the NC would not be a barrier in this historical process of media reform. We believe that the NC would not start its steps towards independent broadcasting under pressure of any political forces."

Collective Board members obtained the right to attend the NC meetings as observers.

On 5th January 2006, the Collective Board has been restructured and renamed as the Temporary Committee (TC) consisting of 11 members. G. Badamsambuu, TC member said to Globe International correspondent that, "The Government used Mongolian National Radio and TV as their voice for many years. Now the Government's duty is to create the foundation for a public service broadcaster. We are deeply concerned about the future of PRTV and its financial sustainability. The Temporary Committee will be working as an essential part of PRTV to influence the programming policy and technological renovation."

B.Ganbaatar, TC member said: "The crisis in the Mongolian governance also affects our Radio and TV. The NC members, who are clearly affiliated with political parties, argue with each other. It is clear that they are not able to make decisions on crucial issues."

The TC raises the following 3 issues:

i) Unfair appointment

The TC complains that the General Director did not call an open selection of a Vice Director and heads of the organizational units (so-called departments), which violated the law. 4 TC members brought forth a case on the appointment of Vice director, Director of Radio and directors of departments: Human Resources and Cooperation, Finance and Income Generating and Strategy Planning to Bayangol District Court. They claimed the Order #11 of GD issued on 15 December 2006 should be repealed. They won the case and the decision of Bayangol District Court was obliged to repeal the order. The NC did not accept the court's decision and appealed to the City Court on 17 July 2006, but the City Court decided to keep the decision of the District Court and ignored the appeal.

ii) Structure

The TC thinks a so called temporary structure is related to the above violation. They suspect this structure is intentionally and purposely created for the friends and relatives of the NC members. The TC sent a letter to the NC on 26 August 2006, which says: "The MNB's only duty is to let our audiences listen and watch. Unfortunately, the present structure weakens two main services for

production and establishes a too big and not efficiently functioning structure of whose activities are not clear. ...because of this the interrelation between production, technology, finance and administration has decreased and it is too complicated to make technological and quality coordination for works at the required level.”

iii) Internal NC structure

The TC argues that the establishment of 2 internal NC committees called the Committee of Foreign Relations and Investment, and the Committee of Management, Organization and Ethics overlap with the law. The TC suspects that the NC members want to use their power to serve their own interest through these committees.

The Statue of the MNB approved the establishment of these committees and its working procedures. Each committee has 3 members composed of NC members.

4.6. Committee on Foreign Relation and Investment (CFRI)

To draw up the policy on foreign relations, investments and technical and technological renovations of the MNB.

The MNB Statue

4.7: Committee on Management, Organisation and Ethics (CMOE)

The National Council shall establish a Committee on Management, Organisation and Ethics with the aim to determine a structure and policies on the organisation of the MNB and approve its working procedure.

The MNB Statue

The CMOE is to carry out wide activities; it must draw up a proposal on amendments to the Statue, select the GD, Vice Director and heads of organisational entities and release them, draw up and submit for adoption a policy on human resources, draw up and submit for adoption a code of ethics and take control over it and so on. The article 4.7.8 of the Statue, which ensures the possibility of the CMOE to work in a selection commission and creates suspicion within the TC.

The TC approached the the Ministry of Justice and Home Affairs (MJHA) with this issue. In a letter signed by Ms. D.Munkhgerel, chairwomen of Policy Implementation and regulation of the MJHA, dated July 26, 2006, it says: Letter #14 of the NC dated May 12, 2006 with the request to include these committees and re-register it has been reviewed and revised for the reason that it should be consistent to the relevant law provisions of the Law on PRTV”.

The TC approached the NC on 26 August 2006 with demands to re-consider the structure, re-form the management team, and decrease the staff, which was caused by the wrong structure, and to take into account such priorities like economic knowledge, management skills, fresh attitudes, a new mentality, professional background and knowledge of foreign languages should be the main criteria for the selection of a General Director, independent from political and business groups. The TC has proposed to meet the NC members face to face. The TC also stated that the TC composition can be changed, if it is understood that the TC members have a conflict of interests and is not able to represent the entire staff. It is should noted that the letter was sent before the NC appointed the second new general director by its meeting held on 31 August 2006.

The Mongolian Parliament formed its working group to monitor the implementation of the law upon intensive requests of the TC. The Working Group finished its monitoring, but the conclusion has not been yet introduced to the public. During his meeting with the Globe International President, Mr. S.Demberel, MP and chairman of the Working Group said: “We do not want to be directly involved in

the transition process, which might be understood as being a political action or having political intentions. Indeed, personally I am afraid to set the wrong precedent for using the Parliament's power to solve the conflicts of the PSB. The concept of the law is against it."

The TC many times has been stating that the Parliament must remove the NC: "They justify that the NC, which has been violating the Law, is not able to make decisions in favor of the interests of the staff".

Removal of the NC members are strictly restricted by law. They can be removed before their power terminates, if the chairman and member submitted their request because of a health condition or other valid reasons, if a member committed a crime, and if a member failed to attend the NC meeting for more than 6 months. The NC member also can be removed, if Article 21.3 is violated or a member elected or appointed to the position detailed below.

Article 21.3 bans members to be a state political and state genuine official, work 'in the management level of a political party', hold a position at another broadcaster, or take part in the determination of its programming policy, be invested in another broadcaster, or to be a person which may influence financial independence.

Meanwhile, the National Council has held 39 meetings and has taken 95 decisions since its establishment. It has also adopted 20 rules and procedures including the Statute.

The NC members do not deny that there is a conflict among them in some principle issues and they faced a crisis during the first appointment. Now the NC members agree not to leave the meetings.

In general, the NC attitude towards the TC is very sceptical too. Some of the members think that the TC is not able to represent the interests of the entire staff and there is a disagreement among members. The TC becomes more active, when their personal interests are affected. For example, they are active, when the NB discusses appointments.

The NC chairman agrees the present structure should be changed in a more efficient way. The structure is adopted for only one purpose: to move things ahead and overcome the crisis they faced during the first general director's appointment.

The Chairman said: "Committees have been established in order to balance the active participation of NC members in the process of decision making. Some of the members had been working hard during the last period and some were very passive. Indeed, the Committees do not have any power. The Committees are not decision making bodies."

There is also disagreement among the NC members on 2 committees that are strongly opposed by the TC.

2.2 General Director (GD)

Article 31.1 states that GD is elected by a majority of NC members by closed voting. In accordance with article 31.2 the NC may appoint the GD by open selection. The GD has to have higher education, no criminal records and must not be a member of any political parties(31.3). Article 31.5 says: "The GD is prohibited to work in the management of other organisations and entities."

The appointment of the first GD was delayed for 3 months. Finally, Mr. S.Maygmar was appointed as General Director on January 26, 2006. S.Maygmar previously worked as an animation painter and producer at the Mongolian National Television and owns a private production studio "Boroldoi," mainly producing TV advertising spots, as General Director of PRTV.

The appointment process created serious disagreement between the NC members and they faced a crisis. S.Maygmar was accused that he did not pay his debts to Mongolian television, when he took

production equipment. The minority claimed that he was not an honorable person to trust. S.Myagmar had denied it through media. 4 NC members brought a case before Bayangol district court. Order 15 of the NC on the appointment of S.Myagmar as GD was banned by the court's decision 14 December 2005. The process was delayed for 2 months and it affected the daily activities of the MNB. The NC was seeking various ways to resolve the crisis and the minority came to a compromise and S.Myagmar became GD on 26 January 2005.

S.Maygmar was released from his job on 3 August 2006 due to decision of the NC that accused him in serious violations of the contract.

The new general director Mr. Naranbaatar was appointed by the NC on August 31, 2006. Mr. Naranbaatar is the director of one of the production studios. During a meeting with Globe International's President he said he is planning to dissolve his studio. Since his appointment some media reported that he is in a leading position of the Democratic Party, committed automobile crime and signed an unlawful loan contract with a Chinese company.

The NC Supervisory Board is investigating the loan contract. He also was accused of closing 2 television programmes. The first entertainment programme is produced by one of the private studios and Mr. Naranbaatar explained: "The studio did not have a contract." The second programme was exclusively devoted to inform the public in MNB television programmes. Mr. Naranbaatar thinks it is not appropriate to inform the public in what are they doing every week. He says that he is not against informing the public, but the content and structure of the programme should be further developed.

2.3 Economic independence

An internationally recognized principle is that there can be no political independence without economic independence. A standard test of the government of media freedom is often judged by its approach to the public broadcaster.

Financial mechanisms maintained at the MNB are against the PRTV Law concept.

We do not think the present financial matters of the MNB show the real wishes and intentions of the Mongolian Government towards public broadcasting and media freedom, but the financial relationship between the MNB and Government should never be hostile.

MNB is a publicly funded non-profit broadcaster. It has mixed funding coming from license fees, state subsidies, sponsorship, donation, non-commercial advertising and others (Article 17). Article 13.1 prohibits commercial and hidden advertisements. Advertising shall not exceed 2% of the daily broadcasting time (Article 13.3).

The 2006 budget revenue of the MNB is 5, 2 billion of Mongolian Togrogs (MNT). 4 billion come from the state subsidies and 1.2 billion come from license fees and other resources. 45% of the state subsidies go towards the transmission.

The financial activities are regulated by the Law on the State Management and Finance enacted on 27 June 2002. The Government established a Department of State Fund as a part of the Ministry of Finance and Economy by its Order on 24 May 2002. This Department administers the budget and the expenditure of the state (government) bodies and any state body has an account with the State Fund.

Now the MNB also has an account within the State Fund and it operates its financial activities with the Department of Budget Policy and Regulation. This Department controls the MNB budget and implementation. It determines the salaries and wages of the MNB staff. The staff must get the same salaries as state officials.

An official of the Department of Budget and Regulation said: “The state gives 4 billion MNT to the MNB. It is a big amount. In order to supervise how the budget is realized, we have to check its expenditure.”

The MNB activity report of the first half year informed that it established its own account at a commercial bank in order to determine its economic status.

The MNB is not a state(government) body any more. It is an independent body, which is defined as “non-profit legal entity” with a goal to “serve only for the public interest, be responsible before the public, and operate under public control”(PRTV Law, Article 3).

The independence of the MNB as an independent legal body is exercised through the power of the NC. The Law provides it power to ‘discuss the main objectives of activities, strategy plan and annual budget and be included (not adopted) in the state budget’ (24.1.1), ‘to determine an organisation’s structure and highest limit of number of vacancy’ (24.1.6) and ‘discuss and adopt the operational and financial reports’(24.1.10) One of the weakness of this law is that the NC has the power to determine the highest limit of number of vacancy, but has no right to determine the salaries for the staff, and it has the power to adopt the financial report, but the report is supervised by the government.

We think it is not a relevant restriction. It would be consistent with the law’s concept, if the MNB adopted its own budget and supervised its realisation as an independent legal body.

Conceptually, license fees are not state funding and are an independent revenue source. Article 18 of the PRTV law clearly says that the MNB may establish a body (unit) to collect licence fees and Article 18.2 provides the right for the NC to adopt its working procedure and funding.

The MNB has its so-called marketing entities all over the country. Logically, it is absurd that the MNB collects their licence fees for the state and gets it back from the state fund.

State subsidies, as we assume, are not direct funding. It is one of the MNB’s mixed funding. We agree that it is a significant amount. However, it would be alright, if the MNB concentrates its funding in its own account. The Government should transfer its subsidies accumulated from tax payers money directly to the MNB account. The Government’s only duty and role is to endorse the budget adopted by the NC and transfer the amount of state subsidies without any delay and bureaucracy. The MNB has its Supervising Board to control its financial activities provided by the Law.

Such measures will ensure more financial freedom and more independence from the state.

2.4 PSB and Independent Studios

There are 10 independent production studios, which supply television programmes on the basis of contracts. These studios supply nearly 70% of television programming. The tradition comes from 1997 and its legal grounds were created in 2004.

The production studios are registered with the MJHA as an independent body and they have its own stamps, structures, directors, journalists and producers. The programmes are supplied under contracts signed by the studio director and GD of the MNB.

The independent production studios mainly supply information on specialities, arts, culture, pop music, reality shows and sports. Besides the studios, there are 3 main editorial offices in the MNB structure producing children’s programmes as well as current affairs, arts and culture.

The studios are located at the same building with MNB and do not pay for their premises. They sell their programmes to the MNB and get app. 2500- 4000 MNT per minute. In the past, they had been transferring a certain amount of their advertising revenues to Mongol National Television (previous name). Studio directors assure that studios have been established with the primary goal to serve

quality programmes. They also say that they have been helping television to save money on the production, salary, social insurance and so on. They also complain that their sale price has decreased twice in the last years.

However, some other staff who are outside of the studios have different opinions. They think these studios are established with only one purpose: to make profit. Some studio directors agree with it. The MNB has discussed issues of rentals with studios and have started signing contracts as it mentioned in the 2006 first half year report.

The legal papers are clear evidence that these studios are outside of the MNB structure, but they act as a part of MNB.

Now it is a headache of the general director and the NB on how to balance the interests of MNB and the production studios. As the NC Chairman said, it would take time.

2.5 Supervisory Board (SB)

Article 28 of the law obliges the NC to establish the Supervisory Board, elect members and adopt its working procedure. The law does not specify that it is a part of the NB structure and members are elected exclusively from the NC members. The primary goal of this board is to supervise and control the decisions made by the NB in matters other than programming policy, such as financial and operational activities, and management (28.1). Article 29.1.1 of the Law guarantees the right of the SB to submit a recommendation for the removal of its chairman and members. The present SB has 3 members and all come from the NC.

The provisions of the law regulation the SB are contradictory. It is not understandable why GD must get permission for signing contracts with individuals and entities as is stated in Article 31.7. Supervision is irrelevant when the SC provided a permission. In accordance with the above article the GD has to get permission from the SB for designing and recording music, for example. At least there is a body - the NC- to take responsibility before the public. It is enough, if the NC provides the right for the GD to sign contracts which exceed the limitation of his or her powers, or for works and services, which are subject to tender or bid. The SB should have a right to supervise, if the tender was fair or the selection was correct.

The Supervisory Board would be most efficient, transparent and ethical, if the members were outside the NC.

2.6 Complaint's Committee (CC)

Article 30 of the PRTV Law obliges the NC to establish and run a Complaint's Committee. According to the law the CC has 2 aims: 1) to review and take decisions on statements and complaints on matters related to the content of radio and television programmes, and 2) study the public's opinion. (30.1) The law does not specify the number and status of CC members, but says the composition should include NC members and people specializing on human rights, journalism and law. The structure, composition and working procedure are subject to NC adoption

The present CC is supposed to have 7 members. 3 NC members have been appointed and 4 others have not been selected yet.

Such committees are established to ensure the public's right to reply. It is one of media's self-regulation mechanisms to accept and take decisions on the citizen's complaints on false statements and facts. The complaints procedure should provide for the rectification of any false statements and breaches of ethical codes. It provides the possibility to decide whether to take the citizen's complaint on a breach of journalists ethics before the court. A citizen who does not accept the decision of the committee, has the right to appeal to the NC. The NC should come to the conclusion of whether the CC's decision was right or not. If a citizen does not agree with the NC conclusion he or she has the

right to claim so to the court. Such complaints are mostly related to information and facts broadcasted and mainly apply to one's reputation rather than programme content.

The CC should be part of an executive power and the role or the involvement of the NC is only in the case of appeal.

Every citizen has a duty to complain and criticise the quality and content of any particular programme. The MNB should determine ways and mechanisms on how to make decisions.

III. CONCLUSIONS/RECOMMENDATIONS

Our first impression is that the relationship between the NC and the TC, between the NC and the staff, and between the staff and the TC are very much based on personal ambitions, feelings and unjustified suspicion rather than principles and facts.

We assume that the different parties involved in the PSB development made some mistakes in the different stages of the transition process.

1. It was a mistake that the NGO Assembly involved the Mongolian Trade Union (MTU) and proposed a candidate representing the MTU, when 16 Mongolian NGOs organised a NGO Assembly to propose their candidates to the nominating bodies. The MTU is not a NGO by law or character. It is a trade union organisation in accordance with the law on the Rights of Trade Unions. NGOs have their own law as well. This mistake further created suspicion and the misunderstanding that the MPRP and its leaders are trying to have control over the public broadcaster and play a key role in the appointments. It is still a common understanding among the public and the staff of the MNB.

2. The Mongolian Parliament, Government and President did not respect the NGO Assembly by ignoring its decision. They selected 6 candidates that not been proposed by the NGO Assembly. We understand that the Law does not restrict the rights of NGOs to propose their candidates outside of NGOA, but we criticise that the above bodies did not ensure openness and transparency in their selection, nomination and appointments. It may be serious grounds to suspect them of attempting to keep political control. The public still does not know by what criteria these 6 members were selected, and who and which NGO proposed them. The Parliament, Government and President should explain their reasons to the public. Finally, we emphasise that the President, Parliament and Government should take responsibility before the public for the critical situation that is still continuing at the MNB.

3. The Parliament of Mongolia violated its Resolution #61 on the Approval of the Agenda on Sessions of Ulsyn Ikh Hural, which was issued on 21 June 2006. Article 11.2 states that the Parliament shall vote for each person openly in order to appoint the composition of the organisation established by the Parliament. The Parliament took a collective voting of the NC members.

Such irresponsibility ignores the concept of the law adopted by them and seriously damaged the public's anticipation, desire and trust. The Parliament should be responsible for their mistakes and take immediate actions.

We also demand the Parliament to publish the minutes of the session held on 13 October 2006 in the newspapers for the public's concern.

4. We appreciate actions of the Parliament towards the MNB crisis by sending its Working Group to evaluate the situation, but their commitment to establish a truly public service should not be limited by silence. The report of the Parliament's Working Group should come to light. Their voters should know and be informed of Parliament's conclusion and their actions.

5. We are aware that the first National Counsel is fulfilling a difficult and historical task and taking enormous responsibility before the staff and public to establish a new culture of a truly public service. We appreciate the greater awareness and benevolent commitment of the NB members in this complicated and important transition period, but its works should have been more transparent and open to the staff and public, and provided greater staff participation in matters such as drawing up and adopting policy papers, rules and procedures. We do not ignore the NC's actions promoting openness such as a television programme produced for greater openness in the selection process of the candidates for GD, newspaper publications about their activities, constant interviews by broadcast and print media, and permitting the TC and others to attend its meetings, etc., but the NC should be aware that only the collective and combined efforts of the NC and staff will bring good results. The NC's duty is to create the most favorable environment at the MNB in order for it to achieve its goal.

It is always difficult to recognise mistakes, but it is honourable to make courageous steps towards the common goal.

6. In our opinion, the NC could not correctly define their primary objectives. The organisational and programming strategies are pivotal grounds to set up the truly functioning structure of the MNB. The NC was too irresponsible in immediately adopting the structure without having a clear ground, i.e. strategy. In doing so the NB acted as an executive power by drawing up the documents themselves. It creates understanding among the staff that the NC does not trust and underestimates the staff.

We remind you again that the MNB is a policy and decision making body with a lot of power.

7. The NC did not provide for conflict of interests in its selection criteria of a General Director in order to protect various interests. We think it was a mistake that the NC did not take control over the selection of Vice Director and other directors.

Having said that we present the following recommendations:

To the Parliament and Government of Mongolia

The Mongolian Parliament should immediately make relevant amendments to the Law on PRTV towards improving political and financial freedoms, openness and transparency, and responsibility and accountability. In this way the following suggestions should be taken under consideration.

Mongolian National Broadcasting

1. The Parliament should immediately adopt a law guaranteeing the economic independence of the MNB. It should never be a part of the State Fund by its nature and law.
2. The Law should be amended to provide the NC the responsibility to adopt the entire budget of the MNB, not the government. The Law also should provide the right for the NC to adopt the salary fund.
3. Globe International has been repeatedly insisting that the process of nomination and appointment of NB members should be open, so that the public is aware of the steps being taken. The public is able to take control if they are well informed. Enhancing public participation and involvement in the MNB's activities is an essential objective.
4. Article 26 should be amended in order to impose more responsibility on the NC members. The legislation should include provisions to remove the NC members, for example, "if a member commits a serious violation of his or her responsibility under the PRTV law". We think article 26.1.5 saying "if a member fails to attend the meeting for a period of over 6 months" is not practical and efficient. The article should be amended, for example, to: "if a member fails, without valid excuse, to attend 3 consecutive meetings."

5. The above removal should be based on the justified recommendation of the Supervisory Board (Article 28). We note that the number of the SB members should be increased significantly and involve various interested social groups and the staff.
6. It should be legislated that the SB does not include NC members and correct the contradiction of the provisions regulating SB.
7. Article 27 of the law on the Complaint's Committee should be amended to be consistent with international standards and nature.
8. Article 31.6.5 should be amended in such a way that open selection applies to the Vice Director and other directors, not for the chairman or head of each organisational unit. The article obligates them to call a selection even for the head of cleaners or drivers, if they are within the organisational structure as a unit.
9. Article 24.1.1, obliging the NB to adopt and amend ethical codes, should be repealed. The Code of Ethics is always an efficient part of media self-regulation. Conceptually, it is wrong to say it's a workers' code. A Code of Ethics should apply to the journalistic staff. If ethical issues of technicians, cleaners, drivers and others are a serious concern, it can be a part of their labour contracts. It is not relevant that the NC draws up and adopts code of ethics. It should be adopted by the journalistic staff. The involvement of the NC to draw up and adopt codes of ethics may force the journalists and may create conditions that pressure journalists and influence their independence. It would be enough, if the NC bases its breachment of the code of ethics while reviewing the citizens' appeals.
10. Article 21.6 should be repealed. Globe International had repeatedly suggested not to include such a provision. It is a pity that this provision was accepted after the President's veto. NC members should not represent any particular organisation or field. It is good that members are experienced experts in certain fields, but international standards suggest using this experience and ability to define a strategy of programming by inviting them to work as consultants to the Advisory Board. For example, BBC and NHK have such an Advisory Board, which consists from 110 experts.

The NC should be skilled in management, journalism, economics and be experienced working in non-governmental structures or civil society.

11. Article 8.5 of the Law should be replaced by a provision obliging them to have an Advisory Board and the number of members should be increased.
12. The Law should provide a clear statement that restricts political representation in the NB. For instance, at NHK the representation of one political party in the governing body does not exceed 30%.

Provincial public broadcasting

13. We are insisting again that article 33 should be repealed. It should be amended so that "MNB shall have its provincial branches" and make the local production and air time using the MNB channel obligatory.

Commercial Broadcasting

14. The Parliament should immediately enact a general Broadcast law to regulate cable, commercial and other forms of broadcasting. During our monitoring we noticed that too many problems accumulated at national and provincial levels. It is an immediate need to regulate financial matters between cable and public broadcasters. The present situation does not make the collection of licence fees more effective.

We suggest that the amendments should be made in careful and serious consultations with professional bodies, NGOs and the MNB in order to avoid any other misunderstandings and misuse of the law.

To the Supreme Court of Mongolia

We are aware that many of the above disputed areas of the present law should be interpreted by the Supreme Court.

The Supreme Court of Mongolia should adopt an interpretation on an entire provision on access to information and protection of information sources (Article 34). These provisions are very important to the implementation of the law's concept, principles, goals and provisions, particularly in guaranteeing the independence and rights of journalists. However, the above provisions have declarative character and do not have narrow regulations, so it will be difficult to use in the practice. These rights of journalists are guaranteed by law in other countries.

To the NC and TC

The NC and TC should be aware that a hostile, irreconcilable and chilling attitude towards each other will never bring good results in the MNB. Devotion to the public's interests, mutual trust and collective efforts will only play a positive role in the transition. Your detached existence and misunderstanding will harm not only the MNB, but the entire public that you should inform, educate and entertain.

To the NC

- We are calling the NC to come to a mutual understanding with the TC on issues raised over the statutory provisions providing for the establishment of 2 committees.
- We are suggesting to take disputable issues of appointments of the Vice Director and other directors into consideration and respect the Court's decision.
- We are urging the NC to take immediate actions to remove the Supervisory Board and re-establish it with members outside of the NC and put it in the right path.
- We are also calling the NC and the MNB leaders to ensure greater participation of the public and staff in its activities, define short-term and long-term strategies, and adopt them.

To the TC

We greatly appreciate the rights of workers, but journalists and other staff should be aware of their independence and freedom provided for them by the Law.

We are concerned that your thoughtless actions are attempts to solve your problems by involving politicians. You must be aware that it would harm your future. There are other internal mechanisms for the solution of your problems.

We recommend that you be well organised and act professionally rather than as a problem making group. The TC's demands should be precise and based on facts rather than rumours or unjustified suspicion.

Finally, we hope the management of MNB and independent production studios will come to a mutual agreement through negotiations and balancing each others' interests. The public interest should prevail in such negotiations.

The TC and staff should be aware that they work in public media, which is a part of the civil society, so the role and commitment and basic principles of management and activities should be the same as with civil society organisations. Public media's entitled to be an entirely independent, sustainable and powerful watch dog to the public.

We hope the MNB will overcome its transitional problems with honour and without significant damage.

To international and inter-governmental organisations:

We are calling on international, inter-governmental and other donor organisations to collectively support the MNB in its transition. The MNB needs their support and assistance for :

- technical and technological reform
- drafting law amendments and lobbying
- drafting the interpretations of the Supreme Court on disputable law provisions
- capacity building of the management and staff through professional training and international consultancy in specific fields such as programming and finance
- building a strong trade union to protect workers' rights
- increasing public participation and public oversight in the law's implementation, activities and programming
- producing programmes on issues of public concern
- exchanging information and skills with other international public broadcasters

Ulaanbaatar, October 2006

APPENDIX # 2

CASE STUDIES: CRIMINAL DEFAMATION

2.1. The dasnrentsen case study

G.Dashtseren

Newspaper "Deedsiin

khureelen"

Political reporter G.Dashtseren, General chief of newspaper "Deedsiin khureelen", was found guilty to crimes of slander (Article 110, Criminal law) and defamation by means of mass media (Article 111, Criminal law) of G.Purevbat, a Buddhist Lama, because of his published article "Movement of black spot by N.Enkhbayar in the state of Mongolia", (#31 (449) newspaper "Deedsiin khureelen" on October, 2005). Thus, the court of Bayanzurkh district charged him to pay a fine of 2 million 167 thousand 500 tugrugs on June 14, 2006.

However, the journalist G.Dashtseren was freed from punishment after Article 4.4, the Law of Amnesty, was adopted by the State Great Khural in accordance with the eighth centennial anniversary of the establishment of Great Mongolia on June 23, 2006.

In the journalist's article, Purevbat's honor and dignity was humiliated:

"After N.Enkhbayar was elected President, he granted the rank of Honored Lama to showmaker Lama Purevbat. Cases of corruption that might be related to the N.Enkhbayar were revealed by newspapers and televisions. Showmaker Lama Purevbat achieved merits. This is because Purevbat participated at his election, had his prestige enhanced to a living God and declared all evidences against N. Enkhbayar as defamation. Therefore he became the first Honored Lama. Also another great merit of Purevbat was the demolition of historical evidence of mass destruction. Therefore, the skulls of the

hundreds of Lamas who were murdered and found in a pile at Tasgan, and stood as a witness of the communist regime that slaughtered them, are not to be found. Historian N said that the historical evidence of the horrific massacre was destroyed because N.Enkhbayar said, “to not destroy these dead bodies and to not build a pagoda badly influences the party’s reputation, and also my honor” after he told him to build a museum by their head bones and to determine their identities using the cell research. That is second reason why he became Honored Lama of Purevbat. Actually, under religious customs, a Lama’s title and ranks are granted by the learned Lama. However, he became the president’s counsel and he received this rank without the granting of Choi khamba as a learned Lama...”

The above was written in a “Historical brief of ‘Boner’ Lama Purevbat, who was granted this rank that has not yet been given to the Learned Lama”.

According to the reason mentioned beforehand, advocate D.Orosoo of Purevbat filed a suit to restore the honor, dignity and official authority to the Court of Bayanzurkh district on November 10, 2005. Also he added a claim on December 20, 2005 that demanded 30 million tugrugs for the humiliation of G.Purevbat.

After that, the Godlike Lama G.Purevbat made a complaint that “I consider this article as a crime of slander and defamation” to the police office on January 11, 2006. He wrote that “I consider it as a crime on slander to my dignity and works against me. I am a normal Lama, but I was related to the political purpose after the humiliation of the dignity of N.Enkhbayar, president of Mongolia.

- a) The quote that “Purevbat participated at his election, had his prestige enhanced to a living God and declared all evidence against N.Enkhbayar as defamation. Thereby he became the first Honored Lama” humiliated my honor and dignity. Thus, it must be examined and determined if I was granted the honored rank because of praising anyone, and if I didn’t do anything to be esteemed by the state.
- b) He complained that it was absolutely unfounded defamation that: “Also another great merit of Purevbat was the demolition of historical evidence of mass destruction. Therefore, the skulls of the hundreds of Lamas who were murdered and found in a pile at Tasgan, and stood as a witness of the communist regime that slaughtered them, are not to be found. Historian N said that the historical evidence of the horrific massacre was destroyed because N.Enkhbayar said, “to not destroy these dead bodies and to not build a pagoda badly influences the party’s reputation, and also my honor” after he told him to build a museum by their head bones and to determine their identities using the cell research.” He complained that his defamation that Purevbat destroyed historical evidences by order of N.Enkhbayar, has to be examined objectively.

On page 76 of the case file, the first explanation of journalist G.Dashtseren on January 27, 2006 was that “it is true. I have written a personal conclusion on the great victimization in 1937 in accordance with the freedom of expression. But it is not defamatory action with deliberate purpose and not encroaching on the official dignity and honor of Godlike Lama Purevbat. It is just a political article. I am ready to apologize officially through the newspaper “Deedsiin khureelen”, if my article encroached on and defamed the honor of Godlike Lama Purevbat. For me, I have never met Godlike Lama G.Purevbat nor known him. I don’t feel any hostility towards him. I respect him as a good young painter and creator of art.” This explanation was repeated and the journalist apologized during this statement of being suspected and accused.

First of all, this case preceded the “Slander” Article 110.1, Criminal law, on February 1, 2006. Therefore, he was accused of committing the crime by the “defamation” Article 111.2, Criminal law, on February 22, 2006. After that, the article 110.1 (Slander), Criminal law, on April 13, 2006 was added to his punishment.

For this reason, the Agency conducting an inquiry sent an official paper #291-82 that requested the definition of “Boner” and its means to the Institute of language and literature of Scientific Academy on February 23, 2006. The reply of February 26, 2006 said that “...catcher of

bones is a sign of respect but boner is used in popular speech. ... Though boner has multilateral meanings, there are not any defamatory meanings and ideas.”

Advocate D.Orosoo took this interpretation of “Boner” from the Institute of Language and Literature on March 22, 2003 and this interpretation was entered in the case file. But it was an ordinary request, not an official expert conclusion.

According to the request on the appointment of experts under the Articles 155, 157, and 162 of the Criminal procedural law, Linguistics Sc.D Sh.Choimaa, L.Khurelbaatar, M.Bazarragchaa were appointed by the Institute of Language and Literature of Scientific Academy and Council for state language on March 27, 2006. Hereby, on April 6, 2006, the appointed experts made the conclusion that “Boner” had an insulting meaning in this article.

The Court of Bayanzurkh district discussed this case by judicial session on June 14, 2006 and determined the settled part of Punishment decision as “...According to the evidences collected in the case file and re-investigated in judicial discussion, it is proved clearly that journalist committed the crime on defamation by mass media that “Historian N said historical evidences of massacre were destroyed by the order of N.Enkhbayar”, and committed a crime with the insult “Boner” Lama with mass media. It is correct to accuse him of committing a minor or less serious crime for the first time; give sincere repentance; and apologize to the victim G.Purevbat; etc”.

In the Article 111, Criminal law, a crime of defamation is formulated as a “Spreading of knowingly false fabrications defaming another individual ...” Thus, this case of “...defaming deliberately someone’s honor and dignity...” must be committed as a direct deliberate form of guilt as in Article 26.2, Criminal law. A direct deliberate form of guilty is determined “if the culprit, while being aware and having preliminary knowledge of the socially dangerous character of one’s act or omission ...”

For the conclusion mentioned beforehand, it is doubtful that the case against journalist G.Dashtseren is a crime of Defamation of Criminal law. In other words, it would be necessary to prove in the article of G.Dashtseren that he deliberately attacked the reputation of G.Purevbat, in order to consider it as a defamatory action and a direct deliberate form of guilt. Hereby, it is wrong that the accusation of defamation applies to the article.

The cooperative declaration between the UN Special Rapporteur on Freedom of Opinion and Expression against accusations of crimes on slander and defamation by criminal law in democratic countries, the OSCE representative on Freedom of the Media and the OAS special rapporteur on Freedom of expression states:

“... provisions against defamation shall be removed from the criminal law and it shall be regulated by the civil code”, “Anyone shall not be accused when complaint requirement of defamation is doubtful and evidences are insufficient“, “The committing of defamation shall be not accused and allowed by criminal serious punishment and tougher sentences such as imprisonment, suspended sentence, suspension of freedom of expression by mass media and suspension of journalist position”. Further, Mongolia is addressing these matters to change its legislations according to the above requirements.

2.2. THE GANKHUYAG CASE

| | |
|-----------------------------|--|
| Defendant: | D.Gankhuyag |
| Victim: | O.Chuluunbaatar (President of Mongolian Bank) |
| Related people: | N.Enkhbayar (President of Mongolia) O.Tsolmon (wife of N.Enkhbayar) |
| Dates of case commencement: | May 2, 2005. |
| Dates of case decision: | July 8, 2006. |
| Decision act: | Punishment decision #60 A |
| Court jurisdiction: | Court of Chingeltei district |
| Case number: | 20539374 |
| Crime charged: | Defamation, Article 111.2, Criminal Law |

Journalist D.Gankhuyag was considered guilty to the crime on spreading libel to the public by means of mass media (Article 111.2, Criminal law) with the purpose of disgracing, because of publishing his article **“Great debt ..., 8 million \$... O.Tsolmon?!”**, which related to the matter on the great debt paid by Mongolia to Russia, newspaper “Mongol times” #8 on March, 2005. Thus, he was charged a fine of 3 million tugrugs, equal to 75 the amount of minimum salary, on June 14, 2006.

However, the journalist D.Gankhuyag was freed from punishment based on Article 4.4, of the Law of Amnesty adopted by the State Great Khural on June 23, 2006.

It was written in this article, that **“Mongolian bank transferred 8 million dollars to USA, when payment of great debt was paid ...** The most unusual and doubtful fact is that O. Tsolmon, the wife of the former prime minister, speaker of the State Great Khural N.Enkhbayar, was listed among people’s names that took this 8 million dollars for their own.”

The complaint by O.Chuluunbaatar, president of Mongolian Bank, instigated a criminal case on May 2, 2005. In this complaint: “it doesn’t agree with actual facts. Also, it spreads libel of my honor and dignity to the public”. Thus, the case was determined as a crime of “defamation” by the prosecutor and was dismissed by the Court of Chingeltei district based on lacking criminal composition. The court found the verdict to be not guilty.

Because of an objection by the prosecutor, this case was appealed in the Appealing court and the verdict of non-guilty became invalid. Hereby, this case was returned to a re-investigation in order to be decided by the original jurisdiction procedure. After the re-investigation by the Agency conducting the inquiry, the prosecutor made a punishment conclusion and submitted it to the court of the Chingeltei district.

So, the Court of Chingeltei district decided this case by the original jurisdiction procedure and made the decision (a fine of 3 million tugrugs), as mentioned beforehand, on July 8, 2006.

Defendant D.Gankhuyag stated in the judicial discussion: “I have written research works with related evidence for about 10 years. I wrote an article on Mrs. O.Tsolmon in the newspaper “Mongol times” # 8, but I didn’t write on matters related to O.Chuluunbat. ... High officials, including members of the State Great Khural and ministers sent inevitably 8 million dollars. But O.Chuluunbaatar had been claiming for a year and 3 months that this was not true. As a researcher, I revealed a financial conflict from an earlier time until now. There are no police and tax investigators working on that. That there is no disclosure on how the great was paid, made me sensitive.” Thus, the case decision took several stages in court and took a lot of time, but judges and prosecutors didn’t consider that this matter was related to the public interests.

In the statement by O.Chuluunbaatar: “... writing that the Mongolian Bank transferred 8 million dollars to the USA during the payment of the great debt to Russia in the article, insults not only my dignity, but also the Mongolian Bank. Hereby, I applied to the legal organizations. This is defamation. The Mongolian Bank didn’t transfer 8 million dollars to the USA, also the Mongolian Bank doesn’t serve individuals. An international world-famous audit organization takes control and makes conclusions about the financial report of the Mongolian Bank every year. Eris and Young Company audited the bank and made final reports during the payment of great debt.”

In conclusion, the complaint of the president of the Mongolian Bank that “the dignity of not only me but also the Mongolian Bank was compromised in the world arena” wasn’t proved, but this article included the name of former Prime Minister N.Enkhbayar and his wife O.Tsolmon.

1. There was another complaint for criticizing other people.
2. Internationally, it is wrong that public service organizations and their officials are considered as victims of crimes of defamation.

The statement of witness B.L, the head of department for media, technology, registration and account of the Mongolian Bank, it said that: “The Mongolian Bank doesn’t provide service for legal

entities and individuals because it is not an Exchange Bank. There are some operations of studying assistance for students in foreign countries through the state studying fund”.

This statement violates the statement that it doesn't provide service for individuals. Article 45.1 of the Criminal procedural law is formulated as, “A person who knows significant circumstances of a crime and is not involved in the crime shall be deemed to be a witness.”

In the statement of witness T.N, a legal specialist of the Mongolian Bank, : “negative effects of this false article insult not only an individual, but is also harmful to the interests of Mongolia and its monetary policy”.

But these witnesses work under the direct leadership of the president of the Mongolian Bank. Also how citizen's tax payments are spent has to be open. And this information should be raised to the public's attention.

During the criminal procedure, the investigator and the inquiry officer were required to reveal sources and were asked several times, “where did you obtain this information from?” This question is in the case file.

During the judicial discussion, the prosecutor asked: “Tell about other evidence? Say their names?” Gankhuyag replied: “A researcher doesn't say the informer's name... The police and the prosecutor didn't receive my petition even though I sent it more than once”.

In the note of the defendant's questioning on April 26, 2006, D.Gankhuyag replied: “the safety of the information source is not provided...”

During the judicial discussion on July 8, 2006, the prosecutor said: “D.Gankhuyag has to reveal his sources himself.” D.Gankhuyag replied: “Bring and check several other newspapers yourself.”

And in objection the prosecutor said : “he didn't reveal the information source...”.

This violates Article 16.2 of the Criminal procedural law: “The Inquiry officer, investigator, prosecutor and court shall not have the right to demand the suspect, accused or defendant to prove their innocence themselves.”

Journalist D.Gankhuyag submitted a petition for justification in a fair trial to the General Judge twice. In the petition on January 18, 2006, D.Gankhuyag said: “I am considered a Prisoner of Conscience. Some lawyers have been trying to separate me from society for a year under the orders of their higher officials'. I have just disclosed serious information of many strange uncertainties related to the payment of the great debt to the public” (Case file page 147).

Thus, he received the response that: “The courts that implement judicial power were established according to the background and principles of the Constitution of Mongolia and other legislations, so they are “fair trials” and it is correct to consider the Court of Chingeltei district as a fair trial”.

Also, the questioning note of defendant D.Gankhuyag on May 10, 2005 stated: “in addition, when the preliminary investigation hadn't yet finished, Ts.Nyamdorj, minister of the Justice and Home affairs, has been saying precisely my statement. I am surprised at that.” (Case file 29-page). In the note of a judicial discussion attached in case documents on March 23, 2006, Advocate S.Narangerel said: “the court of Mongolia needs to show its independence and impartiality. We have information that Altantuya was examining the judge's personal paper in the office of the President after the verdict of not guilty in the original jurisdiction. This is true information. We have doubts that the Appeal court made a fair decision, because of pressure from higher officials.”

The right to a fair trial is guaranteed in Article 16.14, of the Constitution of Mongolia. It is allowed that independence of the court wasn't provided if it is proved that a judge's personal paper was examined. Also it is doubtful whether secrecy of information attached in the case file was kept during the investigation.

In comparative summarization between national and international rules based on the research of case files:

One. The crime composition, especially the subjective element of direct deliberate form of guilt was not determined precisely.

The global campaign for free expression, Article 19's 4th principle, "Defining defamation: Principles on Freedom of Expression and Protection of Reputation": "*Anyone shall not be accused by the law against defamation when complaint requirement of defamation is doubtful and evidences are insufficient*". A Trial instigated against humiliation of honor shall be decided not more than a year except in special circumstances. The court shall control an appropriate and quick period of judicial procedure against humiliation of honor in order to eliminate the negative effects to the freedom of expression⁴. These principles were violated in this case.

Two. Generally, the protection of an individual's dignity is considered as an individual interest in many countries. Consideration of defamation as a crime is not important to protect someone's dignity and it eliminates freedom of expression. Thus, it is not recognized. Also this fact violates the international standard that "Individual and entity have the right to claim on defamation, but this right is not related to the public organization's officials⁵".

The European Court of Human rights considers that it is important to have the possibility to criticize freely the Government and public organizations in a democratic society. Therefore, public officials have a special position, whose being in public attention is related to their functions in society. So they have to be more patient than others for criticism. It is very important to discuss and criticize clearly someone on matters related to the freedom of expression, free flow of information and public interests. This plays an important role and provides not only individual development, dignity, creativity, but also social welfare, development and others rights and freedoms in a democratic society.

Three. it emphasizes that "Freedom of expression, free flow of information and ideological matters are still an international problem. It is expressed by two forms of alarm that journalists and other people are damaged by censure, defamation, and humiliation by laws that restrict freedom of expression". Also, the European court warned that "member states have to define more precisely and change their laws against defamation in pursuit of international obligations in order not to restrict freedom of expression".

Under this principle, the provision against defamation shall be removed from the criminal law and it shall be regulated by a civil code.⁶ A country with criminal law against defamation needs to implement this principle.

Four. Principle 9 says that: A published article shall be protected if it is related to public matters. Public matters are all matters related to the public's legal interests. For example: "three authority" of state, public officials, public service, political and social interests, and economic and cultural matters. So it is vital to protect secret sources and informers of this information. Information on Great debt shall be protected, because it is a public matter.

Five. Also the above criminal procedure violates Principle 3 by Article 19 that "Journalists and anyone that keeps the reliability of source secrecy have the right to spread information and classify sources of information according to public interest. This right shall not be restricted and under no circumstances be related to the crime on defamation. No one shall be damaged when he or she refuses to disclose information source to the crime on defamation under this principle" and under article 16.14 of the Constitution "Compelling to testify against himself or herself shall be prohibited".

Six. A fair trial is a material and procedural right. Everyone has the right to an effective protection by the civil and criminal tribunal recognized by requirements at the international level. This tribunal secures the following criteria:

- To take evidence

⁴ Principle 5, Definition of defamation: the principles on freedom of expression and protection of dignity.

⁵ Principle 3, Definition of defamation: the principles on freedom of expression and protection of dignity.

⁶ In the cooperative declaration between the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE representative on Freedom of the Media and the OAS special rapporteur on Freedom of expression.

- To receive justification by an impartial and independent judge
- That the judicial decision meets standards of international impartial court⁷.

Also Article 14 of the International Covenant on Civil and Political Rights: "...everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law". And Article 17 of the Rome Statute of International Criminal Court states that issues of admissibility by an International criminal court are determined, meaning that everyone shall be provided to justify themselves with a fair trial.

Thus, the advocate's statement that "seeing a judge's personal paper" attached in the case file wasn't checked in order to provide the right to a fair trial in the Article 16.14 of the Constitution.

APPENDIX # 3

CASE STUDIES: ASSAULTS AGAINST JOURNALISTS

3.1 The Batjav case study

G.Batjav
"Eagle" television

Unknown people beat, acted without discipline and damaged two teeth of G.Batjav, a correspondent of "Eagle" television, while he was having lunch in "Aura" restaurant at 12 a.m. on Saturday, November 10, 2005. After that, his car, which was near his apartment was broken and damaged in the night of December 19-20, 2005. The individuals who damaged his car didn't steal anything and didn't require any money or property.

During the interview named "**Secret materials related to the Intelligence, Tax and Social insurance office are disclosed to the public**", journalist G.Batjav said in the newspaper "Daily news" on December 24, 2005 that, "I was sitting to have a lunch alone at about 12 a.m. in "Aura" restaurant. Suddenly, someone tied my throat. When I could not breathe, he hit my liver once. Then hit my face. This action was took less than 30-40 seconds. That person said: "stop doing your work." My car, which was near the apartment was broken into on the night of December 19-20, 2005. Two side mirrors, the driving side window pane and interior were broken. The car couldn't be driven because all of the metal wires were cut. The outside of the car was broken by heavy things. As soon as I knew, I informed the police station. The police said that the fingerprints of four people were revealed".
<http://www.oloo.mn/modules.php?name=News&file=article&catid=200&sid=18812>

Journalist G.Batjav didn't make a complaint on being hit, but did report the damage of his car to the police. This case was considered as a crime by the Police station of Sukhbaatar district. The head of the department conducting the inquiry, G.Erdenebaatar, said that "this case was dismissed, because the defendant was not found under the article 205.1.1 of Criminal procedural law".

The request for official information on when and on which grounds this case was instigated was dismissed by related officials. The head of the department conducting the inquiry and major G.Erdenebaatar said that "Ask from inquiry officer Battumur who investigates this case". But Battumur said that "Take permission from prosecutor Khudertsetseg who is in control of this case". The prosecutor Khudertsetseg said "it is impossible, because information and documents have background that may be related to personal secrets. Thus, the possibility to know about this case has reached a deadlock".

The journalist was preparing a television program and researching into an illegal operation and corruption of Social insurance, Tax and Intelligence agency before that case.

The interview with S.Erdene, head of the Social insurance office, named in "did G.Batjav defame others and perform a play on criminal attack?", was published in "Daily news" # 035 (2169)

⁷ A Handbook of international human right terminology. H.Victor Conde. 1999. page-54.

on February 10, 2006. In the preamble of the interview, it was written that the interview "... tells of evidence that he wasn't hit by neither S.Erdene nor someone he hired, but by the younger brother of his loving woman; and someone didn't break his car, but a few things from his car were stolen.

But the source of information revealed that this journalist's reason to make such rumors was related to the 10 million tugrugs given by the Mongolian people's revolutionary party."

After that, "Eagle" television established a working group in order to check whether G.Batjav received 10 million tugrugs. The working group asked the non governmental organization "Globe International" to do interference observation. The working group asked the journalist S.Enkhtuul of "Daily news" who made this information, whether it is true and where this information was from. She replied that "I classify information secrecy and my information is true and factual."

City Audit organization audited the Social insurance organization in the activities of 9 districts in 2005 in a report titled "foundation composition of social insurance, spending and usage of budget property" from January 9, 2006 to February 1, after the program by G.Batjav was broadcasted. The general conclusion of the audit says that "although the foundation's income increased by 16.4 percent, possibilities to add income weren't used adequately". Many violations were listed in the audit report. For existence:

- there isn't any foundation money in the account for citizen's pension of about 20000 in the city and districts;
- Tax royalties are higher than in the market place;
- It doesn't provide the needs and requirements;
- It damages the state because inspectors take some goods and property but do not sell them;
- Some properties aren't listed in the registration;
- Though debts apartments were divided for the inspectors, and funds from the apartments weren't collected by the foundation e.t.c.

<http://www.city.audit.mn/index.php?huudas=subcontent&id=55>

After this audit of the insurance organization determined serious violations, S.Erdene, head of this organization, resigned voluntarily from his position.

The news on attacking and damaging the journalist G.Batjav's health and property was in the website of Tom Terry, director of "Eagle" television, on December 10, 2005. But a few days later, the interpretation that "Batjav was hit for personal reasons, not his professional activity" was added to this website. <http://terrycom.net>

If people, who attack Batjav's freedom, commit crimes involved with his professional activity, it is a crime of the Prevention of a journalist's activities that are consistent with the law, Article 139, Criminal Law of Mongolia.

It is impossible to make a conclusion whether the crime committed against Batjav was organized and related to his professional activities. This is because the people who attacked Batjav's freedom and the attack's purpose and reason weren't determined.

3.2 THE TSEVEGMID CASE STUDY

Journalist B.Tsevegmid

Attack against freedom of expression

B.Tsevegmid, correspondent of "Nomin" television in Orkhon aimag, was hit and his health was harmed by an unknown person while he was going home after his work in the night from 12 p.m. to 1 a.m. on July 5-6, 2006.

At that time journalist B.Tsevegmid was afraid of them, and he made the complaint to the Police office. The police office instigated proceedings and investigated under the Article 139⁸ of

⁸ Article 139. Prevention of a journalist's activities that are consistent with law. Prevention of a journalist's professional activities that are consistent with law with the view of dissemination or preventing dissemination of

Criminal law based on this complaint.

This case was dismissed based on article 205.1 of Criminal procedural law as “in the event that it is not established who is subject to prosecution as the accused”.

The journalist B.Tsevegmid of “Nomin” television currently works as a specialized investigative journalist. He broadcasted the “to watch is prohibited” program related to the Park reform of Erdenet’s youth, the Morgue of united hospital of Erdenet and illegal operations related to the investment certificate and stock of 9000 workers in Mining Industry of Erdenet on the channel of “Nomin” television.

While he was preparing the program on the investment certificates of 9000 workers in the Mining Industry, he interviewed former director Amarjargal of “Erdenes” Broker Company that holds investment certificates and stocks of industrial workers. In the program, the journalist included Amarjargal’s threat that “You have to broadcast actual information. You should be killed because of such information. This is very difficult matter”. After that, unknown people threatened him by telephone twice.

It was written in the newspaper, “Shine medee” # 27 on July 14, 2006,. that “After these threats, when two people caught him and assaulted and hit him, a person entered this apartment from outside and they stopped doing it. At that time he was going home in the night at 11 p.m. The attackers said ‘what a serious program?’”

Lawyers of “Globe International”, a non governmental organization, considered it as serious case against freedom of media in the democratic society of Mongolia and researched it in Erdenet city of Orkhon aimag. During the research works, they met and asked related organizations’ officials.

Director I.Baasanjav of “Nomin” television said that: “The journalist was treated in the hospital of Orkhon aimag for injuries with the diagnosis on a broken rib, first level of injury to the brain, and was required to take water because of this attack. This matter was very serious for our television. It seemed to me that a stronger media organization than our television should do it. But we don’t refrain when he wants to work and to fight courageously on this matter related to the stocks.”

An expert of forensic medicine concluded that, “there were hidden injuries to the brain, a first level smash of brain cells and the fourth rib in right side of breast was broken. This is related to a minor level injury.”

But expert doctor Gerelmaa of forensic medicine has sole responsibility for all the related works in Orkhon aimag. During this case, she had a usual holiday and said that another doctor was working and as a substitute for her position.

Lawyer G.Davaakhuu of Globe International asked: “What conclusion would you made if you had such a person with an injury like that?”

Doctor Gerelmaa replied that “If I made the conclusion, it would be that the injury was less serious. But I would decide if the injury was of a minor level or less serious after precise research of the rib breaking level”.

Journalist B.Tsevegmid said that: “I understood that someone must suffer damage because of working for true. But I am not afraid of them now. Further I am going to prepare and research continuously this program related to the stock. At that time, I couldn’t see how many and which people were there.”

The branch of Mongolian journalists’ union in Orkhon aimag questioned why a journalist who works impartially in the field of investigative journalism was injured. And the branch concluded that “this is an inevitable and cruel tendency to pressure a journalist’s fighting voice for the truth.”

So a media conference was held in aimag’s official hall on July 6. Workers of all media and information organizations, D.Orosoo, head of office for public relation of Police station, and Ts.Amarjargal, head of discipline office of Police station participated at this conference.

any information which affects the culprit’s or others’ interests shall be punishable by a fine equal to 31 to 50 amounts of minimum salary or by incarceration for a merm of 1 to 3 months.

The police station said that “The police station is taking attention not to repeat such cruel action and providing safety to journalists who write articles and programs related to the public interest and related to serious matters according to the request of the journalist’s organization”. (Newspaper “Shine medee” # 27, on July 14, 2006).

The branch of Mongolian Journalists’ Union in Orkhon said that, “Journalists have never attacked and defamed an individual’s honor. The journalist executed courageously his obligation before society by the way of informing activities related to considerable violations and conflicts as crimes in the society according to the principles of investigative and professional journalism”.

Ya.Munkhdelger, head of the office conducting the inquiry and the lieutenant colonel, who is investigating this case, said that: “I am considering that it is very wrong that this case was qualified by article 139 of Criminal law, because journalism is a profession. It has not been determined yet whether the attack of freedom was related to the journalist’s professional activities, but it would be qualified by article 181 on “Hooliganism” of Criminal law.

Now our police office is operating in order to reveal this case. After the case was raised, Amarjargal, former director of “Erdenes” broker company, who threatened the victim, was checked and imprisoned for a defined period, it wasn’t determined that he was related to this case”.

APPENDIX # 4.1

Media Release: Mongolia
July 13, 2006

MONGOLIAN TELEVISION EDITOR BEATEN AIRING CONTROVERSIAL PROGRAM

The International Federation of Journalists (IFJ) has expressed its shock and anger over news that editor of Nomin television, B.Tsevegmid, was beaten by unknown attackers outside of her office on July 6, and hospitalized for treatment.

IFJ President Christopher Warren said, “This appalling attack is of the most serious nature and must be treated as such. Violence against anyone trying to carry out their job is unacceptable and can not be tolerated.”

On June 11, Nomin aired an investigative television program entitled “Forbidden to Watch”, which covered the fate of privatization vouchers for more than 9000 Erdenet mining industry’s employees.

According to local reports, B.Tsevegmid received threats during and after the program, including reported threats from the Erdenest Brokerage Company’s former director, who allegedly warned her that the issue being covered was complicated and that she could be killed for interfering.

Local police are reportedly investigating the incident.

“The IFJ calls upon the police to find the perpetrators of this violent and senseless attack and ensure they face justice,” Warren said.

“Furthermore the IFJ calls for greater protection, rights and support for journalists working in Mongolia to ensure they are able to carry out their professional duties without fear of further targeted attacks.”

For more information contact IFJ Asia-Pacific at +61293330919.

The IFJ represents over 500,000 journalists in 120 countries worldwide

APPENDIX # 4.2

Media Release: Mongolia
June 21, 2006

IFJ URGES MONGOLIAN AUTHORITIES TO RESPECT JOURNALISTS' RIGHTS

The International Federation of Journalists (IFJ) condemns efforts by Mongolian authorities to deny information to local media.

Globe International reports that on June 12th, G.Dashtudev, Chief Secretary of the Crime Prevention Council twice turned off a journalist's tape recorder during a council meeting and ordered the two attending journalists to leave.

"When authorities deny information to journalists without sound legal grounds they create an environment of political impunity, sheltered from public scrutiny," said IFJ president Christopher Warren.

This latest incident follows reports from Globe that a journalist with the community radio station Orkhon was denied access to information about the activities of a local lime processing company Tsavchirt on May 24 2006, because his station had previously aired a program on the negative impact Tsavchirt and other companies were having on the environment.

According to Globe International, under current Mongolian legislation, it is a crime to interfere with the lawful professional activities of journalists with the aim of promoting one's own interests.

The IFJ calls on Mongolian authorities to respect and protect the rights of journalists to report freely and without unjust interference.

For more information please contact IFJ Asia Pacific at +61 2 9333 0919.

The IFJ represents more than 500,000 journalists in over 110 countries

APPENDIX # 4.3

Media release: Mongolia
March 13, 2006

IFJ SUPPORTS CALLS FOR MORE LEGAL PROTECTION FOR JOURNALISTS IN MONGOLIA

The International Federation of Journalists (IFJ) is calling for appropriate legal protection for journalists in Mongolia after a series of incidents where journalists have been censored and intimidated by government officials.

Globe International, a Mongolian media development NGO, reports ten cases since the beginning of 2006 in which journalists have been censored or harassed to try to make them reveal their sources. "We are deeply concerned about this growing trend of censorship of journalists through threats and intimidation in Mongolia," said International Federation of Journalists president, Christopher Warren. "The right for journalists to protect their sources is not legally guaranteed in Mongolia, and this situation urgently needs to be addressed," Warren said.

On December 31, 2005, Governor of the Northwestern region of Zavkhan threatened to shut down the local newspaper, *Zavkhan* unless it corrected a report published on December 20, 2005, which included sensitive government information with regards to the selling of a hotel.

Also on that day, the editor-in-chief of the newspaper, B.Ider, was reprimanded by a government official for not asking permission before publishing the confidential information.

In another case, a female journalist, Sh.Otgonjargal, from the national newspaper Unen (True) was harassed by a special agent from the General Intelligence Agency (GIA) about her investigation, published on 26 January 2006, into the embezzlement of government funds through a construction project involving a monument to Chinggis Khan. The agent threatened to arrest her unless she revealed her sources.

Another journalist from the newspaper Hovdyn Medee from the Hovd Province faced possible legal action after she claimed in an article published on January 1, 2006, that the airfares of the private company Air-Mongolia between Ulaanbaatar and Hovd were inflated because the local agent consistently overcharged. The Hovd agent for Air Mongolia, B.Bujinkham, told the journalist she must reveal her sources or she will take her to court.

“We call for the Mongolian authorities to ensure this intimidation is halted and to pass a law that protects journalists and their sources, and thereby protects the freedom of the press” said the IFJ president.

For more information please contact IFJ Asia Pacific +61 2 9333 0919

APPENDIX # 4.4

Media Release: Mongolia
October 31, 2006

IFJ CALLS FOR AN THE TO POLICE BRUTALITY IN MONGOLIA

The International Federation of Journalists (IFJ) demands a full investigation into police brutality against journalists in Mongolia, after police attacked journalists and photographers while they were covering a civil society demonstration on October 27, and then detained them for two hours.

According to Globe International, during the mass arrest, police officers assaulted journalists G. Erdenebat and B. Khajidmaa and photographer Ya. Aranjinbaatar of the daily *Udriin sonin*, as well as photojournalist Sh. Gerelsaikhan of *Ardiin erkh*, destroyed one of their cameras, confiscated their documents, and gave them no opportunity to explain their purpose.

“This is disgusting behaviour by police officers, and this sort of brutality must not be allowed to continue,” IFJ President Christopher Warren said.

“The IFJ calls on the Mongolian government to launch a swift and independent investigation into these allegations, and ensure that police violence against journalists is no longer tolerated,” said the president of the IFJ, the organisation representing more than 500,000 journalists in over 115 countries.

According to Globe, the public relations office of the General Police Department, denied the claims of violent force, however admitted to detaining the journalists arguing that it was difficult to differentiate journalists from demonstrators.

However, B. Khajidmaa, a female journalist, was reportedly beaten by police with batons and her face and body were severely injured.

Udriin sonin reportedly held a press conference calling for solidarity from journalists to stop authorities violating the rights of journalists.

“Journalists must be free to report on public events without fear of attack or abuse, especially from members of the police force,” Warren said.

“The IFJ demands greater protections for the rights and safety of journalists in Mongolia, and thus stronger support from the government for the public’s right to know,” the IFJ president said.

For more information contact IFJ Asia-Pacific on +61 2 9333 0919

The IFJ represents over 500,000 journalists in 120 countries worldwide

APPENDIX # 5

AGAINST CENSORSHIP!!!

Adopted by participants of the round table:
Against Censorship! May 2, 2006

Censorship is a clear and serious restriction of freedom of expression. Censorship is banned in Mongolia by the Media Freedom Law of 1998. However, in reality it still exists, and threatens media freedom and journalism ethics.

We, participants of the round table organized due to the World Press Freedom Day discussed and adopted this Call based on the IFJ Manifesto of Democratic Culture and Free Press Charter.

In order to disseminate news and information within the country and abroad, create favorable conditions for the professional activities of journalists, and respect the need for the public interest to know the truth, we call on:

The Parliament, President, Government and Public Officials

1. The provision of the Media Freedom Law banning censorship must be implemented in good faith.
2. The State Secrecy Law, the Law on Organizational Privacy and Criminal defamatory legislation, which seriously restrict the gathering and distribution of information must be amended in consistency with democratic criteria.
3. We demand that all attempts to influence media content, deny access to information be stopped, and to guarantee the protection of information sources.
4. We urge the adoption of a Freedom of Information Law, which would demand public officials to provide information to the public.

Media Owners and Editors

We urge the end of editorial censorship, a guarantee of editorial independence, and conditions in which journalists can carry out their everyday activities without interference.

Confederation of Mongolian Journalists

We call on the establishment and development of an efficient media self-regulation system that truly protects journalist’s rights.

Mongolian journalists

We call on you to serve the public’s interest, and respect human rights and your ethical codes and principles.

Finally, we hope that the Mongolian Government will efficiently and effectively fulfill its obligations of a National Human Rights Programme.