



GLOBE INTERNATIONAL CENTER NGO



MEDIA FREEDOM REPORT

May 2017- May 2018



KNOWLEDGE IS POWER

Prepared by:

NaranjargalKhashkhuu

MunkhjinTsevee

GalbaatarLkhagvasuren

BilguunGanbold



TITLE

PREAMBLE.....	4
I. VIOLATIONS OF FREEDOM OF EXPRESSION	6
II. CIVIL AND CRIMINAL DEFAMATION CASES	13
III. MEDIA LEGAL ENVIRONMENT	15
III.1. Guarantee of Freedom of expression.....	15
III.2. Press freedom and journalistic activities	16
III.3. Information freedom and restrictions	17
III.4. Election and Media	19
III.5. Defamation law	21
III.6. Content restriction	21
III.7. Other regulation	22

PREAMBLE

We are pleased to present the 2018 Media Freedom Report to you on the occasion of the World Press Freedom Day (WPF) marked at global level. The theme of this year's WPF is Keeping Power in Check: Media, Justice and Rule of Law as defined in the UNESCO Concept Note. Free, independent and ethical media is main dimension of the healthy and fair society.

2017 has given many tasks to think of and make judgment in media freedom issues. The campaigning of the Presidential Election that took place in 2017 was one of those. The voters of Mongolia witnessed how media and social media channels were abused and manipulated by dirty technology of the political election. Unfortunately, in such condition principles of fair election became remained just as a dream.

That is why we welcome the UNESCO WPF sub-themes: Free press, access to information and election, the justice system supporting free and safe journalism, and freedom of expression online: improving self-regulation.

Politicians blamed social media users in circulation of populist propaganda and encouragement of hate speech and incitement of violence, and media became a target of the political propaganda. It risks fundamentals and principles of ethical and responsible journalism and becomes dangerous to media freedom in Mongolia. Petty political interest to win by any means is spreading in Mongolia and it is becoming a normal to ignoring the values of democracy. It seriously violates the citizens' right to true and objective information.

On 18 May 2017, Parliament passed a new version of the Law on Administrative Offence and Law on Procedure of the Administrative Offence and both became effective from 1 July, 2018. It is becoming a problematic for media freedom. In accordance with the Article 6.21 titled Libel of this law, a total of 98 million of Mongolian tugrugs of fines were imposed to 49 media houses which encouraged the economic censorship. In January 2018, a brutal action against journalists happened. A Police officer accompanied by a Legal adviser of the private company and computer expert entered the news room of the News website without any warrants and started researching database of journalists and threatening them to delete information on the company.

In April 2018, information on telephone harking of 9 journalists disclosed to the public. The General Prosecutor's Office held a Press Conference and made a statement that cases against government officials launched.

The politicians frequently make the statements on strict restriction of freedoms of expression and media and blocking social media. It is concerned that citizens and journalists who work for them will become the victims of the crafty political method.

The UN Human Rights Committee examined the 6th periodical report of the Mongolian government on implementation of the ICCPR on 6-7 July 2017. It recommended ensuring that any restriction on media activities is in strict compliance with the provisions of article 19 (3) of the Covenant, protect journalists and promptly investigate all such attacks, and bring those responsible to justice.

Globe International Center has recorded a total of 182 cases of violations as results of the free expression monitoring. More than 30 percent of free expression violators are politicians, high authorities, public officials and public bodies. The report notices that editorial censorship has increased in 2017. In 2017, the Mongolian courts heard a total of 12 civil and no criminal defamation cases.

Mongolia will submit its Mid-term UPR report in May 2018. A total of 11 actions on implementation of recommendations on freedom of expression planned in the Government Action Plan on Implementation of the UPR Recommendations adopted by a Resolution No 204 on 11 April 2016, but 9 of them have not been implemented yet.

It is hoped that Mongolian Government will actively work on implementation of the recommendations over remaining period of 2018.

In 2017, Mongolia is in the 71st place out of 180 world countries and it is still the country is with noticeable problems of press freedom. Mongolia still remains as a country with partial press freedom in accordance with the Freedom House.

We hope the present report will give you an overall picture of the media freedom of Mongolia.

Kh.Naranjargal, GIC President

ONE. VIOLATIONS OF FREEDOM OF EXPRESSION

Globe International Center has been monitoring violations of freedom of expression and journalists' professional rights since October 2005 and a total of 701 violations were recorded up till April 2018.

In 2017, GIC registered a total of 182 violations affecting the professional rights of 140 journalists and media outlets. If any right is violated, it also affects other categories of the violations of journalists' professional rights. It should be noted that current report is not a full picture of the free expression violations in the country because Mongolian journalists are highly self-censored and they fear further possible reprisals, attack and assaults if their cases are publicized.

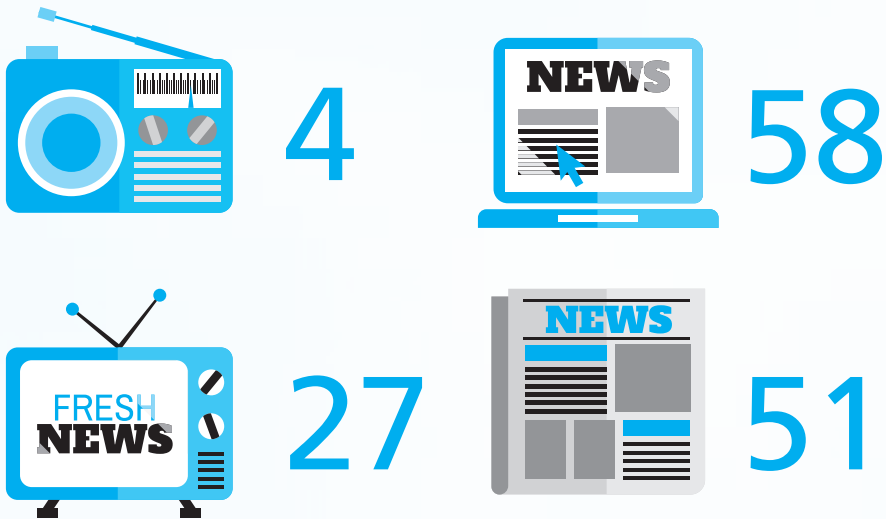
Among the registered cases, 51 of violations involved newspapers and magazines, 31 against broadcast media and 58 involved websites. Most of the cases, i.e., 98 percent of cases occurred in Ulaanbaatar and two percent- in the provinces.

57.4% of those who violated freedom of expression and professional rights of journalists' rights were authorities, high-ranking public officials and government organizations.

Number of registered violation cases was relatively high comparing to previous years due to an Article 6.21 titled Libel of the newly passed Law on Administrative Offence that contains libel, and defamation provisions. A total of 95 defamation cases were filed against journalists and media outlets over 9 months since 1st July, 2017, when law became effective. The fact significantly increased number of violation category "Court, police and other pressure or force by institutions".

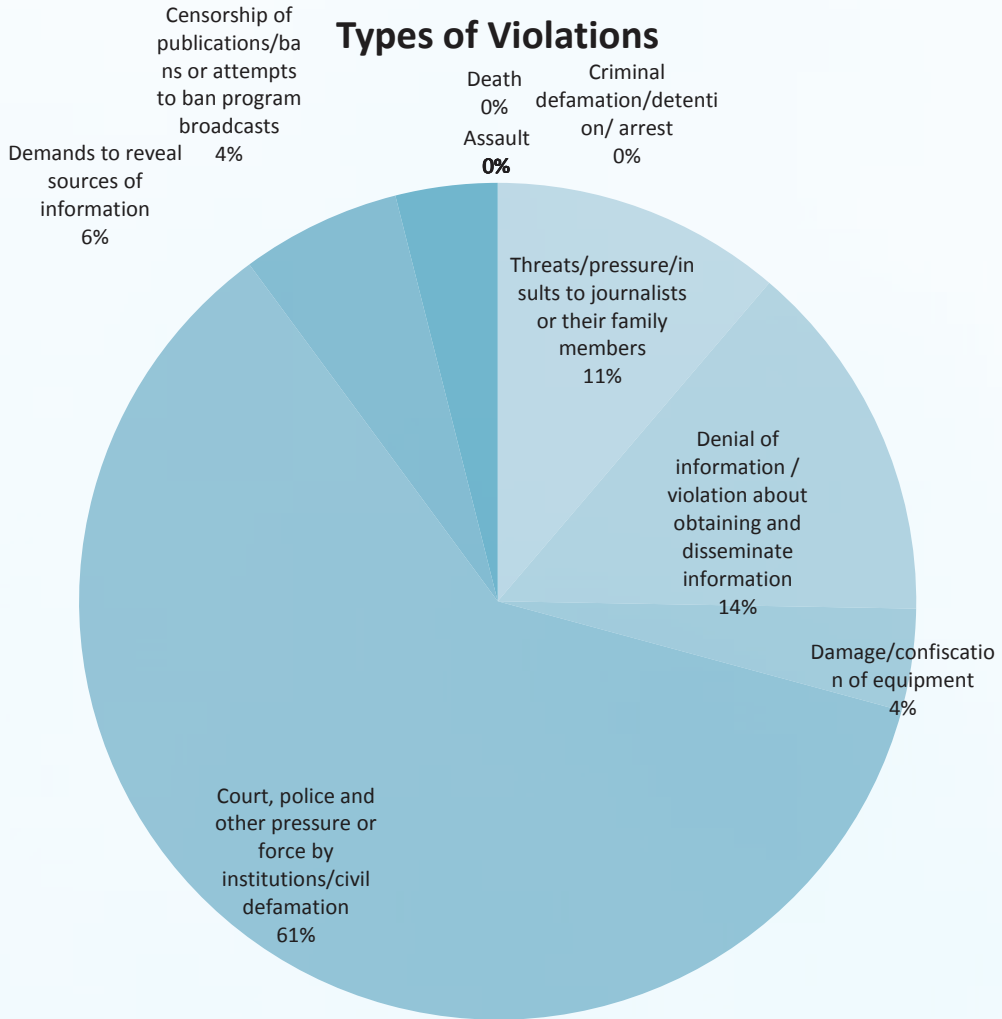
Results of survey conducted among 30 journalists showed there is high editorial censorship. For example, 40 percent of respondents said their editorial offices have a black list or censored topics that prohibit writing materials by due to Agreement with organizations or other reasons. 23.3 percent said they experience prior censorship that they could not publish and air their works by management decision. The survey shows editorial censorship affiliated with political parties or corporations is getting serious.

PRESS FREEDOM VIOLATIONS BY MEDIA TYPES /MAY 2017 – MAY 2018/

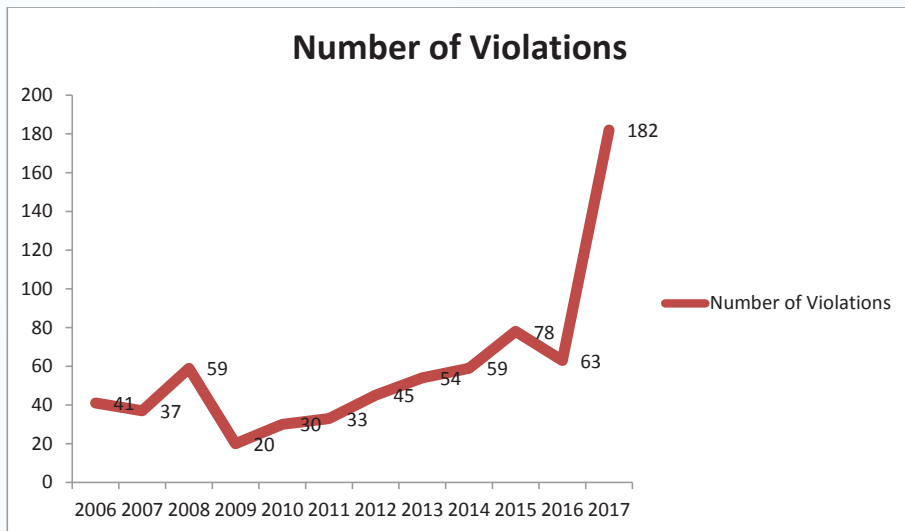
**Types of free expression violations in 2017-2018 by per cent:**

- Threats/pressure/insults to journalists or their family members: 20 (14.7%)
- Denial of information / violation about obtaining and disseminate information: 25 (18.3%)
- Damage/confiscation of equipment – 7 (5.1%)
- Court, police and other pressure or force by institutions/civil defamation: 108 (60.6%)
- Demands to reveal sources of information: 11 (8%)
- Censorship of publications/bans or attempts to ban program broadcasts: 7 (7.4%)
- Criminal defamation/detention/ arrest: 0
- Assaults: 0
- Death: 0

Types of Violations



Types of Violations	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Нийт
Assaults	3	3	6	-	-	1	5	-	4	5	1	0	28
Threats, pressure and insults to journalists and family members			23	13	10	8	5	6	9	12	8	20	137
Denial of information / violation on obtaining and disseminating information		10	13	2	-	7	7	8	11	6	6	26	103
Damage or confiscation of equipment			2	-	2	2	4	2	2	4	2	8	33
Court, Police/ other institutions exerting pressure or force/ civil defamation	2	8	5	3	5	3	5	6	8	17	17	108	187
Demands for journalists to reveal their sources	3	1	5	1	6	3	4	11	9	10	4	11	68
Censorship of publications/ bans or attempts to ban program broadcasts and other types of censorship	2	1	3	1	2	3	9	9	4	11	13	9	65
Criminal defamation/ detention/ arrest	4	4	2	0	5	6	6	11	10	12	12	0	72
Death	-	-	-	-	-	-	-	1	2	1	-	0	4
Total	41	37	59	20	30	33	45	54	59	78	63	182	701



Free Expression Violation Highlights

- **Intervention to the media independence**

Globe International Center is deeply concerned about interference and pursuance of the office and threat on its journalists of the news website *chuham.mn* by the “Sod Mongol” group, one of the few local oil importer who has governmental special permission and sees it as a severe violation of media freedom.

On January 26, 2016, two people called themselves as a lawyer and engineer of “Sod Mongol” group accompanied by N.Erdenebileg, policeman who is in charge of 5Th sub district of the Bayangol district interfered website office around at 6 p.m. According to journalists, who has worked that time in the office, they invaded aggressively not shown any permission issued by judge or prosecutor and entered the website’s archive by admin name and pick out all contradictory materials related to “Sod Mongol” group and its owner Ts.Anandbazar and demanded to destroy it. Meanwhile, above mentioned two people who called themselves as staff of “Sod Mongol” group, took a photo of journalists and attempted to confiscate website’s financial statement, computer and other properties.

As explained B.Munkhdul, owner of news website *chuham.mn*, the website outlined to post a set of materials regarding to local oil importers and also he considers that, it happened because of reposting a story related to “Sod Mongol” group published on 2015 by “Undesniishuudan.

According to B.Munkhdul, he applied to the relevant governmental organizations including a police office of Bayangol district about this severe action however they did not took any action except considering guilty just ethically that policeman and fined him 20 % amount of his monthly salary.

Globe International Center is deeply concerned over an illegitimate interference of personnel properties including assault on the editorial independence of media

outlet and threats on journalists by some officials or someone who has connections among authorities which misusing a power of law enforcement agencies.

- **Double economic censorship enforced on a media outlet**

An article “The citizens of Khailaast bag (administrative sub-district in Mongolia) close to running out of drinking water and land to walk on” was published in the daily newspaper Unuudur (Today’s edition of October 27, 2017. The editorial team reported on how the mining companies operating in Zaamarsoum, Tuv province are damaging the health and living conditions of the people and causing environmental degradation following citizens’ complaints.

“UulsZaamar” LLC stated in the claim submitted to the first instance court of Chingeltei district on November 16, 2017 that Unuudur newspaper spread fictitious, ungrounded information about the company, furthermore, the newspaper caused a defamation to their professional reputation and immense damages. The company demanded the newspaper to refute and apologize publicly, to reinstate their professional reputation and to pay 100,000,000 (One hundred thousand million) Mongolian tugriks in damages.

However, even though either the court date was not set and the editorial team’s fault was not proven, based on the company’s claims to the court to freeze the expenditures from the newspaper’s bank account up till 100,000,000 (One hundred thousand million) Mongolian tugriks, the first instance court judge of Chingeltei district ordered to freeze the newspaper’s bank account on January 17, 2018.

Unuudur newspaper claims that all facts included in the article are from credible sources and we are willing to prove the facts. We see the court decision as a clear act of attempt of violation of the right to publish through economic censorship.

- **M.Enkhbold, Mongolian Parliament speaker launched the defamation case against T.Baasansuren, TV9 Director,**

Dr. T. Baasansuren, Executive director, TV9 was accused of defaming through his a series of articles published on 5th and on 9th January 2018 under the No. 5710, No 5712 of “ Century news” newspaper following complaints by M.Enkhbold, Mongolian Parliament speaker which applied to the Civil court.

In fact, Dr. T. Baasansuren analyzed how the media outlets especially newspapers covered the Mongolian Presidential election, exempling 7-8 daily newspapers namely “ Daily news”, “ Century news”, “Today”, “Mongolian news”, “ Political review” “National post” and “ Morning newspaper” between July and October 2017 and published it.

His first article which named “Results and lessons learned about Presidential election campaign” was published on 5th January 2018 of “Century news’ under the title “Expression of expert” and a second one “ Some comments and lessons learned about Mongolian Presidential election campaign also was published on 9th January 2018 in the corner of that newspaper“ Facts and comments”.

M.Enkhbold, Mongolian Parliament speaker considered those articles defamed his honor and reputation and applied to the Civil court of Sukhbaatar district. The trial was launched at 9 a.m, on 28th March 2018, in the Sukhbaatar districts Civil court following complaints by M.Enkhbold, Parliament speaker however this case was reversed as an attorney and trustees of complainant failed to attend the trial.

The judge considered the absence of the complainant's attorney and trustees in the court as disrespect of law enforcement agencies and dismissed this case however two sides still not received a court's final decision.

SERIOUS STATEMENT

Information on telephones of 9 journalists and 30 relatives of them hacked publicly released on 26th of April, 2018. The General Intelligence Authority (GIA) delivered the request to launch the criminal case against the public officials to the Capital Prosecutor's Office. During the press conference Mr. Byasman, Prosecutor confirmed saying "We received the request from the GIA to the criminal case against police officers accused in illegal surveillance of persons and journalists and breached the law. The case is under investigation".

GIC concerns about violation of privacy guaranteed by the Constitution, so the case must be immediately and properly investigated and publicly informed.

II. SURVEY ON CIVIL AND CRIMINAL DEFAMATION CASES

In 2017, Globe International Center has conducted research and analysis on court decisions relating to civil claims of honor, personal or business reputation and criminal cases of libel and defamation. Furthermore, the research looked into the use of Civil and Criminal Codes by public authorities and officials. Despite Mongolian Parliament abolished the Criminal defamation in 2016 the provision 111.2 of the Criminal Law, Defamation provision, was still valid until July 1st, 2017. Provisions 21, 27, 497, 511 of the Civil Code and provision 6.21 of the Law on Administrative offence protect the name, honor, personal or business reputation of the person and remedy for harm.

Journalists and media organizations were accused of inflicting harm on the honor, personal or business reputation of persons in 12 cases out of 49 civil lawsuits heard by court. No criminal defamation case heard by court in 2017.

Politicians, high-ranking public officials and public bodies made up 33% of plaintiffs in civil cases and 34% in civil cases. Courts ruled remedy through the way one's reputation was harmed on 7 cases, approved the settlement on 4 cases and 1 case was dismissed.

In 2017, a well-known politician claimed 75 million tugrugs (approx. US\$30,000) from media outlets for damaging his reputation, but case was dismissed in the first instance. The maximum amount of damage claimed for harming honor, personal and business reputation was 104.7 million (approx. US\$45,000) tugrugs, 40 million less than was claimed in 2016. In 1999-2017, 50.2 percent (or 426 cases out from a total 848) of civil and criminal defamation cases were filed against media and journalists.

Comparative data on the trials of defamation cases

Year	Civil cases		Criminal cases	
	Total	Agianst media	Total	Agianst media
1999	30	-	3	-
2000	39	-	-	-
2001	31	11	4	-
2002	44	37	2	2
2003	28	18	1	1
2004	40	40	1	1
2005	29	25	1	1

2006	36	31	3	3
2007	33	33	-	-
2008	39	25	5	5
2009	44	17	1	-
2010	67	37	2	-
2011	43	23	7	3
2012	43	20	8	4
2013	37	17	9	3
2014	45	20	12	9
2015	37	10	14	5
2016	47	12	9	1
2017	49	12	5	0
Total	761	388	87	38

III. MEDIA LEGAL ENVIRONMENT

III.1. Guarantees of Freedom of Expression

Constitution and International laws and standards

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

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

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

Mongolia became a member of the United Nations in 1961 and recognized the Universal Declaration of Human Rights. In 1974, Mongolia ratified the International Covenant on Civil and Political Rights (ICCPR) and joined the Organization for Security and Co-operation in Europe (OSCE) in 2012. As such, Mongolia is legally bound to protect the freedom of expression in accordance with international laws and standards. In conformity with Article 10 of the Constitution, the above mentioned documents are effective as domestic laws. This is formally recognized in part 10.3 of Article 10 of the Constitution which stated that: "The international treaties to which Mongolia is a Party become effective as domestic legislation upon the entry into force of the laws on their ratification or accession" and was published in TuriinMedeel (State Gazette) in 2004.

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

Part 16.17 of Article 16 of the Constitution of Mongolia stated that: "In order to protect the human rights, dignity and reputation of persons and to ensure national defense, security and public order, the information which is not subject to disclosure must be classified and protected by law." This article indicates the purpose and reason that can put restriction on freedom of expression. Part 3.3 of Article 3 of the Criminal Code of Mongolia states that: "No one may be subjected to criminal liability for his/her opinion and beliefs". Even though there are opinions and beliefs, but there is no means to express them, this right cannot be fully implemented.

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

First: Only prescribed by law

Second: Have a legitimate aim

Third: Truly necessary and proportionate

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

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

III.2. Media Freedom and Journalism: Professional Activities

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

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

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

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

Numerous drafts of new Media Freedom Law were developed. However the State Great Hural is yet to discuss the final version or pass it.

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

The National Security Concept stated that the State, citizens and media shall: "cooperate in developing a policy to build awareness of a society proud of its motherland, nationality and respect for national interests, ethics, rule of law and state" (3.3.3.2). It also stated that social sustainability should be ensured through the strengthening of independence and autonomy of the media and by following responsible and professional journalism and journalism ethical standards (3.3.4.3).

In 2015, the Law on the Mongolian Language was passed by the Parliament and media outlets and publishing entities are obliged to: “strictly follow the grammar of the Mongolian language and standards of the Mongolian language of modern Mongolian literature”. Article 19 imposed to determine indicators of knowledge of the Mongolian language and grammar, shall be included in professional skills exams of journalists and media workers”. In accordance with Article 21.7.9, the National Council of the Language Policy of the President shall take control over implementation by media organizations, of the adherence of the standards of the Mongolian language.

III.3. The right to information and restrictions

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

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

According to article 6 of the above-mentioned Law, state organizations are obliged to disclose information relating to their activities, budget, finance, procurement and services, received by state and local budgets. Any citizen and/or legal entity retains the right to request information in any form of media desired, and officials are legally obliged to respond to freedom of information requests within seven working days at maximum, if there is need, the period can be extended by seven working days. If information is available, citizens and legal entities must be given immediate access. Moreover, there are regulations on implementation and monitoring of the law by stating to take notes in order to monitor law implementation (Article 23) and to make the above notes to assess indicators of outcome agreement (Article 24)

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

of higher instances as well as to the National Human Rights Commission and the Administrative Court.

In accordance with the Law, the Government has adopted the following two procedures: "Regulation on charges, exemption and reduced charges for information services" approved in January 2013 and "General regulation to ensure information transparency" approved in December 2013.

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

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

The principles of transparency and open information, in accordance with the Law on Information Transparency and Right to Information, are reflected in the laws passed in 2016 and include the Laws on: Deliberative Opinion Poll, Future Heritage, Legislation, Development Banks, Construction, and Hygiene. Furthermore, new legal provisions imposing an obligation to involve media representation and dissemination through media, in the framework of ensuring transparency and open information, have been enacted. Article 19.1 of the newly amended Law on Referendum passed on 5th February 2016 states: "Vote counting shall start at 22.00 of the voting day and shall be transparent and open with the involvement of observers, representatives of the media and citizens". Article 18.1: "Common Principles of the Public Hearing" of the Law on Public Hearing adopted on 8th July 2015 states: "It is necessary that a media representative shall be involved in a public hearing.

The Mongolian Parliament enacted the Law on State and Office/Official Secrecy on 1 December 2016 and the Law on the List of State Secrets and Law on Organizations Privacy were invalidated. It is positive that the maximum period of the protection of secret information has been reduced from 60 to 30 years.

However, some provisions in the new law are critical. For example, Article 5 provides a precise definition of official secrecy. Provision 5.1.2 says: "Official secrecy means information that is harmful to the interests of the sector, public organizations and other entities in the case of disclosure and loss and that shall be under state protection". This law is of public interest and clearly contradicts the concept and principles of the main RTI Law.

The scope of the state secret information is very broad including state policy, economy, science and technology, defense, intelligence, counter-intelligence, law enforcement and information security.

Moreover, in accordance with Article 10.1.5 of the new law, the Government has the power to approve procedures on taking decisions to make information secret, and transfer, disclose and categorize secret information, and change and prolong the period of secret information. We are skeptical that it complies with the Mongolian Constitution which states state and organizational secrets information must be protected by law.

III.4. Election and media

Media play an important role in election being as a forum for the exchange of opinions, public debate, confrontation and criticism, and offer the general public a chance to gain a better understanding of opinions presented by individual candidates and political parties.

Media have the duty to distribute unbiased and balanced information. Particularly, media inform and explain election platforms, their opinions and future plans of the competing political parties and independent candidates. According to free expression principles, media owners, editors and producers as well as journalists must be responsible for content of information they are distribution. The government must guarantee the right of access to information and disseminate information with no any censorship, threats, restrictions and discrimination. The government authorities must not intervene to the activities of journalists and media workers with purpose to influence the election campaign. Media owners and editors have to accept the principles of independent and ethical journalism and there should not be any pressures to their staffs. Role of broadcast media is crucially important during the election.

Nowadays, about 500 media outlets are actively operating in Mongolia and near 70 television stations out of a total of near 300, are located only in the capital, Ulaanbaatar.

The Globe International Center conducted the media monitoring on election coverage of the 2017 Presidential Election and it involved five national television channels: the MNB, UBS, MN25, TV9 and C1. This fourth media monitoring on election coverage was conducted a part of the "Civil Society for Fair Election" monitoring network initiated by Open Society Forum, Mongolia.

Monitored channels were selected on criteria such as publicly funded, popularity based on rating of the MAXIMA, a research company, and existence in the media market over four years and the owners' political affiliation, etc.

The monitoring results showed that election coverage on television channels were biased and no balanced. Time allocated to election coverage on channels was over that is permitted by the Election Law and prime time news programs were turned to the election advertising of the political parties and candidates. The news on TV channels was used as platform of hidden advertisements.

Election Law

On 25 December 2015, the new Election Law was enacted and it integrated the regulations of the previous Parliamentary and Presidential elections. Chapter 9 regulates the election campaign. Article 68.3 specifies means and types of the election advertising including printed materials and its distribution to voters /68.3.1/ and use of radio and television programs /68.3.6/, and use of web sites /68.3.7/. Concerning the restrictions of the printed election advertising materials, it shall not exceed three printed pages in the daily and other newspapers and the same size limitation applies to magazines /77.17/.

Article 82 includes the narrow regulations on use of radio and television. The public broadcaster shall air election programs in accordance with schedule and equal

time allocated which shall be adopted five days prior to the start of election campaign and no payments shall be charged. In accordance with new Election Law, no equal time for individual candidates running for parliamentary and local elections shall be allocated, so it applies to political parties and coalitions participating in the election. Regarding the Presidential election, equal time shall be allocated to each candidate. Besides equal time, legal requirements are equal conditions and equal opportunities. Other radio and television stations other than PSB, shall air election programs basing on the agreement. A total air time of paid programs shall not exceed 60 minutes a day. Fifteen minutes or up to 25 percent of one hour's duration shall be allocated for a political party, or one candidate.

The new Election law includes regulation of Internet space by its Article 83 and Article 83.3 allows to distribution of e-materials through e-mail and 83.4 obliges that names of subscribers and Party's Election Campaign Headquarters running web sites must be necessarily mentioned.

More restrictions are imposed by Article 70 titled Prohibition of the Illegal Campaign, namely, media is prohibited:

- To distribute information that is libeling and insulting, or false information, or any type of activities with the purpose of determining political ranking by media outlets, online space and messages /70.1.6/,
- To call people not to vote /70.5.7/
- To print, publish and air the songs and pictures related to religion in election broadcast programs and materials /70.5.9/
- To libel and insult others and to disseminate false information and news of any types/70.5.13/
- To sign an agreement and pledge to release all types of information and news about any parties participating in the election, or not to release such information during election campaign /70.7/

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

- If the Court decision proves the bodies guilty in dissemination, publishing and airing flashy and false information on parties, coalitions and candidates, they shall reimburse the expenses spent for the campaign /70.8/.
- In the case of breach of the provision 70.1.6 by web sites, the CRC shall terminate the license for six months based on the conclusion of the government administrative organization responsible for fair competition
- Radio and televisions breaching the Law shall be warned once and in the repeated cases, its operations will be stopped until the voting day by the organization which issued the license /82.19/.
- In the case of the breaches specified in this chapter, license of the broadcasters shall be terminated until six months from the day breach occurred /82.21/
- In case, if it is not possible to identify the bodies and media individuals who breached this provision, web site shall be blocked in Mongolian territory until the end of the voting by the regulatory body /83.7/

- Procedures of the election media campaign on radio and television, and monitoring shall be adopted by the Central Election Organization and Communications Regulatory Committee (CRC) in accordance with Article 82.17 of this Law. The CRC shall conduct monitoring on election advertising and it may take measures to not breaching the Law and stop the breaches in cooperation with police, election organizations and specialized non-governmental organizations /82.18/.

The involvement of the Authority for the Fair Competition and Customers and the CRC which is a government body by law, encourage the government censorship and it violates the Media Freedom law which bans any type of censorship.

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

III.5. Defamation law

An individual's honor is protected in both the Civil and Law on Administrative offence of Mongolia. State, non-state, business and all kinds of organizations can redress their name, honor and reputation by using aforementioned laws.

In accordance with the Law on Administrative offence enacted in 2016, if information defaming honor and dignity of person disclosed and distributed through media and social media, individual shall be fined.

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

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

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

III.6. Content restriction

A number of laws in effect in Mongolia contain content restrictions including the Law on Protection for Child Right, the Law on Prevention from Crime, Law to Control Circulation of Narcotic Drugs and Psychotropic Substances, the Law against

Prostitution, the Law against Alcoholism, the Law on Combating Trafficking in Persons, and the Law on Copyright and Related Rights.

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

The Parliament enacted the Law on Child Protection on 5th December 2016 and Article 8 of the law titled: "Child Protection in the Media and Online Space" protects children from games, news, information, advertising, and online networks that negatively affect child development, health and upbringing. Instructions on child protection shall be open to the public and permanent control shall be taken over. The regulation meets the criteria of necessity and legitimizes the restrictions on the protection public order set forth in Article 19 of the ICCPR.

The CRC regulations "General terms and requirements on Radio and Television Broadcasting" and General terms and requirements on digital content service" were amended in 2015. Standards set in these documents target the groups serving the public and these are also external by its nature. Therefore, these regulations are administrative acts.

These regulation acts did not have any impact assessment by the Ministry of Justice and nor did register in state registration. According to the Rule for decision on administrative norms adopted by the Government resolution No. 119: "any decision unregistered in state registration considered invalid and citizen, enterprises and organizations will not be held responsible for failure of adhering such decision". In contrast, these terms are used in controlling the content of broadcast media and news and information web sites and also utilization in terminating and invalidating licenses. Currently there is no content regulator for print media.

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

During past years, laws adopted by the State Great Hural and bills contain provisions to oblige media outlets, impose unnecessary restrictions and prohibitions which give an opportunity of increasing public organizations' censorship.

For instance, the Law on Culture was amended on 12 February 2015 and the Law will come into effect from 1st January 2016. The provision: "Restrictions on operation run by public and other organizations and citizens in the frame of culture," was amended. Even the main context of this regulation associated with government policy to support national content, it could turn into restriction on media and exert pressure.

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

III.7. Other regulations

Media Ownership and Concentration

All media outlets are required to register in Mongolia and they must submit their registration application form within 10 days after their establishment. In accordance

with the General Law on the State Registration, Law on the Registration of Legal Bodies, Civil Code and other relevant laws and rules, media was registered as either company or as an NGO. However, in practice, requirements for the documents to be submitted for registration, extends to such ones which should be included in the bylaws or statutes of the NGOs. It is not clear why this requirement mixes up principles of profit-making entities with non-profit-making organizations.

Radio and television broadcasting stations can only be registered after their license is granted in accordance with the Article 15.16.1 of the Law on Licensing for Business Activity. In order to apply for a license they must receive permission from their local governor. For the permission, media outlets must submit the following documents: their publication, programmed policy, frequency, structure, powers and duties of the governing body and editor-in-chief, and their financial information. In addition, they must also submit a contract signed with a printing company.

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

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

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

The Chapter 5 entitled: “Ownership transparency” of the CRC regulation “General Terms and Requirements on Radio and Television Broadcasting” says “Owner of the broadcast media shall make the license transparent to the public with purpose to ensure independence, openness and ethics. Information on percentages of investors, license holders, and management, names of license holders, detailed addresses, telephone numbers, management and organizational structure of the legal entities, and citizenship of the management staffs shall be sent to the CRC by letters within the 1st quarter of each year”.

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

It is open to own a various media outlet in many ways including open and hidden way. Thus, it is extremely hard to identify a real owner of media outlet as information on ownership and investor given by entities is questionable. Media ownership concentration in Mongolia seems to go further. Specifically a media concentration among big business and political groups is surging or they are selling a media outlet to one another.

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

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

Broadcast Media

Mongolia has no separate legislation on broadcasting. To conform to international legal standards, a competent regulating body of the media sector shall be independent from government and shall regulate a frequency spectrum. Under Article 8 of the Law on Telecommunications, the Communications Regulatory Committee was established in 1996. The Law on Telecommunications does not specifically and explicitly guarantee the independence of the Communications Regulatory Committee. In contrast, Article 4 of the Law on Radio Waves states that radio waves are State property and the Government solely reserves the right to allocate radio frequencies, while Article 5.2 of the Law refers to the Committee as “the government implementing body” suggesting that it is not intended to be independent.

The above legal statement restricts the opportunities of allocation and regulation of frequencies of waves in independent manner.

Internet

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

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

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

However, CRC regulations have been imposing restrictions. “General Condition and Requirement for Regulation on Digital Content Service” states that “Service provider of news and information website operating in Mongolia shall register in the Communications Regulatory Committee (3.4)”.

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

- It is obligatory to use filtering software;
- IP address of the customers shall be publicly visible under the user-generated content;
- Provide that customers login with a username and email address to leave comments;
- Keep that login in relation to those comments for at least 6 months.

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

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

Self-Regulatory Body

After long debates among media and journalistic communities, the first self-regulatory body Media Council was established and officially registered on 28 January 2015. It is managed by 15 members of the Board and it has two Committees: Ethical Committee on Radio and TV and Ethical Committee on Printed and Online Media each consists of 15 members. In 2015-2017, the Committees reviewed a total of 118 complaints including 16 complaints related to 49 media outlets about breaching the Code of Media Ethics in 2017.

Confidential Source of Journalists

Mongolia has no law protecting the confidentiality of sources for non-public media employees. The 2005 Law on Public Radio and Television guarantees protection for non-disclosure of sources and information only for journalists from the Mongolian National Broadcaster (Article 34).

In accordance with the ethical principle No 8 of the Code of Media Ethics, journalists have the ethical duty to protect their confidential sources.

One of the notable progresses towards protection of confidential source is the Government Decree No 14 of 2017 that adopted the Action Plan of the Implementation of the 2016 National Anti-corruption Program. Provision 4.1.8 includes the following activities to ensure independence of media and protection of journalists' safety:

- To ensure the right of media to obtain and disseminate information /4.1.8.1./;
- To establish legal protection for a journalist who disclosed corruption crimes through investigations from any threats and harassments and

ensure the safety of journalists by decriminalizing journalists' activities and /4.1.8.2./;

- To enable the legal environment for protection of media independence and media /4.1.8.3./;

International recommendations

The UN Human Rights Committee reviewed the sixth periodic report of Mongolian Government on the implementation of the International Covenant on Civil and Political Rights on 6-7 July 2017. The Human Rights Committee is the body of independent experts that monitors by its State parties. By its session on 24 July 2017, the Human Rights Committee issued its Concluding Observations that includes issues of freedom of expression, peaceful assembly and association.

37. The Committee is concerned about broad legal restrictions on the media, including Internet media, and limitations on access to information due to the broad interpretation of confidentiality provisions by authorities. While noting that the general defamation provision has been removed from the Criminal Code, the Committee is still concerned about remaining provisions on defamation in the criminal law and reports about the increasing use of civil law defamation clauses, which has a chilling effect that may unduly restrict the exercise of freedom of expression. It is also concerned about reports of attacks and harassment against journalists and media workers (arts. 19, 21, 22 and 26).
38. In the light of the Committee's general comment No. 34 (2011) on the freedoms of opinion and expression, the State party should ensure that any restriction on media activities is in strict compliance with the provisions of article 19 (3) of the Covenant. It should consider fully decriminalizing defamation and ensure that defamation is not subject to deprivation of liberty and that defamation laws, both criminal and civil, do not serve to stifle freedom of expression. It should also protect journalists and media workers against any form of harassment and threats, promptly investigate all such attacks and bring those responsible to justice to receive commensurate punishment.

Chingeltei District, Khoroo 6,
Ikh Toiruu 68/1, Logos center-902,
Ulaanbaatar-15141, Mongolia