

***Protecting the Journalists' Confidential Sources
and
Repealing the Criminal Defamatory Legislation***



Final Report

To the US Embassy, Ulaanbaatar, Mongolia

Submitted by Globe International

Reported Period September 30, 2007- May 1, 2008

Date Submitted May 28 , 2008

Total Budget: 20.700 USD

Reported: 20,719 USD

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Financial Report is enclosed as a separate Appendix A

1. EXECUTIVE SUMMARY

Globe International has completed a six-months project titled “Protecting the Journalists’ Confidential Sources and Repealing the Criminal Defamatory Legislation’.

The project was ran from September 30, 2007 till April 30, 2008 by a project staff consisted from three persons in cooperation with two Draft Legislation Teams involved in total 10 members.

The project aimed at promoting the media’s role in promoting the transparent and accountable governance and curbing corruption through favorable legal environment for journalists. The project achieved its objective to draft legislation on protection of confidential sources and amendments to the Criminal Law in consistence with the international standards.

The project produced several research reports, which published in two languages and carried out 9 regular team meetings, two consultative meetings and two round tables involving in total 83 participants.

Project ran media advocacy campaign through 26 media materials including one hour television program. The information distributed through Globe International web sites.

The present final narrative report includes a Financial report (**Appendix A**) and attachments to the narrative report. It provides the information on the results, activities, output and input of the project, and its performance and internal evaluation. The project includes the conclusion and recommendations to the follow-up actions.

2. PROJECT RESULTS

The project achieved the following main results:

- The draft law on protection of journalists’ confidential sources available by Draft Legislation Team consisted from four lawyers and a media expert
- Draft law on amendments to the Criminal Law to repeal the criminal defamatory legislation available by Draft Legislation Team consisted from four lawyers and a media expert
- In total four researches and comparative legal studies carried out by the project
- Two reports published in total 2000 copies, and distributed to the various interested parties, and posted at Globe International websites
- Total 83 participants representing the lawyers, journalists and NGO representatives directly educated on the issues of the source protection and criminal defamation and contributed to the draft legislation processes through four project events: two consultative meetings and two round tables
- In total four international documents translated as reference materials for the draft legislations
- The entire public informed and educated on the issues through one hour television live program ‘Policy’ aired by channel TV5 nationally, which totally includes 21 media materials published by 8 print and aired by 10 television channels and GI web sites. 58%

- of TV5 viewers sent their messages supporting the repealing criminal defamatory legislation while the rest was against.
- The Call for Adoption addressed to the Parliamentarians and the Government available and reached the public through five daily newspapers

3. PROJECT OUTPUTS

3. 1. Draft law on Protection of Journalists' Confidential Sources available in Mongolian and English and submitted to the Ministry of Justice and Home Affairs and 10 Members of the Parliament who would be potential law initiators

See Attachments 1.1-1.3

3.2 Draft Law on the Amendments to Criminal Law to repeal the criminal defamation legislation available and submitted to the Ministry of Justice and Home Affairs and 10 members of the Parliament who would be potential law initiators

See Attachments 2.1-2.2

3.3 Publications

The project has produced and printed the following two publications in Mongolia and English .

- Protecting the Journalists' Confidential Sources

The publication includes the educational information on the source protection and studies carried out by the project.

See Attachment 3.1

- Repealing the Criminal Defamatory Legislation

The publication includes educational materials about importance of repealing the criminal defamation legislation and comparative study and research reports produced by the project.

See Attachments 3 .2

3.4 Guidelines and report on comparative legal study on the source protection available in Mongolian and presented to the consultative meeting.

The comparative study involved 22 countries such as Belgium, Great Britain, the USA, Germany, Canada, France, Norway, Sweden, Philippines, Nederland, Portugal, Armenia, Czech Republic, Indonesia, Belarus, Kyrgyz, Luxemburg, Peru, Chili, El Salvador and so on. It also looked at the Human rights bill of Africa, European Human Rights Convention and Recommendations 2000/7 of the EU Ministers "Journalists' right not to disclose the information source'. The survey exposed the nature of the source protection, terminology, frame of the protection, court's involvement and the pivotal principles. The survey is significant that determined the justification and legal principles. The survey will be translated into English and published.

The comparative study based more on the European and best practices because the European countries are more experienced in regulations of the source protection. The laws of the Asian countries are very general and no practical regulations.

Reports attached to the progress report

3.5 Guidelines and report on comparative legal study on criminal defamation and court practices available in Mongolian and presented to the consultative meeting.

15 countries such as Finland, Germany, the USA, Russia, Sweden, Hungary, Ukraine, Kyrgyz so on, involved to the comparative study on criminal defamatory laws. The results show that countries have the provisions on libel and insult, but in many countries they protect the people who often express their opinions. Such provisions do not apply for the journalists and there are very rare practices using of these provisions.

Attached to the progress report and visit web sites www.globeinter.org.mn

3.6 Guidelines of the case studies on the court decisions on the criminal defamatory and report available

In 2006, UB courts heard 33 civil and 3 criminal defamation cases out of total 366 The plaintiff of 52.2% were the politicians, high officials and public officials and state institutions. Media won only in 9.6% of the cases and they lost in 54.8%. In 35.6% plaintiff and media reconciled.

Attached to the progress report and visit web sites www.globeinter.org.mn

3.7 Report of survey among 203 journalists available

40% of the journalists most often use the confidential sources, 13% often, 43% when it is necessary and 4% do not use. 38% of journalists were demanded to reveal their information sources. 39% said they were demanded by the police, 29.7% by the courts, 43.2% by the politicians and state organizations, 10% by the intelligence service and 35.2% by the individuals and political parties. 23% disclosed their sources. 40.9% to the courts, 29% faced the civil and criminal law cases and 15% of journalists were called as witness in other cases.

25% of the journalists affected by the criminal defamatory legislation. 56% of the cases cancelled by the police investigations, 6.1% by the prosecutors and 42.9% by courts. The full report will be translated into English and published.

Attached to the progress report and visit web sites www.globeinter.org.mn

3.8 Media experts' reports

R.Oyuntsetseg, team member produced a report on the journalistic source of information, its types and reasons of using confidential sources in order to provide the lawyers with more professional knowledge. **Attached to the progress report**

G.Galaarid, team member produced a report on criminal defamation referring to the Mongolian experiences and international standards, and why journalists cannot be accused by criminal code.

See Attachment 4

3.9 Translation of reference materials available

- Enabling environment for free and independent media. **Attached to the progress report.**
- Silencing the Sources. **Attached to the progress report**
- Defining Defamation. Principles on Freedom of Expression and Protection of Reputation, Article 19
- Decriminalizing Defamation. An IFJ source fro Defeating Criminal Defamation

See the publications

3.10 Total 26 media materials published and produced by 5 newspapers and covered by 5 broadcast media outlets.

Please see the copies of newspapers for this report. Others attached to the progress report. **Attachments 5.1- 5.7**

3.11 Lawyer's comment on the Supreme Court Interpretation

The Supreme Court produced its interpretation on the defamation and insult provisions 110 and 111. GI lawyer has commented on it and said it does not meet the international standards on freedom of expression.

3.12 A call for Adoption produced and published in five daily newspapers.

See Attachments 6.1-6.5

4. PROJECT ACTIVITIES

The project organized the following events

4.1 Draft Legislation Team Meetings

- Team meeting #1

The first team meeting was held on 31 October 2007. It was aimed to form the teams and discuss the guidelines of the comparative studies and surveys.

- Team meeting #2

The second meeting was held on 5 November 2007. The meeting discussed the methodology of survey among the journalists

- Team meeting #3

The third meeting was held on 17 November 2007. It was aimed to follow the process of the comparative study on the source protection and approve the detailed schedule of the draft law.

- Team meeting #4

The fourth meeting was held on 23 November 2007 to assess the progress of the comparative study and determined the frame of the additional studies and get the law maker's proposals.

- Team meeting #5

The fifth meeting was held on 6 December 2007 and M. Dorjhand introduced the team members with the results of the comparative study and agreed to get the members' proposals on the survey questionnaires

- Team meeting #6

The meeting was held on March 15, 2008. The meeting discussed the draft law concept of the criminal defamation. M. Altan-Olzii, law maker introduced his concept. After discussion he was tasked to make the changes in accordance with members' proposals. It also discussed the program and structure of the round table.

For meeting minutes see Attachment 7

- Team meeting # 7

The meeting was held on 4 April 2008 and it discussed the new version of the draft law concept of the criminal defamation. It agreed to present the final version to the round table for discussion.

For meeting minutes see Attachment 8

- Team meeting #8

The meeting was held on April 01,2008. D.Saranchimeg, law maker introduced the team members with draft law and concept. B.Temuulen, consultant provided her advises to the draft. The members discussed and agreed to make some changes before presenting it to the round table.

For agenda and minutes, see attachments 9.1-9.2

- Team meeting #9

The meeting was held on 12 April 2008 and attended by the team lawyers. D. Saranchimeg introduced the process of the law drafting. It also discussed the program and structure of the round table.

See minutes as Attachments 10

4.2 Consultative Meetings

- Consultative meeting on the protection of sources legislation

The meeting was held on 21 December 2007 at the meeting of Lobby center. Total 29 participants representing attended and it was moderated by H.Naranjargal, GI President. D.Dorjhand, a team member introduced the participants with results of the comparative study.

The participants exchanged their views and opinions and agreed the source protection legislation is urgent need for the Mongolian journalists.

Program and list of participants attached to the progress report

- Consultative meeting on the defamation legislation

The meeting was held on 21 January 2008 and moderated by H.Naranjargal, GI President and G.Davaakhuu, GI lawyer. Total 26 participants attended in the meeting and introduced with the results of the legal comparative study on criminal defamation presented by M. Batsuuri, team member.

Program and list of participants attached to the progress report

4.3 Round Tables

- Defamation and Crime

The round table was held on 14 April 2008 at Lobby Center and attended by 16 people. Kh.Naranjargal, project leader opened the round table. The following presentations were taken:

- Is honor the citizen's right or power of the authorities? H. Temuujin, Law school of the Mongolian National University
- Comparative studies on the Court Practices, M. Batsuuri, Law school of the Mongolian National University
- Study on the Mongolian Courts' Practices, Sh. Sukhnbaatar, Consultant of the Ministry of Justice and Home Affairs
- Concept of the law on the Amendments to the Criminal Law. M.Altan-Olzii, law maker.

The participants endorsed the law concept.

See Attachments 11.1-11.2

- Protecting Confidential Sources

The round table was held on 18 April 2008 at Lobby Center and 11 participants attended. The round table was moderated by D.Munkhburen. Draft Legislation Team leader. R.Oyunstetseg, a media expert has taken her presentation on the nature and principles of the source protection and D.Saranchimeg, law maker introduced the law draft and concept.

The participants endorsed the law draft and concept.

See Attachments 12.1-12.3

5. PROJECT EVALUATION/PERFORMANCE

5.1 Evaluation

No	Activities planned	Indicators	Results Planned	Results Achieved /Measurement
1.	<u>Drafting legislation</u> Comparative study	10 members for 2 teams involved 22 laws on protection of sources studied 15 laws on criminal defamation studied 5 ? team meetings held	Main reference document for legislation provided	Report available in Mongolian Web site Meeting minutes
2	Case studies	Methodology developed A researcher and data enterer, 26 data gatherers worked 203 journalists involved 36 court cases analyzed	Main justification document for legislation provided	Reports available and published GI web sites
3	Consultative meetings	2 meetings held and involved 55 lawyers, journalists and NGO representatives attended	Greater participation of the public and community groups provided	Meeting minutes List of participants Program GI web sites
4	Round tables	Round table held and involved total 28 participants The Call published in 5 daily newspapers: Daily News, Mongolyn Medee, Zuuny Medee, UB	Draft presented and the Call for Adoption adopted	List of participants Program Copies of newspapers GI websites

		Times, Zuuny Shuudan, Onoodriin Mongol		
5	Media advocacy	One hour television live program ‘Policy’ aired by channel TV5 nationally. 21 media materials published by 8 print and aired by 10 television channels	Public informed and educated on the issues	Copies of media materials GI web sites

5.2. Performance

Level of achievements (LOA): F- fully completed, D- delayed, C- cancelled, O- still on

Activities	Indicators	Scheduled for	LOA	Remarks/Comments
Project preparation started	Progress report	01/10/07-07/10/07	F	
Media releases published	Published by 4 newspapers	08/10/07-14/10/07	F	
Draft legislation teams formed & contracts signed	Contracts with DLT members	15/10/07-21/10/07	F	
Teams started working	Reports available Translations available	22/10/07-28/10/07	F	
Comparative analysis started and completed	Methodology available Report available	22/10/07-23/12/07	F	
Case studies started and completed.	Methodology Questionnaires Reports Contracts with researcher and	22/10/07-23/12/07	F	

	data gatherers			
Consultative meetings prepared and held	Minutes Invitations List of participants	10/12/07- 23/12/07	F	
Law drafts available	Availability, 2 languages	17/12/07- 05/02/08	F	
Reports of the studies printed and distributed	Copies List of distribution	02/03/08	F	
Media advocacy	Television live program aired and copies of newspapers	06/02/08- 19/02/08	F	
Draft Calls available and printed in newspapers	Newspapers published	02/03/08	F	
Round tables held	Minutes List of participants	02/03/08	F	
Final versions of the law drafts available	Availability, 2 languages	16/03/08	F	
Drafts submitted to the MJHA	Letter	16/03/08	F	

6. PROCESS/PROBLEMS

1) In February 2008, during the project implementation the Mongolian Parliament passed a Law on the Amendment to the Criminal Law and among the changes occurred the project target- law provisions 110 and 111 on defamation and insult.

The Parliament has taken a word “through media 3 from the article 111.2 and it replaced by a word ‘before the public’” The article is now read:

*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 **before the public** or if the crime on insult and libel is committed by a person who was criminally charged before.*

The project staff carefully discussed the issue in consultation with Draft Legislation Team

and concluded that changes made the provision even harsher. Any person who criticize the public institutions or public figures at public places, for example public meetings or through media can be accused under this article. So it became more broader to pressure public critics.

The situation makes more difficult the process of advocating and lobbying the new amendments to the defamatory legislation

2) The Supreme Court produced its interpretation on the defamation and insult provisions 110 and 111, which are contradictory to the international standards and UN declaration concerning freedom of expression and reputation.

GI lawyer has commented on it and commentary was published in Ardyn Erkh newspaper.

7. CONCLUSIONRECOMMENDATIONS

Above mentioned examples evidence a lack of awareness and knowledge of the Supreme Court, judges and lawyers, in general, and their political commitment.

So the project staff recommends to take the follow-up actions to provide advocacy and lobbying activities for passage of the laws drafted by the project. It can include some educational events for the new MPs elected by the coming elections of the Parliament and lawyers, and other public awareness campaigns.

Progress report by



Naranjargal, Khashkhuu, project leader

Project Input

As soon as Globe International received a firm indication from the US Embassy funding support for this project, we have launched our activities, including forming the project staff and two Draft Legislation Teams (DLT)

3.1 Project staff:

- Project leader Kh.Naranjargal

The project leader manages the project staff and will be responsible for providing the entire project management and ongoing project development and liaison with the donor, and work with the teams

- Project assistant G.Uuganbayar

He is responsible for coordination and administration of the project activities.

- Financial coordinator Kh.Enkhjargal

She is responsible for the financial controlling.

3.2 Research Team

A researcher/data enterer and five data gatherers in UB and 21 in provinces contributed to two surveys among 203 journalists

The list of the research team attached to the progress report

3.3 Draft Legislation Team

Two draft legislation teams (DLT) have been formed and each consists from 4 persons: team leader, law maker, lawyer-researcher, media expert and consultant.

Draft Legislation Team I Protecting the Confidential Sources

1. D.Munkbburen, Team Leader
2. D. Saranchimeg , Law -maker
3. R.Oyuntseteg, Media Expert
4. B. Temuulen, Law Consultant

Draft Legislation Team II. Repealing the Criminal Defamation

1. G.Davaakhuu, Team Leader
2. M.Altan-Olzii, Law-maker
3. G.Galaarid, Media Expert
4. Sh. Sukhbaatar, Law Consultant

ATTACHMENTS TO THE PRESENT REPORT

Attachment #1.1-1.3	Law draft and concept of Protection of Journalists Confidential Sources
Attachment #2.1-2.2	Law draft and concept of the Amendments to the Criminal Law
Attachment #3.1	Publication on source protection
Attachment # 3.2	Publication: Repealing the Criminal Defamation
Attachments # 4	Media expert's report
Attachments #5.1-5.7	Copies of newspaper publications
Attachments #6.1-6.5	Call for Adoption
Attachments # 7	Minutes of the team meeting #6
Attachments # 8	Minutes of the team meeting #7
Attachments # 9.1-9.2	Docs of team meetings #8
Attachments # 10	Minutes of the team meeting #9
Attachments #11.1-11.2	Docs of the round table on source protection
Attachment #12.1-12.3	Docs of the round table on criminal defamation
Attachment # 13	Project Input