

Media Freedom Report

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PREAMBLE

It is our pleasure presenting the 2018 Media Freedom Report on the occasion of the World Press Freedom Day- May 3. The 2019 WPDF is celebrated under the main theme “Media for Democracy. Journalism and Elections in Times of Disinformation”.

In accordance with the UNESCO concept, 2019 WPDF will address the three sub-themes that should be discussed internationally and locally. These are: i) How the digital area is affecting electoral communications?; ii) New attempts to undermine media’s role in democracy: Discrediting professional journalism and disrupting Internet access and iii) Media’s potential to contribute to a culture of sustainable peace and democracy. It comes at exact time in Mongolia because the dirty campaigning of the past Parliamentary and Presidential elections is still in the minds of the citizens and it is currently expectation for the up coming 2020 Parliamentary and 2021 Presidential election.

Free, independent and professional journalism is informed and knowledgeable vote and hunter of the election fraud and manipulation, and media is a dimension of the democratic society respecting for the social justice and integrity

According to the Press Institute of Mongolia, a total of 4462 workers is registered in over 400 media outlets and 49 percent of those are reporters and journalists by the end of 2018.

The Mongolian journalists ended up the 2018 with a fear while they had some achievements and findings. Thanks to the data journalism and investigative reporting, the citizens informed in corruption cases which were not public before. The disclosed misuse of the Small and Media Business Fund gained the public support.

The present report includes the preliminary results and findings of the monitoring on the safety of journalists conducted in partnership with Media Council of Mongolia (MCM) and the Mongolian Bar Association of (MBA) with support of the EU-funded project “Promoting Human and Labor Rights through GSP+” incorporated with the Democracy Reporting International. The final report will be public very soon.

The monitoring results say that at least one out of two journalists faced violations of their professional rights such as denial in access to information, demand to disclose their confidential sources, as well as harassment, threats, pressures, damage of their equipment, and bans of their publications and programs. By May 2018, the Mongolian courts heard a total of 19 civil defamation cases against media and journalists.

Mongolia has accepted the UPR recommendations and criminal defamation which is a harsh censorship affecting citizens’ right to freedom of expression and journalists’ information dissemination, was partially repealed in 2017. The Criminal Law still has a criminal offence in Article 14.8 titled “Dissemination of the obviously false information during the election” and provision 14.8.1 reads: “In case, if obviously false information distributed and damaged the reputation of political parties, coalitions and candidates participating in the election, a fine with amount of 450-5400 unities (1 unity equals 1000 MNT), or from 240 to 720 hours of public benefit works shall be imposed, or the right to travel shall be restricted from one month to one year”.

Article 6.21 titled Libel of the Law on Administrative Offense is still used as strong economic censorship tool. A total of 118 million MNT of fines were imposed against 57 individuals and two legal entities out of 374 registered cases of libel from July 2017 until October 2018.

15 media NGOs including Globe International Center, Confederation of the Mongolian Journalists, Association of Daily Newspapers, Media Council of Mongolia, Press Institute of Mongolia, Mongolian TV Federation and others handed over the Statement on Abolishing the Libel Article to the Working Group on the Amendment to the law on Administrative Offence of the Ministry of Justice and Internal Affairs in December 2018.

At political and legislative levels, the discussions on criminalization of defamation are going on and a draft Law on Amendment to the Criminal Law is available and includes the Article titled Libel. It is concerned that danger of strong legal censorship will be back. It will be step back

from the pledge before the UN Human Rights Council. It is also contradictory to Article 10 of the Constitution of Mongolia which declares to fulfil the pledges before the international community and international treaties and conventions shall be valid as domestic law. Mongolia became a part of the ICCPR in 1974 and the country must follow its Article 19 guaranteeing the right to freedoms of opinion and expression.

Mongolia is developing the first Volunteer National Review on the implementation of SDGs to submit to the High Level Political Forum (HLPF) to be held in July 2019. SDG target 16.10 is to "Ensure public access to information and protect fundamental freedoms". Mongolian Parliament enacted the Law on Information Transparency and Right to Information (LITRI) in 2011. In accordance with the global ranking of the RTI laws, Mongolia is in the 72nd place out of 123 countries. In March 2019, GIC has conducted the study on the implementation of the LITRI that used a methodology developed by FOIANet, which is designed to be a simple tool to help CSOs conduct parallel assessments of the extent of States. The results show that transparency of the government agencies is 36 percent, law implementation is 26 percent and response to the information requests is 59 percent. Regarding journalists, seven out of ten journalists were denied in receiving information from government officials in accordance with the survey of the MCM.

In May 2018, the Human Rights NGO Forum of Mongolia submitted the mid-term report on the UPR implementation to the UN Human Rights Council. The government of Mongolia adopted an Action Plan on the implementation of the UPR recommendations by its Resolution No 204 on 11 April 2016. The Action Plan includes 11 actions to implement 8 recommendations on freedom of expressions. However, 9 of those actions have not been implemented. The Mongolia's third UPR cycle is scheduled in May 2020. We hope Mongolian government will reach the significant achievements in implementation of the current recommendations by that time. The politicians frequently make the statements to strictly restrict the freedom of expression, close or limit the social media access. The report of News.mn, news website is currently in the center of the public attention. During the discussion of the draft Law on Amendment on the Law on Communication at the Parliament Standing Committee on Economy on 23 April 2019, some MPs stated that registration of the social media users should be taken by their national ID numbers and prohibit an anonymous access from other's account.

In 2018, Mongolia is in 70th place out of 180 countries in accordance with the Media Freedom Index of the Reporters without Borders and the country is still among the countries with notable problems of media freedom.

I hope the Media Freedom report will give you an overall picture of media freedom in Mongolia.

Kh.Naranjargal
President and CEO of GIC

ONE. VIOLATIONS OF FREEDOM OF EXPRESSION

1.1 Results of the survey on “Factors affecting journalists’ safety”

In 2018-2019, the Globe International Center contracted the Mongolian Media Council to conduct a survey on “Safety of Journalists” among 300 journalists who work on daily news, investigative journalism and on socio-economic issues. The survey results show the denial to information, threats/pressure/insults to journalists or their family members, censorship of publications/bans or attempts to ban program, damage/confiscation of equipment, demands to reveal sources of information and other violations happen to **one out of two** journalists.

Journalist safety indicator:

- Denial of information / violation about obtaining and dissemination of information: **74 %**
- Threats/pressure/insults to journalists or their family members: **67 %**
- Damage/confiscation of equipment: **58 %**
- Censorship of publications/bans or attempts to ban publications program broadcasts: **52 %**
- Demands to reveal sources of information: **51 %**
- Pressure from the courts, police and other law enforcement agencies: **36 %**
- Loss of private digital address /email, social account/, related information: **20 %**
- Physical assaults: **18 %**
- Temporary detention/arrest: **8 %**

The above violations are experienced in majority by young journalists, under 35 year old, who were employed by TV, website and newspapers.

- **Denial of information**

Denial of information by the state official occurred to 7 out of 10 journalists at least once in their career. This violation is common regardless the fact that request for information is within the scope of the Law on Information Transparency and the Right to Information (LITRI).

The state institutions develop own list of secret information following organization’s internal procedure. The list is too broad and general. This allows the public organizations to define its secrecy access public by own terms and conditions thus creating conditions for obstacles to information and dissemination.

- **Threats are increasing**

67 percent of journalists at least once experienced some form of threats/pressure/insults, because of their disseminated publication and information.

The most common threats are: phone threats, pressure on all levels- to journalists, their editorial and colleagues in the newsroom, public insult, pressure from high level officials in relation to their publications, programs and disseminated information. These threats occur on average at least 3-4 times a journalist.

- **Damage/confiscation of equipment**

58 percent of journalists responded to the survey once experienced damage/confiscation of equipment or attempts to damage/confiscate their equipments at least once.

There are cases of confiscating cameras, damaging it, deleting information on memory cards with the purpose of interrupting the further dissemination of news and information.

- **Editorial censorship remains strong**

All types of censorship on publications/bans or attempts to ban broadcast programs, editorial censorship occurs to 52 percent of journalists or in other words to one out of two journalists.

The above kind of prior censorship is coming to their release derives not only from organizations and officials but also comes from media owners, management, colleagues in the form of influences and blocking provisions of the agreement of cooperation signed by the media outlets.

- **Demands to reveal sources of information**

Pressure to reveal sources of information occurred to 51 percent or one out of two journalists. After a certain publication or program the affected organization or a high-level official demand to reveal the proofs to facts of the information source. The parties go to a court, where the court obliges to reveal the information source while requiring journalists to provide proof for the published, released information.

- **The pressure of court, police and other law enforcement agency**

To the survey question "In regard to your publication, program have you been called to the court or police?" 36 percent or one out of three journalists answered YES.

In most cases, public bodies, high level officials, politicians sue journalists. After the adoption of the Law on Administrative Offences this number is on the rise.

1.2 Globe International Center is highlighting the following cases of violations against professional rights of journalists (2018-2019)

Case 1. Interruption of journalists' professional work

Reporter E.Battsetseg and photo reporter S.Batsaikhan of the "Government News" a daily newspaper were assaulted by the Shangri-La hotel security while conducting their journalistic work (12 December 2018).

M. K. Stuart, a citizen of the USA, a military major was found dead in Ulaanbaatar Shangri-La hotel, allegedly to have committed a suicide. The case is under police investigation (Division # 1 of the Police Department of Sukhbaatar district). S.Batsaikhan recorded a transfer of a body into ambulance van on the camera. The hotel security chased after S.Batsaikhan, dragged him into hotel with his hands at the back. The camera was taken away. Meanwhile E.Battsetseg's phone was searched and photos were erased.

Case 2. A journalist was imposed a fine to complaint by Kh.Nyambaatar Member of Parliament

“iNews.mn” news website journalist Ts. Bulganzaya was fined an amount of MNT 2mln for libeled defamation of Member of Parliament (MP) Kh. Nyambaatar. On December 26, 2018, The Capital City Criminal Appeal Court appointed Kh.Nyambaatar as a victim and retained the penalties imposed on Bulganzaya.

In the article published on the iNews.mn on 27th of June, 2018 MP Kh.Nyambaatar was called “a puppet”. There were no attempts to dismiss events, facts mentioned in the publication, no contra-evidences were provided, the main claim was on the usage of the word “puppet” and the court decided that MP was “slandered”.

The case was initially filed with a district police department. Later, in August 2018, the case was transferred to the General Police Department’s Public Order and Safety Protection Division. The division was assigned to deal with high officials’cases by an order of the Capital Prosecutor. The expert was appointed from the Mongolian National University of Education (MNUE). Sh. Battugs,Ph.D, professor, head of Mongolian Language Department concluded: “A puppet and law exchanger/trader- these expressions do not contain direct in-accidence with libel and insult. It is a private opinion, expressionbased facts on the particular event, action. However, the expert’s opinion was not taken into consideration and the journalist was fined by MNT 2 mln by the provision 6.21 of the law on Administrative Offence.

Case 3. Economic censorship

MP B. Undarmaa sued “Unuudur” daily newspaper on 6 June 2018. The claim was in the amount of MNT 100 mln for publications that she considered to be of libel to honor dignity and business reputation. The amount was estimated on the following calculations: “ MP B.Undarmaa has not registered her company in her Income Statement”, “ MP B.Undarmaa received a license using false documents” publications as 42 mln, website publications as 15 mln, the dissemination of publications released on other websites as 25 mln, defense fee as 8 mln – in total MNT100 mln. The newspaper until today stands its ground. MP B. Undarmaa sued “Unuudur” daily newspaper on 6 June 2018. The claim was in amount of MNT 100 mln for publications which she considered to be of libel honor, dignity and business reputation.

In the past period the newspaper was also sued for MNT 9 bln by “Altain Huder”LLC, the claim was later taken back. The claim of MNT100 mln by “Uuls Zaamar” company is still in process and under investigation.

Case 4. The journalist is fined regardless of the provided evidence.

S.Budragchaa wrote four series of articles titled “A director of the Capital City Archive S. Gavaa is under investigation of the Anti-Corruption Agency”, “The Capital City Archive’s software was sold to public bodies by the double price”, “ The archive documents for preservation purposes rented a space for MNT 5 mln at director’s mother–in-law’s workplace”, “ A director of the Capital City Archive S.Gavaa contracted a consultation service to himself by himself in amount of MNT 2 mln” (January- April 2018). The police fined the journalist in the amount of MNT 2 mln for libel. The decision was appealed at the First Instance Criminal Court, however the court kept the decision (12 October 2018). The court decision did not take into account all the provided evidence

and the decision was biased. Therefore, the journalist appealed to the appellate court. By the 30th of April, 2019 by the court decision the case was overturned and returned to the first instance court for lack of evidence of violation and absence of legally justified conclusion by the court.

Case 5. Physical assault

There was an attempt to abduct a Turkish national Veysel Akçay on the territory of Mongolia. The Mongolian media covered the story. The journalist covering the event was attacked, hit, pushed and pulled by hair by General Police Department policemen. Some journalists were thrown down. Eagle TV journalist B.Battsetseg was hit in the jaw by a policeman. The event was recorded on the camera. The editorial of the TV station filed a complaint to the police, however the policeman was not punished, and no disciplinary actions were taken. The explanation was that the policeman was on duty and fulfilling his responsibilities.

TWO. RIGHT TO INFORMATION, ACCESS TO PUBLIC INFORMATION

2.1 Results of an assessment on implementation of the Law on Information Transparency and Right to Information

Mongolia guarantees the freedom of expression and information, freedom of media by the Constitution. In 2011, a law on Information Transparency and the Right to Information (LITRI) was adopted. LITRI was ranked 72nd out of 123 countries for its strength of right to information laws (<https://www.rti-rating.org/country-data/>).

In March 2019, the Globe International Center jointly with other three NGOs has conducted an assessment on the implementation of the LITRI among randomly selected eight public bodies following a methodology prepared by the Freedom of Information Advocates Network (FOIANet).

LITRI provides that public organizations should report and publicize any activities related to budget and finance, human resources, and procurement to ensure the transparency and good governance. Citizens and legal entity have the right to request any information from the government and to obtain information under the law, which is the basis for increasing public access to information.

Public bodies are legally obliged to respond to citizens' requests to information within seven working days, when there is a reasonable delay an extension of seven working days may be granted. If information is available on websites and other forums for public display, the citizen or a legal entity can access it directly <https://www.legalinfo.mn/law/details/374>.

One of the challenges identified in the implementation of the LITRI is the lack of broad advocacy of the law by the government leading to uneven understanding and awareness of the scope of the law among public bodies (Assessment of Media Development in Mongolia-2016, UNESCO).

▪ **Results**

39.8%

— 0-33 — 34-66 — 67-100

Areas	Score
Proactive Disclosure	35.4%
Institutional measures	25.9%
Processing of requests	58.2%

The main conclusion is an absence of the providing Nodal Agency to ensure the implementation of information officers or officials in charge of information have no sufficient knowledge of the law; have not attended any official training on the subject. Therefore, there is persistent traditional concept of the organizational secrecy/information secrecy.

THREE. CIVIL AND CRIMINAL CASES AGAINST JOURNALISTS AND MEDIA

In 2017, Globe International Center has conducted research and analysis on court decisions relating to civil claims of honor, dignity 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 the fact that the Mongolian Parliament abolished the Criminal defamation in 2016, the defamation provision 111.2 of the criminal Code 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 Offences protect the name, honor, dignity or business reputation of the persons and remedy for harm.

Between January 2017 and April 2019 journalists and media organizations were accused of inflicting harm to the honor, dignity or business reputation of persons in 19 cases out of 69 civil lawsuits. Currently, it is possible to review 12 cases out of the above 19 cases.

33% of the filed cases derive from authorities, high-ranking public officials and public bodies. If take into account the court decision categories: in 7 claims the court ordered to amend and correct and restore the honor and business reputation through means of the disseminated media outlets, in 4 claims parties agreed to reconcile and 1 claim has been dismissed.

In 2017 a famous politician claimed MNT 75 mln from a media outlet, but the first instance court ruled out the entire claim. The maximum amount of the monetary claim was MNT 104.7 mln, which is lower by MNT 50 mln compared to 2016. The claimer filed an average MNT

20 mln per case. The maximum amount of fine issued by the court was MNT 2 mln, which is the same as the previous year. In the case of a court of the first instance, 6 or 50% of the claims were nullified, three cases were convicted. There are three cases of reconciliation between the plaintiff and the defendant.

In 1999-2017, out of total **848** of all civil and criminal cases heard in court relating to honor, dignity, business reputation, libel and slander **426** or **50.2 %** were related to journalists and media. (shuukh.mn website information.)

Comparative results of 1999-2018 cases

Year	Civil case		Criminal case	
	Total cases	Media related	Total cases	Media related
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
2018	69	19	0	0
Total	761	388	87	38

Note: There are no cases registered as criminal in 2017 and 2018 related to the media. It is due to the amendment in the Criminal Code, starting from the 1st of July 2017 defamation, slander clauses are not counted as criminal cases.

3.1 Court cases related to journalists and media workers

A. Criminal case

- As of 2015-2017, 28 journalists were suspected of being involved in a criminal offense of the Criminal Code, and 70 journalists became victims of crimes.

B. Administrative Offence Case

- In 2017, as of the first three months of 2018, 46 journalists were accused of certain types of violations by the Law on Administrative Offences.
- As of February 2017, 2018, a total of 11 journalists were charged with misconduct of "slander" in 12 offenses.
- In the year 2017, the court reviewed in total 6 decisions of officials on slander, out of which 4 decisions were allowed, 2 were dismissed and the defendants were released from conviction.
- In the year 2018, the court reviewed 32 decisions by officials on the slander offense, out of which 19 decisions were allowed and 13 decisions were dismissed.

B. Civil case

- There are in total 69 court decisions relating to the non-material remedies (name, reputation, business reputation) in the e-database of the court decision covering the period of Jan 2017-Apr 2019. Out of which there are 19 cases involving journalists and media. Out of 19 in total 12 cases can be fully viewed from the e-database. Out of 12 available cases 4 or 33% of plaintiffs are politicians, public officials and administrative officials. In total, out of 12 cases 6 claimed for damages, totaling MNT 104.7 mln, an average of MNT 20 mln. If take into account the court decision categories: in 7 claims the court ordered to correct and restore the personal reputation, business reputation through means of the disseminated media outlets, in 4 claims the parties agreed to reconcile, 1 claim was dismissed. Also, the court annulled the total damage claim in the amount of MNT 75 mln. For the remaining damages, the parties reconciled.
- The court adheres to the following grounds: (1) The dignity, reputation, rights and legitimate interests shall be respected (Constitution, Article 17, paragraph 1). 2) Media is responsible for its publications and programs (Section 3.1 of the Law on Media Freedom). 3) A person who disseminated defamation material regarding the honor, dignity and business reputation of a citizen shall be obliged to affirm his / her accuracy. In particular, it is necessary to prove the accuracy of the information with documents (Article 21, provision 21.2 and Article 511, provision 511.1 of the Civil Code). 4) When publishing other media news without alteration it is the media outlet's responsibility to check the information's accuracy and reliability of the source.
- Five cases involving defamation of honor, dignity and business reputation between 3 May 2018 and 1 July 2018 were resolved by the court. The plaintiffs determine the level of

damages associated with defamation/slander differently, and the court decision is directly concerned with whether the damages are confirmed by documentation.

FOUR. MEDIA LEGAL ENVIRONMENT

In the framework of the "Promotion of Human Rights and Employment Rights through GSP + Mechanisms" project the Globe International Center ordered a research on the "Analysis of legal regulation ensuring journalist safety, its implementation" conducted by the Mongolian Bar Association. In this context, the Mongolian Bar Association team summarized the current legal environment for the right of opinion and expression in Mongolia by appropriately analyzing statistical information and legal regulations as of 2017 and 2018.

Legal environment:

- Mongolia has ratified 17 international human rights treaties, conventions and their Optional Protocols on the right to freedom of opinion and expression. The major and main international treaty is the International Covenant on Civil and Political Rights (ICCPR).
- The main laws of Mongolia guarantying rights and freedom of opinion and expression are the Constitution of Mongolia, the Law on Media Freedom, the Law on Information Transparency and the Right to Information, the Criminal Code (Article 1.4, provision 4 "Human thoughts or beliefs are not subject to criminal liability", Article 14.2" hinders the search and receipt of information ", Article 14.3" violates the right to freedom of expression and publication "as a crime). Article 16.16 of the Constitution of Mongolia and Article 1 and 2 of the Law on Media Freedom protect rights of expression. Provisions 14.2 and 14.3 of the Criminal Code and Article 2 and 3 of the Law on State Secrets of Mongolia proclaim that right to seek and receive information with certain obligations to keep confidential the state secrecy matters.
- When selecting laws that allow the right to provide and receive information from 2017-2018: out of total 68 laws passed in 2017 there are 18 laws and out of total 35 laws passed in 2018 there are 6 laws reflect right to provide and receive information.
- Defamation, insults and slander cannot be considered as a criminal offense and shall be regulated by the Civil Code. However, even though a "slander" is not a criminal offence and it is reflected as an offence in the Law on Administrative Offences still some regulations of similar character remain in power in the Criminal Code. Example: Criminal Code article 14.8 on "Disseminating obviously wrong information during an election" /14.8.1/ - dissemination of obviously false information, slandering a participating political party, coalition, and candidate shall be punishable by a fine equal to 450 to 5400 units, or 240 to 720 hours of forced labor or by restriction of movement for a term of 1 month to 1 year.
- Provision 13, 16, and 17 of the Article 16 of the Constitution of Mongolia, Article 34 of the Law on Public Radio and Television (Obtaining information, confidentiality of information source), Article 14.3 of the Criminal Code (violation of the right to freedom of expression and publication freedom) are national legal regulations protecting information source and safety of media workers and journalists.

Ensuring the right to freedom of expression and the mechanism to prevent violations:

- According to Article 17.1 of the LITRI, passed on June 16, 2011, " Complaint may be made on the action or inaction of the organization and official who have violated the rights of citizens and legal entities to receive information to higher level organization or official, the National Commission for Human Rights, or court" which acts as a monitoring mechanism of the implementation of the law. Office of the National Human Rights Commission of Mongolia reported in their reply to the information request of the Mongolian Bar Association as of 9th October 2018: "The National Human Rights Commission received 443 complaints from citizens, business entities and organizations as of October 5, 2018. Out of which within the scope of freedom of expression right there are 2 complaints on issues of violations of the right to publish, 4 violations of the right to protest and 3 complaints regarding the right to seek, receive and disseminate information. However, complaints from citizens, businesses and organizations in connection with violations against journalists and media workers for attempting to attack, harass or politically motivated alleged outside illegal interference against journalists and media workers have not been submitted to the Commission. "
- There are 241 registered non-governmental organizations in charge of human rights, media and journalism. Out of these there are 20 non-governmental organizations registered in 2018. This suggests that for every 100 thousand people in Mongolia there are on average 7 registered non-governmental organizations actively promoting the right to freedom of expression and its protection. There are 32 non-governmental organizations that use a word media, journalist and information in their title.
- In addition to the legal regulations, self-regulation is likewise serving in Mongolia. In particular, the Board of Ethics of the Media Council approved the "Code of Ethics of the Media" on April 14, 2015.
- Based on an analysis of the court decision, the media and journalists are responsible for proving the accuracy or validity of their articles or programs. However, that does not necessarily require the evidence or source to be mentioned in the publication or program.

4.1. Guarantees of Freedom of Expression

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 ICCPR and joined the Organization

for Security and Co-operation in Europe (OSCE) in 2012. As such, Mongolia is legally bound to protect the freedom of expression in accordance with international laws and standards. In conformity with Article 10 of the Constitution, the above mentioned documents are effective as domestic laws. This is formally recognized in part 10.3 of Article 10 of the Constitution which stated that: “The international treaties to which Mongolia is a Party become effective as domestic legislation upon the entry into force of the laws on their ratification or accession” and was published in Turiin Medeelel (State Gazette) in 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 1.4.4 of Article 1.4 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 No 34 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.

4.2. 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 Parliament is yet to discuss the final version or pass it.

2016-2020 the Mongolian Government program 5.3.8 states "To ensure improvement of legal environment for media freedom, right of citizen to freedom of expression, opinion, publication, right to seek and receive information". Accordingly, on 19 December 2018 a working group was established to review Media Freedom law as of order A/233 the Ministry of Justice and Internal Affairs.

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).

4.3. Freedom of 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 (LITRI) 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, public bodies are obliged to disclose information relating to their activities, budget, finance, procurement and services, received by public 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 LITRI 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 LITRI “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. 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 LITRI, 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 clearly contradicts the concept and principles of the main RTI Law and may be considered above the public interest.

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.

In June 2017, the Government adopted the "Procedure on the Formulation and Use of State Electronic Databases" based on the Law on LITRI, there is a hope in this regard that the government will make progress in delivering public information to citizens without delay and bureaucracy. Specifically, under the regulation, the General Intelligence Agency will issue a list of state secrets on the state's electronic information exchange system. Also, the National Data Center will develop a public service portal for citizens and organizations to provide information on the type and definition of e-services.

4.4 Election and media

On 25 December 2015, the new Election Law was enacted and it integrated the regulations of the previous Parliamentary and Presidential elections. Chapter 9 fully regulates the election campaign in regard to party, coalition, independent candidate program; content monitoring, means and types of the election advertising including printed materials and its distribution to voters and use of radio and television programs and use of web sites.

However, the proposal to reverse the law on Election to regulate the election separately back by the Presidential, Parliamentary, aimag, soum district people's representative election laws was delivered to the State Structure's Standing Committee with approval by the General Election Commission.

Article 3.1 of the Media Freedom Law states that "the media is responsible for its publications and programs", while the draft law provides that the journalist is to be solely responsible which contradicts the provisions of the law. In addition, regardless of the fact that the law prohibits censorship in any form in media the regulation to revoke a license during the election based on the public body conclusion contradicts international norms and domestic legislation.

4.5. Defamation law

An individual's honor is protected in both the Civil and Criminal Codes of Mongolia. State, non-state, business and all kinds of organizations can redress their name, honor and reputation by using aforementioned laws. With the revised Criminal Code of July 1, 2017, the autonomy of "Defamation" is deleted which is a progress made in promoting freedom of expression and media freedom. However, Article 11.2 of the revised Criminal Code states "degrading his / her dignity ...received sudden psychological shock for a short period of time and loss of normal mental state thus caused a serious injury to the health of the person.. shall be punishable by the period of six months to three years of restriction of movement or by imprisonment for the period of six months to three years" which raises concerns of possible censorship against journalists by people of influence.

11 May 2017 the Parliament has adopted the Law on Administrative Offences. The Law on Investigation and Prosecution of Administrative Offences came into power on July of 2017. Article 6.21 of the new law on Administrative Offences imposes fines on an individual, legal entity for imparting or disclosing false information to public or through media or through social networks defaming dignity and reputation of an individual.

Since the implementation of the Law on Administrative Offences as of October 2018 the police received in total 374 complaints out of which 57 individuals and 2 legal entities were considered to have violated defamation clause and they were fined for MNT 118 mln. 6 individuals went to court, out of which 3 cases were dismissed as not guilty. This proves again that the Law on Administrative Offences may be misused to restrict freedom of expression right.

According to the Article 497 of the Civil Code "A legal person who caused damage to others' rights, life, health, dignity, business reputation or property deliberately or due to negligent action (inaction) shall compensate for that damage". According to the Article 511 of the Civil Code "If the party responsible to distributing information damaging honor, dignity and business reputation of others fails to prove that it is true, it shall be liable to compensate the non-material damage in monetary or other form separately from the material damage".

One problem with these civil defamation provisions is that they allow public bodies to bring defamation legal action. Another problem is the fact that the Civil Code places the focus on a person who imparted the allegedly defamatory statement to prove that the information was "accurate" or that it was "truthful".

4.6. Content restrictions

A number of laws in effect in Mongolia contain content restrictions including the Law on Protection for Child Right, the Law on Prevention from Crime, Law to Control Circulation of Narcotic Drugs and Psychotropic Substances, the Law against Prostitution, the Law against Alcoholism, the Law on Combating Trafficking in Persons, and the Law on Copyright and Related Rights. We recognize that these restrictions are made in order to protect the public interests. However, we concern that these provisions can create a condition where these restrictions can be overused due to lack of general definition in terminology and scope. This can also be harmful for journalists.

The 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 of 2010: “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. As of March of 2019 there are in total nine administrative acts registered with the Ministry of Justice that released from the CRC.

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 Parliament 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. The provision (19): “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.

4.7. Other regulations

Media Ownership and Concentration

Majority of media outlets or 78 percent are owned by private companies, individuals. This is true in each sector, especially in TV where approximately nine out of ten belong to private ownership. In overall, there are 15 newspapers, 12 journals, 12 radios, 3 televisions, 2 news sites with state ownership¹. 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 is registered as either company or as an NGO. However, in

¹ Mongolian Media-Unuudur, page 5

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.

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 assure ensuring 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. 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. Non-transparency of media ownership, its centralization encourages editorial censorship, thus confines media freedom, diminishing pluralism, negatively impacting quality of journalistic information. The media market is not formed fully, thus media organizations are contracting and cooperate with government organizations, politicians, and business entities rather than fairly competing for advertising revenue.

Broadcasting

Mongolia has no separate legislation on broadcasting. Broadcast industry relations are regulated by the Law on Communications and law on Radio Waves, and the broadcasting market is expanding day by day, and broadcasting can be received through television and radio, as well as mobile phones, computers and car receivers, thus the scope of use and requirements are changing.

The Parliament passed the Law on Public Radio and Broadcasts in 2005, but the law is only aimed at establishing the National Public Radio and Television, setting the principles and legal basis of operations and defining program policy principles.

However, currently there are nationwide in total 84 licensed outlets to operate television, radio. Out of which 29 television stations in Ulaanbaatar, 66 in rural areas, license holders for cable services 77 in Ulaanbaatar and 8 in rural areas, multi-channel transmission services or cable television service provider in Ulaanbaatar 16, satellite channel multi-channel transmission service 1, in rural areas 50. There is a lack of legal environment to regulate fully activities of these outlets.

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 Commission (CRC) was established in 1995. 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". The CRC is the government implementing body, its management is directly appointed by the Prime Minister suggesting that it is not intended to be independent.

The Draft Law and concepts on amendments to the Communications Law are ready. On 23 April 2019 at the Economic Standing Committee's meeting the initial discussion on this draft Law along with the draft law on Amendments to the Law on Radio Waves, to the Law on Administrative Offences and the Post Law occurred.

According to the Resolution No. 47 of the Government of Mongolia on February 20, 2017, the Government has adopted a policy on information and communications development, and 3.2.1 of this policy document states "Improve the legal acts of the Information and Communications Law and update and review in conformity with the Law on Mongolia and international treaties". However, there is no mention of the independence of the CRC management/members and its appointment. We do hope that further we will focus on implementing this policy.

Internet

There is no state regulation to restrict internet users in Mongolia to access any domestic and foreign websites and to join social media. 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. However, 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" in 2013. 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, the 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 Commission (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. On daily basis it is managed by a CEO and implementation unit.

Over the last four years, the Media Council has been expanding and complaints from citizens and business entities have been increasing. For example, in 2015 in total 19 complaints were filed and reviewed related to media outlets. In 2018, this number increased fivefold. Since its establishment the Media Council reviewed in total 227 complaints about breaching the Code of Media Ethics.

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 nondisclosure 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.

In addition, one of the most important thing is the adoption of the Action Plan for the Implementation of the National Anticorruption Program adopted in 2016 by the Government Resolution No. 114 of 2017. In the 4.1.8 area of the program the certain actions to ensure media independence, safety of journalists are reflected:

- Ensure the right of the media to obtain and disseminate information /4.1.8.1/;
- To create a legal regulation to protect journalists from any pressure who report corruption or abuse of power, to alter the criminal liability due to their professional conduct, and to create safety regulations for journalists. /4.1.8.2/;
- Create a legal environment for media freedom and independent and free media outlets /4.1.8.3/.

In regard to the adoption of the above action plan and its implementation there is a high expectation for the future legal environment protecting the journalist's source and whistleblowers.