

ON THE ROAD TO PUBLIC SERVICE BROADCASTING

Monitoring Report

Preamble

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

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

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

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

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

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

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

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

Globe International issued a media release on January 11, 2005, when the MNB faced serious conflict. The media release said: "We have been reminding people that the composition and appointment of the NC should be open and transparent. The nominating bodies (President, Parliament and Government) have selected 9 candidates from the list

of people proposed by the NGO Assembly. It is not clear who and what NGO proposed the other 6 candidates and by what criteria they have been selected and nominated. Secondly, the PSB legislation protects against conflict of interests, but an owner of private radio has been appointed as an NC member. This critical situation would not have been created, if the NC included a provision on conflict of interests in its selection criteria of a General Director. It is important that the NC, a body obliged to control the implementation of the law, must not violate the law. It is also important for the NC to convene its open meeting and take its decisions before the public. The NC should work under the public's control.

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

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

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

I. BACKGROUND

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

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

Mr. Ts. Nyamdorj, speaker of the Mongolian Parliament

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

Minutes of the Parliament Session, 13.10.2006

The newly established PSB is managed by an independent governing body consisting of 15 members that are NGO representatives. The governing body of Mongolian National

Broadcasting(MNB) is called the National Council (NC) and it was appointed by the Parliament on 13 October 2005. Four days later, on 17 October 2005, the first historical meeting of the NC was held and it elected Mr.N.Sodnomdorj, president of Mongolian Trade Union and former MP representing the ruling Mongolian People's Revolutionary Party in 2000-2004.

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

Article 21.6

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

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

Mongolian National Broadcasting (MNB)

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

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

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

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

The MNB has around 700 journalists and other staff.

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

Radio (%)

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

PS: * non-commercial advertising

Television (%)

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

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

Provincial public broadcasters

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

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

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

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

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

II. TRANSITIONAL CHALLENGES

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

2.1 Independence, the NB and General atmosphere

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

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

The first serious dispute was raised during the appointment of a General Director of MNB and it also created serious conflict among NC members. The NC was divided into a

majority(10) and a minority(5) accusing each other of political affiliations. J.Zanaa, representative of the minority said to our correspondent: "The NC chairman receives indications over the phone" and O.Mongontuul representing the majority stated: "Nobody is trying to influence us. Some of the NC members should be ethical".

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

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

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

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

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

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

The TC raises the following 3 issues:

i) Unfair appointment

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

ii) Structure

The TC thinks a so called temporary structure is related to the above violation. They suspect this structure is intentionally and purposely created for the friends and relatives of the NC members. The TC sent a letter to the NC on 26 August 2006, which says: “The MNB’s only duty is to let our audiences listen and watch. Unfortunately, the present structure weakens two main services for production and establishes a too big and not efficiently functioning structure of whose activities are not clear. ...because of this the interrelation between production, technology, finance and administration has decreased and it is too complicated to make technological and quality coordination for works at the required level.”

iii) Internal NC structure

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

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

4.6: Committee on Foreign Relation and Investment (CFRI)

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

The MNB Statue

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

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

The MNB Statue

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

The TC approached the the Ministry of Justice and Home Affairs (MJHA) with this issue. In a letter signed by Ms. D.Munkhgerel, chairwomen of Policy Implementation and regulation of the MJHA, dated July 26,2006, it says: Letter #14 of the NC dated May 12,

2006 with the request to include these committees and re-register it has been reviewed and revised for the reason that it should be consistent to the relevant law provisions of the Law on PRTV”.

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

The Mongolian Parliament formed its working group to monitor the implementation of the law upon intensive requests of the TC. The Working Group finished its monitoring, but the conclusion has not been yet introduced to the public. During his meeting with the Globe International President, Mr. S.Demberel, MP and chairman of the Working Group said: “We do not want to be directly involved in the transition process, which might be understood as being a political action or having political intentions. Indeed, personally I am afraid to set the wrong precedent for using the Parliament’s power to solve the conflicts of the PSB. The concept of the law is against it.”

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

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

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

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

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

In general, the NC attitude towards the TC is very sceptical too. Some of the members think that the TC is not able to represent the interests of the entire staff and there is a

disagreement among members. The TC becomes more active, when their personal interests are affected. For example, they are active, when the NB discusses appointments.

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

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

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

2.2 General Director (GD)

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

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

The appointment process created serious disagreement between the NC members and they faced a crisis. S.Maygmar was accused that he did not pay his debts to Mongolian television, when he took production equipment. The minority claimed that he was not an honorable person to trust. S.Maygmar had denied it through media. 4 NC members brought a case before Bayangol district court. Order 15 of the NC on the appointment of S.Maygmar as GD was banned by the court's decision 14 December 2005. The process was delayed for 2 months and it affected the daily activities of the MNB. The NC was seeking various ways to resolve the crisis and the minority came to a compromise and S.Maygmar became GD on 26 January 2006.

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

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

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

2.3 Economic independence

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.4 PSB and Independent Studios

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

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

The independent production studios mainly supply information on specialities, arts, culture, pop music, reality shows and sports. Besides the studios, there are 3 main

editorial offices in the MNB structure producing children's programmes as well as current affairs, arts and culture.

The studios are located at the same building with MNB and do not pay for their premises. They sell their programmes to the MNB and get app. 2500- 4000 MNT per minute. In the past, they had been transferring a certain amount of their advertising revenues to Mongol National Television (previous name). Studio directors assure that studios have been established with the primary goal to serve quality programmes. They also say that they have been helping television to save money on the production, salary, social insurance and so on. They also complain that their sale price has decreased twice in the last years.

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

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

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

2.5 Supervisory Board (SB)

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

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

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

2.6 Complaint's Committee (CC)

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

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

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

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

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

III. CONCLUSIONS / RECOMMENDATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

Having said that we present the following recommendations:

To the Parliament and Government of Mongolia

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

Mongolian National Broadcasting

1. The Parliament should immediately adopt a law guaranteeing the economic independence of the MNB. It should never be a part of the State Fund by its nature and law.
2. The Law should be amended to provide the NC the responsibility to adopt the entire budget of the MNB, not the government. The Law also should provide the right for the NC to adopt the salary fund.
3. Globe International has been repeatedly insisting that the process of nomination and appointment of NB members should be open, so that the public is aware of the steps being taken. The public is able to take control if they are well informed. Enhancing public participation and involvement in the MNB's activities is an essential objective.
4. Article 26 should be amended in order to impose more responsibility on the NC members. The legislation should include provisions to remove the NC members, for example, "if a member commits a serious violation of his or her responsibility under the PRTV law". We think article 26.1.5 saying "if a member fails to attend the meeting for a period of over 6 months" is not practical and efficient. The article should be amended, for example, to: "if a member fails, without valid excuse, to attend 3 consecutive meetings."
5. The above removal should be based on the justified recommendation of the Supervisory Board (Article 28). We note that the number of the SB members should be increased significantly and involve various interested social groups and the staff.

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

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

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

Provincial public broadcasting

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

Commerical Broadcasting

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

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

To the Supreme Court of Mongolia

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

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

To the NC and TC

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

To the NC

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

To the TC

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

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

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

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

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

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

To international and inter-governmental organisations:

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

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

Ulaanbaatar, October 2006