

FREEDOMS OF OPINION AND EXPRESSION

1. This report was developed after three consultations with representatives from media NGO's, academia, and journalists from both urban and rural Mongolia. The Mongolian Government accepted 8 recommendations on freedom of expression (108.131-108.138) from the previous cycle. As of publishing no governmental action has been taken towards implementing these recommendations.

Harmonise national legislation regarding freedom of expression with the International Covenant on Civil and Political Rights, and ensure the independence of the Regulations Commission of Communications.

2. The Parliament of Mongolia has passed the Amendment to the Law on Telecommunications on 30 May 2019, but it does not guarantee the independence of the regulatory body. Parliament is considering to abate the current Law on Election passed in 2015 and three drafts on parliamentary, presidential and local elections are available. The current restrictions on election campaigning imposed by Article 70, titled Prohibition of Illegal Campaign remain the same in all three drafts. It is prohibited to distribute information that is libelous, insulting, or false, and carry out any activities with the purpose of determining political ranking by media outlets via online space and messages /70.1.6/, to call people not to vote /70.5.7/, to libel and insult others and to disseminate false information and news of any type/70.5.13/ and to sign an agreement and pledge to release all types of information and news about any parties participating in the election, or not to release such information during election campaign /70.7/
3. Harsh sanctions against media are included in various parts of the current Election Law. If a Court decision finds the bodies guilty of the dissemination, publishing or broadcast of disinformation or false information on parties, coalitions and candidates, they shall reimburse the expenses spent for the campaign /70.8/, radio and television stations breaching this Law shall be warned once and in repeated cases, operations will be stopped until the voting day by the organization which issued the license /82.19/ and in the case of breaches specified in this chapter, broadcast licenses shall be terminated until six months from the day breach occurred /82.21/. In the case, it is not possible to identify the bodies or media individuals who breached this provision, the offending website shall be blocked in Mongolian territory until the end of voting by the regulatory body /83.7/. 11 news and information web sites were blocked during the 2018 Parliamentary Election.
4. The Communications Regulatory Commission, a government controlled regulatory body is responsible for the termination and withdrawal of broadcast licenses based on the statement of the Authority for the Fair Competition and Customers, a government agency¹. It encourages government censorship and is contradictory to Media Freedom law which bans any type of censorship.

Decriminalize defamation

5. Provisions on libel and insult were repealed from Criminal Law, but 2017 amendments to Criminal law has reintroduced defamation in Para 14.8. The section claims to target the distribution of obviously false information during the election and outlines it as a criminal offense with the penalty of fine, restriction of travel and impose community service works in the case of distributing obviously false information defaming the reputation of political parties, coalitions or candidates.
6. Defamation is covered by Article 6.21 titled Libel of the Law on Regulatory Offences adopted in 2017. Article 16.21 reads "In case, if false information defaming honor, dignity and business reputation is disclosed to the public, or disseminated through media and social media, a person shall be fined with

two thousands unity (MNT 2,000,000) and legal entity shall be fined with twenty thousands unity (MNT 20,000,000).

7. According to the Law on Regulatory Offense Procedure, police are authorized to investigate these cases. 'The Division of Public Order and Safety Protection' is assigned to deal with cases involving high officials, by the Order of the General Prosecutor. Fines for claimed libelous activities are incredibly high. The police may impose a double fine to an individual journalist and media organization which contradicts Media Freedom Law. According to this law, media outlet shall be responsible for its publications and programs.
8. Between July 1, 2018 and March 2019, libel cases were launched against 46 journalists, 12 were found guilty and fined. According to the results of a GIC survey from May 2018 to April 2019, among 300 journalists surveyed, one in three journalists had been called for questioning by the police for breaches of Article 6.21.
9. In December 2018, 15 media NGOs including Confederation of Mongolian Journalists, Press Institute, TV Federation, Association of Daily Newspapers and Globe International Center sent the Statement to the Ministry of Justice and Home Affairs to abolish Article 6.21 of the Law on Regulatory Offences.
10. Parliament is planning to discuss the amendment to the Criminal Law and draft re-introduces defamation by Article 13.14 entitled Libel.ⁱⁱ: *"1. In case, if obviously false information defaming person's honor, dignity and business reputation of the legal entity distributed through social media, a fine amounted equal from 450 to one thousand 350 unity shall be imposed, or shall be sentenced to the public benefit works from 240 to 720 hours, or right to travel shall be restricted from one to three months.";* *"2. In case, if obviously false information defaming person's honor, dignity and business reputation of the legal entity distributed, a fine equaling from 450 to two thousands 700 unity shall be imposed, or shall be sentenced to the public benefit works from 240 to 720 hours shall be imposed, or rights to travel shall be restricted from one to six months."*
11. Comment in the Law states: *"Public bodies shall not be considered as victims of this crime. In case, if while opinions expressed, the persons influential to the politics are suspected or surmised in crime, it shall not be counted as a crime"*.
12. Politicians and high authorities have used defamation laws to target media and journalists. Next instance of appeals of libel cases is the Criminal Court. In 32 libel appeals filed in 2019, journalist's appeals were denied in 19 cases. Between January 2017 and April 2019, a total of 19 civil defamation lawsuits were launched against journalists. The Judiciary database made 12 civil defamation cases public and in a third of those cases, the plaintiffs were politicians and authorities.
13. The main problem in defamation law is that it fails to provide for a defense in cases of reasonable public interest information. Another problem is defamation laws allow legal entities which presumably includes both private and public bodies may bring legal action. Civil Law allows the plaintiffs to launch the monetary demand as they want and amount is dramatically increasing.

B. Undarmaa, MP sued "Unuudur" newspaper on 6 June 2018. The claim was in amount of MNT 90 mln (app EUR 30,000) for articles which supposedly defamed her reputation. The monetary claim was based on the following calculations: MNT 42 mln (app. EUR 14,000) for two articles: "MP B.Undarmaa has not declared her company in her Income Statement" and "MP B.Undarmaa received a license under false documents"; MNT 15 mln. (app. EUR 5,000) for website publications; MNT 25 mln. (app. EUR 8,300) for the dissemination of the articles via other websites; and MNT 8 mln. for her legal defense fee (app. EUR 2,700). The newspaper is confident that they have sufficient facts and proofs to support the statements, but they appealed to the Supreme Court where they decided that to recover her honor and dignity, a monetary award of MNT five million was justified. The newspaper is going to appeal to the General Judge which is the last local appeal mechanism. The case illustrates the sort of economic threat that newspapers have to face. Even

where the final awards are relatively modest, the threat of a huge award means that newspapers tend to self-censor just in case a court might actually make them pay the full amountⁱⁱⁱ.

Ensure that journalists, media workers as well as civil society activists are able to practice their activities freely without any fear for punishment

14. Safety of journalists remains our deepest concern. GIC reports^{iv} that 67 percent of 300 journalists surveyed reported that they, or family members, faced pressure, intimidation and harassment at least once in their career . For 58 percent, their professional equipment was damaged. 36 percent experienced legal pressure from the courts and law enforcement officials. 18 percent were physically attacked. These violations are experienced most commonly by journalists under the age of 35 employed by TV, news websites, and newspapers.
15. In July 2018, an officer from the General Police Department hit B.Battsetseg, a female journalist from Eagle TV news channel, in the jaw and pulled her hair while she was reporting on the abduction of Turkish national Veysel Akçay, the former Deputy Director of the Turkish School in Ulaanbaatar. Eagle News filed a complaint with the police. Unfortunately, at the time of writing, there has been no response^v.

To protect journalists' sources and whistle-blowers

16. No actions have been taken towards implementing the relevant provisions of the National Anti-corruption Program that pledged to provide legal protection of confidential sources and whistleblowers. 51 percent of out of 300 journalists surveyed said they were still forced to reveal their confidential sources.

Guarantee freedom of expression, including on the Internet

17. Practically, word filtering is not used, even so the CRC's procedure "General Conditions and Requirements of Digital Content Services" is still in place. Procedure remains unregistered with the Ministry of Justice and Home Affairs.
18. Para 26.2 of the new Law on the Procedure on the Criminal Law provides conditions for taking control over a telecommunication network. Police investigations can begin based on a Prosecutor's permission, with no judicial decision. For example, a detective is authorized to demand the organizations to provide information on owners and users, their locations, date of connection, reach, techniques and equipment and any other information and assign to restrict to access telecommunication channels, and take control by accessing telecommunication channels and demand information from the relevant organizations on content disseminated via telecommunication channels.

Adherence of any restrictions of those rights to the principles of legality, necessity and proportionality

19. The new Law on State and Official Secrecy was enacted in 1 December 2016 and became effective in 1 September 2017 replacing the Law on State Secrecy and Law on the List of State Secret Information. The new law obligates the Government to approve the Rule and List of Secret Information by its resolution and according to this Government Rule, public bodies are allowed to internally approve their organization's rules on secret information and list of secret information. This contradicts the Constitutional declaration that secret information shall be protected by law. The Law and Rules do not include a harm test. Process of disclosing secret information takes a three-months bureaucratic

process. The Government makes the final decision on disclosing the state secret information. Before this the request of the public bodies to disclosing the secret information is submitted to the General Intelligence Authority. It allows Heads of public bodies to make virtually all operations information secret^{vi}. Number of state secret information has radically increased from 60 in 2017 to 565 in 2019.

20. It is a concern that secrecy does not provide actually harm to a legitimate national security interest and public interest in knowing the information outweighs the harm from disclosure.

During an interview with a Head of the Capital's Land Office, a reporter from the MNB, public broadcaster asked if it is possible to make the cadaster of Ulaanbaatar open to the public. The head of the Land Office replied that this was a state secret. To reporter's question "Who owns, rents and uses the land in Zone A of the capital?", he said it is privacy^{vii}.

21. In our view, such unnecessary restrictions seriously inhibit investigative reporting. The new Criminal Law provides for up to three years of imprisonment for disclosing state secrets and for those who helped to store, collect, or steal classified information.

22. Mongolia Parliament enacted the Law on Information Transparency and Right to Information on 16 June 2011, but law implementation is poor. GIC conducted an assessment of this Law^{viii} in February 2019 as a part of advocacy for inclusion of the SDGs 16.10.2 (access to information) to the National Volunteer Report . After sending 16 information requests to public bodies, GIC received only five responses that provided full information. Example:

A citizen living in the Capital sent a letter to the Mayor's Office of Darkhan Uul province requesting information on the bidding process, selection and contract information for the procurement of measuring equipment of air and soil contaminants, no response was received within 14 days working days. When a citizen called to remind them of the request, they said the requester should personally come to Darkhan Uul province in order to find the information.

23. It is concluded that regime of exceptions is too broad, there is no nodal agency responsible for the monitoring of law implementation, and public bodies have no information officers and no incentive to provide sufficient response to information requests.

Ensure full respect of human rights, including the right to privacy and the right to freedom of expression, in all aspects of internet regulation

24. IP addresses of the Internet users still remain open. Mongolia is missing any data protection legislation. The Law on Privacy has not been amended since its passage in 1995. The private companies and banks have started using the fingerprints in their services. One of the biggest nationwide supermarkets 'Nomin' requires their discount card holders to use fingerprints. It is unclear how the government can control the possible loss or misuse of their citizens' private information, and how the data permission process is handled. The general public is not greatly aware about protection of their privacy or lack thereof.

Recommendations

25. The Government of Mongolia should take immediate actions implementing the accepted recommendations on safeguarding freedom of information as stated in Article 10 of the Constitution and in fulfilling the nation's pledges before the international community. In addition, new recommendations are suggested as follows:

- 1) Abolish Article 6.21 entitled Libel of the Law on Regulatory Offenses.

- 2) Initiate legislation recognizing public figures, so that they are tolerant to open criticism and are under the public control by their own choice.
- 3) RTI Law should be amended to narrow the regimes of exceptions and as appoint a nodal agency to monitor implementation of the law
- 4) The Law on State and Office Secrecy should be revised and provide the restrictions only by law, not by Government resolution and internal rules of the public bodies. It should to be based on three-part test of legitimacy, necessity and proportionality. All secrecy laws should incorporate a substantial harm test as well as requirement that this harm is greater than public interest in override.
- 5) Revise Para 19.11 titled “Illegal Access to the State Secret Information” of the Criminal Law
- 6) Consider adopting legislation on data protection
- 7) The provisions on election campaign included in the current drafts of three election laws should be revised in consistence with international standards, and sanctions on the termination and withdrawal of broadcast media should be abolished.

ⁱ Provision 70.18, The Election law

ⁱⁱ Draft is available at www.parliament.mn

ⁱⁱⁱ 2018 Media Freedom Report, GIC,

https://www.gic.mn/public/docs/freedom_report/media_freedom_report_2018_mn.pdf

^{iv} Media freedom monitoring report. Monitoring was conducted by CIC in cooperation with the Media Council of Mongolia and the Mongolian Bar Association as a part of the EU-funded global project implemented by Democracy Reporting International Promoting Human and Labor Rights through GSP+ implemented by Democracy Reporting International.

^v 2018 Media Freedom Report, GIC

https://www.gic.mn/public/docs/freedom_report/media_freedom_report_2018_mn.pdf

^{vi} Analysis on access to information and secrecy legislation conducted by GIC

^{vii} GIC Analysis on access to information and secrecy legislation

^{viii} Assessment used the FOIANet Methodology

https://www.law-democracy.org/live/wp-content/uploads/2018/11/SDG-Parallel-CS-Report.18.09.20.final_.pdf