Globe International Center, NGO, Mongolia

 List of issues

 Article 19

1. Freedom of information

The Law on Information Transparency and Right to Information (LITRI) was passed on 16 June 2011. Mongolia’s Right to Information Law was ranked 53rd in the global right to information rating (out of 95 countries).[[1]](#footnote-3)

The regime of exceptions of the law is problematical for the following reasons:

* it both fails to protect key confidentiality interests and renders confidential some issues that should be open;
* many exceptions are not harm based; and
* there is no public interest override to ensure that information of significant public interest is disclosed.

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).

The LITRI has no provisions concerning open meetings and protections for whistle-blowers.

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.

Even so, the implementation of the law is very weak and awareness of the citizens and public officials on the law is poor.

1. Civil and criminal defamation

In accordance with free expression monitoring reports by Globe International Center, there were 27 criminal defamation cases between 2005 and 2012, but only in 2013-2015, the number reached 17.[[2]](#footnote-4) All the plaintiffs of criminal defamation cases in Mongolia are elected authorities, powerful pubic officials and public organizations.

At the trial in 2013, the Chilgeltei District Court heard arguments for the criminal defamation case launched by PM N. Altankhuyag. The editor-in-chief and two other journalists from the defendant publication were fined 20 mln. MNT (app.11, 000 USD) or a three- month sentence to prison if the fine was not paid. The Supreme Court persisted with the decisions of the appealing courts and the editor-in-chief and journalists were fined over 14 mln. MNT (app.7,800USD)[[3]](#footnote-5).

Criminal defamation has become alarming for social media users.

On August 18, 2014, the Initial court found Ts. Bat, a Twitter blogger, guilty for insult and libel against A.Gansukh, the Minister of Road and Transportation. Ts.Bat was arrested and detained for 3 months and 10 days. In the appeal, on September 9, 2014, the court decided to further investigate the case and Ts. Bat was released on bail.

On 4 December 2015, the Parliament enacted the new Criminal Law and repealed the general criminal defamation provisions on libel and insult and it is a part of the Administrative Law which was passed on the same day. Both laws will be effective from 1 September 2016. In accordance with Article 7.3.1 of the Administrative Law “In the case, if information defaming honor and dignity of person disclosed and distributed through media and social media, individual shall be fined in amount of MNT equal to 1000 unity and legal entities shall be fined in an amount of MNT equal to 10,000 unity (1000 unity is 2,00,000 MNT).

However, new Criminal Law still contains defamation provision. In accordance with Article 14.8.1, “In the case, if reputation of political parties, coalitions and candidates participating in the election defamed and clear false information disseminated, penalty of fine of MNT equal to 450-5400 unity shall be imposed and shall be imprisoned from one month to one year”.

Reputation is protected by the Article 497 of the Civil Code, but there are two main problems: 1) the Law allows public bodies to bring defamation legal action and 2) places the onus on the person who disseminated the allegedly defamatory statement to prove that information was “accurate” or that it was “truthful”. This poses a significant burden on the defendant and has a chilling effect on freedom of expression.

1. Safety of Journalists

In accordance with GIC Media Freedom report, total of 78 cases of violations of the journalists’ professional rights occurred in 2015 including 5 assaults, 12 treats, etc. It should be noted that number of journalists approaching GIC and those want to publicise their cases is decreasing because many journalists afraid from possible further treats. The Mongolian journalists are highly self-censored.

The Mongolian society is shocked by deaths of the well-know journalists. In accordance with the Globe International Center, four prominent journalists were dead in 2013 and 2015. The police have not properly investigated the cases in connection with their journalism activities.

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|  Luntan Bolormaa, a famous female journalist and publicist, was found dead at her home on the night of 21 November 2015. Bolormaa’s family members, friends, relatives, co-workers, the journalism community and the public are anxious for Police to investigate and report on her sudden death. Sources said that the National Institute of Forensic Science conducted an autopsy of Luntan Bolormaa and concluded that she died due to a brain hemorrhage caused by a concussion in the occipital bone. Police are continuing their investigation into Bolormaa’s death. Luntan Bolormaa was a well-recognized investigative reporter and publicist. She was a Founder and Editor-in-Chief of the Mongolian Mining Journal. Bolormaa published mainly on economic, political, business, and mining issues. Moreover, she managed the non-governmental organization, “Journalism for Development”, which conducts training and supports journalists in reporting on economic and mining related issues. [[4]](#footnote-6) |

The Mongolian police officially made no official statements about her case and the public believes the police is investigating the case. Globe International Center produced the Statement which was signed by other 22 human rights organizations and sent to the Government[[5]](#footnote-7).

1. Internet Freedom

The Mongolian government adopted its main policies on traditional and online media in 2011 and, since then, the Communications Regulatory Committee (CRC) has adopted over 30 internal regulations including the General Condition and Requirement on Broadcasting Service” and the “General Condition and Requirement on Digital Content,” which apply to news and information websites, content aggregators and content supplying services. The regulatory acts also set standards on issuing, terminating and withdrawing licenses and standards on studio equipments. . Since 2011, the CRC has become the only regulatory body on broadcast and online media in Mongolia.

On January 5, 2013, the Government adopted Resolution No. 1, “A Unified System for Website Comments”. With this decree, the government tasked ICTPA and the General Intelligence Agency to work together to develop software and technical solutions to implement a “unified system”. It contained technical and administrative measures to regulate the content of online comments on Mongolian online media. The official objective was to prevent online slander, insults and threats. This decree was approved during a cabinet meeting, without prior consultation with the media and IT industries, the CSOs, or a parliamentary discussion. Both the decree and the way in which it was created were heavily criticized by most media and the IT community. Concerns were raisedaboutthe applicability of the measures contained in the decree and about their legitimacy under both national law and international standards on freedom of expression. It was the government’s intention to use this new software to identify netizens and thereby to end online anonymity. Once the netizen was identified, he or she would be held accountable for posting comments that were considered, under Mongolian laws, to be potentially criminal in nature, libellous, insulting, threatening, or in breach of obscenity laws. The National Data Centre is supposed to ensure the technical reliability of this unified system, and the State Registration Authority to gather the information of users who post comments on websites based on the intersection between IP information and netizens’ civil data and the database of mobile phone users. Internet service providers and mobile operators are obliged to install the government-developed software and to collaborate with the authorities’ efforts to identify netizens.[[6]](#footnote-8)

The CRC, as per the decree, is required to elaborate the regulatory procedure defining the requirements for news websites and issuing domain names. In September 2014, the CRC adopted the amendments to the “General Conditions and Requirements for Regulation of Digital Content”. The document provides regulations on servers, web hosting companies, online content aggregators, online content suppliers and other Internet Service Providers (ISPs). According to the regulation, licensing of the news and information web sites is obligatory and IP addresses of the users posting their comments shall be open. News and information websites place the IP addresses of their users on the tops of the comments generated by the user.

Moreover, the news and information web sites shall use a filtering soft ware

All websites must use the same state-approved registering software. The software spots forbidden keywords, turning them into asterisks (“\*\*\*”). While writing, the software prohibits 86 words in the Mongolian language (written in Cyrillic), such as *mansuurakh* (muddle), *yankhan* (prostitute) and *erliiz* (mixed-blood). It also prohibits 108 words written with Latin charactersor in English, such as “sex” or “terrorist”. The software reportedly contains flaws. It does not take into account the contextualised meaning and blocks all words containing the same letters or syllables as the prohibited words.

In accordance with the above regulation, websites must be registered by [www.happywebs.mn](http://www.happywebs.mn). As of June 2015, 106 websites and blogs in total had been registered with the CRC.

Between 2012 and 2014, the CRC chose to restrict access to 172 websites, mostly for copyright violations, and based on the conclusions of government bodies that have the authority to conduct inspections and monitoring. The CRC has informed the public about websites on the “blacklist”[[7]](#footnote-9), which can be accessed at the following address: <http://www.black-list.mn>.

The government intervention to block a website occurred when the news website amjilt.com criticized the Prime Minister’s private company. Published on July 3 2014, it reported that the “PM’s company Khaan Jims” was polluting the Tuul River and was accompanied by photographic evidence. The following day, an officer from the CRC called amjilt.com “due to complaints made by Khaan Jims”. She instructed representatives of [www.amjilt.com](http://www.amjilt.com) to remove the article and post a retraction with the threat that the website would be placed on the blacklist within thehour if the request was not met. After three hours of telephone calls, the website was blocked and it is no longer operational today.[[8]](#footnote-10)

The above-mentioned Government Resolution obliges the Justice Minister to take measures to identify users who post comments that are deemed libelous, insulting, seductive, obscene and or threatening in order to impose upon them legal liability. The procedure on the implementation of the Resolution obligates private Internet providers and mobile phone operators to help government bodies to identify persons suspected to be in violation of the laws and to collect information about them.

The CRC has the power to both issue and revoke licenses, but this process lacks transparency and public participation. International standards and domestic law dictate that the regulatory body must be independent. In reality however, it is a government controlled body. The CRC belongs to the known as Authority of Information Technology, Post and Communications, government agency. The chairman and commissioners of the CRC are appointed and dismissed by the Prime Minister and it reports to the Government. At the moment, 7 commissioners of the CRC represent the government bodies.

Since Mongolia does not have a general broadcast law, regulations are taken from internal rules and procedures of the CRC. In doing so, restrictions are obviously contradictory to the principles of Article 19 of the ICCPR, which state that, “restrictions must be provided by law” and “must conform to the strict tests of necessity and proportionality. Moreover, the CRC regulatory documents breach the Government Resolution, No. 119 issued on May 19, 2010, on the “Rule on issuing Public Administrative Regulations” which states that, “it must conform to the standards set forth by law,” and, “it must not impose new duties which are not stated in the law, nor must it set prohibitive regulations not imposed by law.” Furthermore, “it must not include sanctions” and “decision makers must do regulatory impact assessment according to the Rule.” After the registration with the Unified Registration System of the Ministry of Justice, the public administrative regulation, which is in compliance with basic requirements of the Rule, will be enforced. But public administrative regulations of CRC have not been registered[[9]](#footnote-11). Therefore, CRC’s actions in the termination of and cancellation of licenses based on their inspections and examinations and CRC’s control and usage of its authority, particularly for censoring online media, is a serious breach of the Constitution and the Law on Media Freedom.

1. Freedom of expression during the elections

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

Article 82 includes the narrow regulations of use of radio and television. The public broadcaster shall air the election programs in accordance with schedule and equal time allocated which shall be adopted five days prior of to start of election campaign and no payments shall be charged. In accordance with new Election Law, no equal time for the individual candidates running for the Parliamentarian and local elections, shall be allocated, so it applies to the political parties and coalitions participating in the election. Regarding the Presidential election an equal time shall be allocated to each candidate. Besides equal time, legal requirements are equal conditions and equal opportunities. Other radio and television stations rather than PSB, shall air the election programs basing on the agreement. A total air time of the paid programs shall not exceed 60 minutes a day. 15 minutes or up to 25 percent of the one hour duration shall be allocated for a political party, or one candidate.

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

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

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

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

* if the Court decision proves the bodies guilty in dissemination, publishing and airing flashy and false information on parties, coalitions and candidates, they shall reimburse the expenses spent for the campaign /70.8/.
* In the case of breach of the provision 70.1.6 by web sites, the CRC shall terminate the license for six months based on the conclusion of the government administrative organization responsible for fair competition
* Radio and televisions breached the Law shall be warmed once and in the repeated cases, its operations will be stopped until the voting day by the organization which issued the license /82.19/.
* In the case of the breaches specified in this chapter, license of the broadcasters shall be terminated until six months from the day breach occurred /82.21/
* In case, if it is not possible to identify the bodies and media individuals who breached this provision, web site shall be blocked in Mongolian territory until the end of the voting by the regulatory body/83.7)
* Procedures of the election media campaign on radio and television, and monitoring shall be adopted by the Central Election Organization and Communications Regulatory Committee (CRC) in accordance with Article 82.17 of this Law. The CRC shall conduct monitoring on election advertising and it may take measures to not breaching the Law and stop the breaches in cooperation with police, election organizations and specialized non-governmental organizations /82.18/.

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

During the 2016 elections 11 news web sites were blocked by complaints of the candidates participating in the Parliamentary election.

1. Content Restriction

The CRC controls the content of the news and information websites, content aggregators and content suppliers. The scope of legal restrictions concerning content is far too broad in its language and not well defined. For example, cited content comes under such general phrases as, “cruel religious doctrine,” or, “pornography.” Control of content is taken by public bodies, such as the General Police Authority, the Authority on Intelectual Property, the Authority for Fair Competition and Customers and, based on their official statements and letters, the CRC has the power to close down or block the services of the provider in question.

#### Other issues

#### Mongolia does not have legal protections for whistleblowers or for journalists’ confidential sources, and it tends to prohibit journalists to remain anonymous. Globe International Center has registered a total of 37 cases of demanding the journalists to repeal their sources in 2011-2015. It is not a complete number because many journalists do not publicly report on their cases.

1. www.rti-rating.org/country\_data.php. Access Info and Centre for Law and Democracy [↑](#footnote-ref-3)
2. [↑](#footnote-ref-4)
3. hhttp://www.globeinter.org.mn/images/upld/Hevleliinerhcholoo2016eng.pdf [↑](#footnote-ref-5)
4. (<http://www.ifex.org/mongolia/2016/03/09/investigate_case_journalist/> [↑](#footnote-ref-6)
5. <http://globeinter.org.mn/?cmd=Record&id=1241&menuid=367> [↑](#footnote-ref-7)
6. Government Resolution No 1, 2013. http://www.legalinfo.mn/law/details/8939?lawid=8939 [↑](#footnote-ref-8)
7. [↑](#footnote-ref-9)
8. <http://globeinter.org.mn/?cmd=Record&id=1131&menuid=367> [↑](#footnote-ref-10)
9. Letter of the Ministry of Justice, 29..08.2014, Ref. 4/3496 [↑](#footnote-ref-11)