



Media Freedom Report 2010



GLOBE INTERNATIONAL NGO



The USA Embassy in Ulaanbaatar



Open Society Institute



Open Society Forum

MEDIA FREEDOM REPORT 2010

We express our deepest gratitude to our donors for the publication of this report.

Globe International is a nonprofit, non-membership, tax-exempted NGO. It was founded in March 1999 and is based in Ulaanbaatar, the capital of Mongolia.

Mission: Sustain Mongolian democracy and civil society through spreading power of information and knowledge

Vision: Established democratic culture, informed and empowered citizens.

Values:

- Independence
- Fairness
- Democratic
- Non-discrimination
- Corruption Free

Strategic programs and objectives

- Supporting the Rights of Independent Media
- Promoting Good and Transparency Governance for People
- Empowering the Public



Knowledge is Power

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PREFACE

We are pleased to present our media freedom report, and we would like to express our thanks to the USA Embassy in Ulaanbaatar, the Open Society Forum (OSF) and the Mongolia Network Media Program of the Open Society Institute (OSI) for their support in preparing this report.

This report aims to highlight the current situation of how Mongolian journalists exercise their professional rights and what enabling environments exist for them to fulfill their duties to the public in a fair and responsible manner.

2010 was a year with significant legal media developments. All of the criteria, such as development of new technology, reform of traditional media, rapid progress in modern media and more media outlets (especially broadcasters), have determined the need and demand.

Globe International conducted a survey on March 2011 into a total of 418 extant laws and 1,287 laws on amendments between 1957 and 2010. In March 2011 there were 188 laws and law provisions relating to the media, information, transparency and secrecy. According to Legal Analysis jointly conducted by Globe International and London-based international NGO Article

19, in 2001 there were 91 such laws and law provisions.

The Freedom of Information bill, first included in the Parliamentary agenda in October 2005, is a special concern. In October 2006, Cabinet discussed submission of this bill to Parliament, but this was postponed because of a perceived need to include the issue among information-dissemination and information-security issues.

In the aftermath of World Freedom of the Press Day (May 2, 2007), four Members of Parliament drafted and submitted a Law on Freedom of Information. While this is still pending in Parliament, the Government of Mongolia submitted its own bill on Information Transparency and Right and Freedom to Access Information to the Parliament on January 21, 2011. On April 21, 86% of MPs voted to discuss the bill and promised that the law would be passed by the spring session of Parliament.

Six public institutions formed working groups to amend or draft 10 laws relating to media and information. The President's Office and the Ministry of Justice and Home Affairs (MJHA) are working on amendments to the 1998 Media Freedom Law. The MJHA is

drafting a Law on Media Outlets. New versions of the State Secrecy Law and the Law on Cyber Security are being drafted by the General Intelligence Authority. The Information, Communications Technology and Post Authority is due to start work on drafts for the Law on Information Security and the Broadcast Law.

The Communications Regulatory Commission has adopted the General Regulatory Conditions and Requirements for Digital Content Service, effective as from March 1, 2011.

In 2010, Mongolia remains a country with only partial media freedom, according to Freedom House. Reporters without Borders lists Mongolia as a country with “notable problems” in media freedom.

Globe International highlights the following issues in 2010 in the media freedom field:

- Serious case of confiscation of the host computer of the Niigmiin Toli daily newspaper
- Pressures exercised in the court, police and regulatory commission are likely to increase
- Editorial censorship and its scope are increasing
- The number of the criminal cases against journalists is growing
- The amounts demanded in compensation and awarded in civil and criminal defamation cases are increasing, which is becoming economic censorship
- Demands to reveal confidential sources by courts, police and public officials are not decreasing

In 1999-2009, the courts heard 664 civil and criminal defamation cases, 37.7 per cent of them against media

and journalists. In 2009, there were 17 civil cases against media and journalists. The largest amount demanded in compensation was 3 billion MNT, while the largest award was of 2,200,000 MNT. No criminal defamation cases were heard by the courts in 2009.

Concerning violations of journalist rights, Globe International has registered 30 cases relating to 18 journalists. Half of these cases involve threats and various other pressures from the police, courts and public institutions. Globe International claims that not all violations against journalists have been registered, and GI has been working with journalists who have approached us on unregistered cases.

This report comprises two chapters:

Chapter One comprises data and examples of violations of media and journalist rights, based on monitoring.

Chapter Two offers information on national legislation to guarantee or restrict freedom of expression.

CHAPTER ONE. Media Freedom in 2010

According to the Press Institute monitoring report (Mongolian Media Today), in the first quarter of 2011 there were 4080 media practitioners working in 430 media outlets throughout Mongolia; 1,781 journalists and contributors and 20% of media outlets operated in the provinces. Six newspapers were publishing in a foreign language, while there was one newspaper in the Kazakh (national minority) language.

In the last two years there has been an increase (from two to three) in the number of on-line media; the Press Institute registered five on-line newspapers and ten on-line magazines. Also available on-line were five daily newspapers, twelve radio stations and 11 television stations, while 24 newspapers could be read on a popular website (www.sonin.mn).

Despite the existence of laws and regulations protecting freedom of the media, there were many contraventions in practice. Violations of freedom of the press and of the work of professional journalists (pressure to influence the exercise of a journalist's professional work, threats of court action, denial of access to information by public officials, editorial censorship, demands to reveal information sources, and use of provisions of the Criminal and Civil Code by politicians, public figures and wealthy individuals against the media outlets and journalists to conceal wrongdoing) continue to occur.

Violations of the rights of journalists lead to restrictions of media freedom and prevent journalists from disseminating the truth, thus causing serious damage to democracy and the public interest.

Since such violations continue to occur, Mongolia remains a country with only semi-media freedom, thus breaching its obligations to the UN and to international society.

In Mongolia, the use by politicians and public officials of criminal defamation provisions to censor media outlets continues to increase. The courts, when deciding libel cases, do not take into consideration the legitimate right of the public to receive objective information; rather, the courts generally support authority figures; this in turn creates doubt about the independence of the judiciary.

Globe International has been monitoring violations of journalistic professional rights since October 2005, with financial support from the OSI Media Network Program and the Open Society Forum. Up to May 1, 2011, we have registered a total of 187 violations of free expression.

Violations of journalist rights

Type of violation	2006	2007	2008	2009	2010	Total
Assaults	3	3	6	-	-	12
Threats/pressure/insults, including to family members	16	7	23	13	10	59
Denial of information	8	10	13	2	-	33
Damage/confiscation of equipment	3	3	2		2	8
Court, police and other pressure and force by institutions/civil defamation	2	8	5	3	5	18
Demands to reveal information source	3	1	5	1	6	10
Censorship of publications/bans or attempts to ban program broadcast	2	1	3	1	2	7
Criminal defamation/detention/ arrest	4	4	2	0	5	10
Total	41	37	59	20	30	187

Over half of the violations involved threats and pressure. Mongolian journalists are highly self-censoring and fear further possible reprisals, attacks and assaults. Bearing this in mind, we were not able to include all cases in this report.

Globe International had been gathering information on violations through 22 monitors, located in the 21 provinces and in the capital, Ulaanbaatar. Since the end of 2010, Globe International has been operating a new monitoring system; this allows journalists to report on their own cases via a website (www.globeinter.org.mn/selfalerting). The system offers two options: open or closed; if the reporting journalist wishes to avoid publicity, they may have discussions solely with the GI Alerts Coordinator. We believe that this new system of monitoring can help to reveal otherwise unknown violations.

Globe International distributes alerts on violation of free expression to the media and a national and international network (including IFEX, IFJ, Freedom House, Reporters without Borders, Internews International, Global Forum for Media Development (GFMD), Forum Asia, a Bangkok-based human rights network, Article 19, embassies and international bodies operating in Mongolia) through an email list, a bi-monthly newsletter (Globe News), the website www.globeinter.org.mn and the annual Media Freedom Report.

Between May 2010 and May 2011, Globe International has registered 30 violations affecting professional work involving 18 journalists and media outlets. If any journalism right is violated, it will affect other rights. 85 per cent of those who approached us worked on daily newspapers, 15 per cent were working for television stations. Most of the violations (86.7%) were registered in Ulaanbaatar, the other 13.3 per cent were from the provinces.

Type of violation:

- Criminal defamation charges: 5
- Civil defamation cases: 5

- Damage/confiscation of equipment: 2
- Threats: 10
- Compulsion to reveal confidential source: 6
- Editorial censorship: 2

Seventy-five per cent of those who violated journalist rights were authorities and public officials.

GLOBE INTERNATIONAL HIGHLIGHTS THE FOLLOWING VIOLATIONS OF JOURNALIST PROFESSIONAL RIGHTS.

In 2010, GI registered violations of media rights by government institutions, courts, police and law enforcement bodies. These violations included unfair decisions by courts and police bodies, pressure from government institutions, and groundless restriction on access to information. These were serious violations involving censorship of the media and journalists.

Pressure from courts, police and law enforcement bodies

Young journalist B, working for a daily newspaper, authored an article about a newly-established criminal youth group and its activities, asking for action from authorities and law enforcement bodies and alerting the public. In order to avoid possible personal risk, the article was published anonymously. After publication, Mr M, a police officer with the Metropolitan Police, called female journalist T, who had sub-edited the newspaper page; she accepted the promise of the officer that he would work with the information source, and told him that the article had been written by B. First Lieutenant O of the Sukhbaatar District Police Department later accosted journalist T outside her office, threatened her, searched her handbag and confiscated her tape recorder. He then called journalist B, and together they went to the incident place, but there were no signs of the incident having occurred. At the Sukhbaatar District Police station, as part of the investigation, the First Lieutenant threatened journalist B with imprisonment and forced him to sign a statement that he had fabricated the information in the article, and would publish a retraction.

On September 1, 2009, the *Niigmiin Toli (Social Mirror)* newspaper published a letter from local citizens of Bayan-Olgii (a western province of Mongolia) in which they were critical of what they claimed were illegal actions by their government officials. After publication, seven public officials of Bayan-Olgii aimag who were affected by the mail filed a civil defamation case against Niigmiin Toli. The Chingeltei District Court found the newspaper guilty of slander and defamation, and ordered the paper to publish a retraction and an apology and pay 1,698,500 MNT (about US\$1,300) to the complainants.

On August 27, 2010, at the end of working day, officers of the General Authority for Implementing Court Decisions entered the premises of the daily newspaper Niigmiin Toli and confiscated the host computer, which the staff had no opportunity to seal. These officers were acting under a decision by the Chingeltei District Court. The journalists at the newspaper offered computers other than the host computer,

but the officers refused them. The confiscated computer contained confidential information of newspaper activities, including many confidential sources of information.

PRESSURES OF GOVERNMENT ORGANIZATIONS

State Great Khural

On December 30, 2010, the State Great Khural Parliament of Mongolia approved an amendment to a bill on the Law on Procedures of Parliamentary Sessions. This amendment shut the door on journalists attending Standing Committee meetings, stating, "The right for a journalist to broadcast or report on parliamentary activities will be decided upon and announced to journalists before each session, after consideration of the requesting media and any journalist's experience and professional skills."

Globe International issued a protest letter expressing concern about the amendment, saying, "This decision, which discriminates against parliamentary journalists, clearly violates the professional rights of journalists, the rights of media organizations to regulate their job schedules, and the freedom of journalists and media. This undemocratic act restricts the constitutionally protected right to seek, process and disseminate information, and breaches the Media Freedom Law which bans any kind of censorship."

A clause excluding attendance of journalists at open meetings of parliamentary standing committees and sub-committees received much criticism and protest from the media, journalist organizations, NGOs and even from some Members of Parliament.

Later, some Members of Parliament proposed an amendment to the bill on the Law on Procedure of Parliamentary Session, which was adopted on December 30, 2010. This amendment allowed journalists to attend meetings of parliamentary standing committees and sub-committees. The law was adopted by the first debate, with 84.1% support from MPs at the plenary parliament session.

As the amendment came into force from the date of adoption, journalists now have the right to attend such meetings.

Communications Regulatory Commission of Mongolia

On April 5, 2010, the Communications Regulatory Commission delivered an official letter to Eagle TV station. This letter stated, "By broadcasting and reporting during recent days on events that incite violence and social commotion, your TV station may have encouraged social unrest and rioting, violence against the state and government, and rebellion. Participation in such sorts of operation may be cause for confiscation of your license under the related law."

Eagle Television was broadcasting a direct broadcast and coverage of a demonstration in Ulaanbaatar city.

Mr D. Dorligjav, State General Prosecutor

Starting in December 2010, female journalist Tsoojchuluuntsetseg, from the Udriin Shuudan (Daily Post) newspaper, was author of a published series of articles entitled Billionaires Who Swindle Banks, about people who had taken out large bank loans and were not making repayments. In her third article (December 9, 2010) she wrote about debtors to the Khadgalamj Bank, sub-headed “Does General Prosecutor D. Dorligjav owe US\$827,000?”

On December 10, 2010, General Prosecutor’s assistant Enkhtur called the newspaper’s Responsible Secretary and threatened him with prosecution. On December 17, another assistant to the General Prosecutor and head of the Supervision Department of the State General Prosecutors Office, Mr. B. Bold, filed a criminal complaint at the Criminal Police Department on behalf of Mr. Dorligjav.

The Sukhbaatar District Police Department decided that there was insufficient evidence for a prosecution of Tsoojchuluuntsetseg on criminal defamation charges. However, on December 23, the Sukhbaatar District Prosecutor opened a criminal defamation case against the journalist.

Globe International sent an alert through the national and international network and an official letter to State General Prosecutor Dorligjav about this criminal prosecution of the journalist. In the latter, Globe International expressed concern that, while Mr. Dorligjav may have been able to file a civil defamation lawsuit, he instead chose to file a criminal defamation case against the journalist.

In addition, the head of the Supervision Department filed a complaint on behalf of the General Prosecutor relating to his personal reputation.

Globe International is not confident the investigator is able to conduct his work properly and the journalist should not be pressed to reveal her confidential source.

Globe International noted that the action of the General Prosecutor breached the Media Freedom Law, which bans any kind of censorship, and that interference with the work of a journalist who is in compliance with the law is considered a crime under Article 139 of the Mongolian Criminal Law.

Mr L. Gansukh, Minister for Nature, Environment and Tourism

Mr Baatarkhuyag has been under investigation for criminal defamation since July 8, 2010, following a complaint from the Minister of Nature, Environment and Tourism, Mr L. Gansukh. The Minister complained that he had been defamed by the following sentences: “Many suffocate from their embezzlement” and “Gansukh from the Democratic Party and Otgonbayar from the Revolutionary Party become neighbors in houses costing a million dollars,” which appeared in an article headed “From solidarity to demoralization,” written by Baatarkhuyag in the Udriin Sonin (Daily News) newspaper of March 1, 2010. In his complaint, the Minister claimed that Baatarkhuyag had spread nationwide defamatory libel alleging corruption and should be severely punished.

Globe International expressed concern about the defamation charges against a journalist and sent an alert through its national and international contacts. In

addition, GI delivered a protest letter to Mr L. Gansukh, Member of Parliament and Minister of Nature, Environment and Tourism.

In this letter, GI said, "You, as a public figure, are under public and media scrutiny and are involved with a group which is under constant criticism. As an individual, you have a right to respond to the publication. You have various ways and opportunities to deny defamation. You may have been able to file a civil defamation lawsuit. Your action may turn into censorship against journalists and media...We believe, that you, as a fighter for democracy, understanding the essence and significance of free and independent media and that the media contribution to democracy is more important than your reputation, should withdraw this criminal lawsuit."

Mrs D. Tsendekhuu, Chief of the General Laboratory of the General Agency for Specialized Inspection

Ms Ch. Chuluuntsetseg published an article in the Udriin Shuudan (Daily Post) newspaper of March 15, 2011, in which she alleged wrongdoings in her work by Mrs D. Tsendekhuu, Chief of the General Laboratory of the General Agency for Specialized Inspection. The journalist claimed that Mrs D. Tsendekhuu had abused her official position, which she owed to her high official brother. She claimed that the laboratory headed by Tsendekhuu had been discarding chemical waste of laboratory testing into a sink and at the foot of a tree behind the building since 2005, although the laboratory was financed for proper disposal of chemical waste. The journalist claimed to have based her article on informed sources.

Tsendekhuu brought a criminal defamation lawsuit against the journalist, and the Sukhbaatar District Court is reviewing the case.

PRESSURE FROM WEALTHY BUSINESSPERSONS

Mr B. Narankhuu, Director of the Mon-Uran company

From August 2010, the *Zuunii Medee (Century News)* daily newspaper published a series of more than 20 articles on human trafficking and sexual violation of teenaged Mongolian girls. The paper's investigative office, via Bolormaa, claimed that an organized criminal group had engaged in trafficking of virgin teenagers for US\$500 per girl. In addition, the newspaper and Bolormaa claimed to have obtained verification from confidential sources, including a witness and a victim, that privileged and affluent persons were involved in the criminal group. Using these sources, Bolormaa published an article in the newspaper on November 8, 2010, in Issue #267, headlined "Director B. Narankhuu of the Mon Uran company is being investigated by police for sexual abuse of teenage girls."

Mr Narankhuu filed criminal charges against Bolormaa as well as a civil defamation case against Zuunii Medee, accusing the newspaper of defamation and demanding compensation of 3 billion MNT (about US\$2.4 million).

After publication of the article, the journalist received a number of threatening phone calls, and information which she claims amounted to slander was published in the media.

Responding to Globe International’s alert through national and international network, the International Federation of Journalists issued a media release noting, “The IFJ demands that Mongolian authorities ensure criminal charges and defamation laws are not misused to impose censorship on reporters and media organisations and further calls on authorities to ensure the safety and protection of Bolormaa Damdinsuren...” (from IFJ Asia-Pacific Director Jacqueline Park).

Globe International held a press conference on December 22 protesting the use of criminal defamation legislation against a journalist for publication of an article, saying that to claim such huge amount of money could drive the media organization into bankruptcy. Globe International also expressed concern that the journalist could be forced into revealing her confidential sources because of a lack of a national law to protect confidential sources.



In November 2010, Globe International held distance training for 86 provincial journalists and media representatives of 13 aimags (provinces). A free discussion after the session revealed that violations of journalist professional rights happened in every step of a process and the problems being faced are similar in every province.

Province journalists often face difficulties in access to official information and are often taken to court over their articles. With a lack of specialized lawyers in the provinces, the media often lose their cases in the courts of first instance.

Last year in Khentii province (in the east) three journalists were four times threatened by phone. The Khentii News newspaper published articles about denial of information. A journalist of the Dulguun Kherlen radio station had his material checked through before airing of his program and was forced to delete unwanted information by public servants from the health sector.

Most journalists are reluctant to report violations of their rights because of the threat of further pressure.

Mr B. Adyakhuu, head of journalism sector,
Khentii province



I wrote an article entitled "Director B. Narankhuu of the Mon Uran Company is being investigated by police for sexual abuse of teenage girls" in the Zuunii Medee newspaper of November 8, 2010. The article was based on two sources: a victim and an official figure. After publication, Mr Narankhuu brought a criminal lawsuit against me and a civil lawsuit against the newspaper, asking for 3 billion tugrugs (about US\$2.4 million). I am being now investigated under provision 111.2 of the Criminal Code and the Zuunii Medee newspaper is being asked for 3 billion tugrugs. This means that two lawsuits were brought over one article. Last month, the Sukhbaatar District Court reviewed the civil case and dismissed it, noting, "The claim is groundless. This case may more reasonably be decided under criminal law." The case against myself was brought to the prosecutor for judgement. I had no intention to defame anyone. The article was based on two real sources. There are also witnesses who claim to know that Narankhuu had been "buying" virgin girls. They also claim to have told authorities about his case, but Narankhuu has still never been investigated. After publication, another Narankhuu was investigated (he fled to Singapore). After giving a statement to police, a female witness was threatened and forced to retract her statement. What is the point of revealing secrets of an investigation? The police department should investigate the human trafficking instead of forcing me to reveal my confidential sources. Unfortunately, no changes have yet been laid. The crimes involving sexual abuse of teenagers have been going on since 2008, and 17 girls aged 14-18 have been involved. Since this case, I have lost hope and courage. I have realized that I am living in a society that encourages the wrongdoings of wealthy people. I may be found guilty because of someone's power. Nevertheless, I hope the future of girls aged 14-18 will be lighter and brighter. If there is any justice, the whole truth of the case will be revealed.

D. Bolormaa,
Investigative and News Division journalist,
Zuunii Medee daily newspaper

In addition, some authorities own the media outlets, which they use for their own interests, thus breaching the Media Freedom Law, which prohibits state ownership of the mass media. They discriminate against journalists for political reasons and pressure them to reveal their confidential sources.

Media outlets carrying out independent activity are often under pressure, and often fall into financial dependence. Year after year, province journalists face difficulties in the exercise of their professional duties. Young journalists then get fed up with the difficulties, which further leads to a lack of specialists in the provincial media.

Use of defamation legislation as censorship

Globe International has repeatedly stated that journalists should not face criminal charges for what they write. International standards provide, "It is inadvisable to consider libel as a criminal offence, since this leads to limitation of the freedom of expression."

The number of defamation cases brought by politicians, public officials and wealthy businesspersons against the media is growing. In 2010, Globe International registered five criminal cases undergoing court processes.

The amount of fines imposed by courts has been increasing year by year. In 2010, the Mongoliin Unen (Mongolian Truth) daily newspaper was fined 30 million MNT (about US\$25,000) and the Zuunii Medee (Century News) daily newspaper was fined 3 billion MNT (about US\$2.4 million). The court also dismissed a civil lawsuit against Zuunii Medee. These newspapers are the nations' largest daily subscription newspapers.

Globe International protests that such a large fine of 30 million MNT could drive the Mongoliin Unen newspaper into bankruptcy. The lawsuit plaintiff was a human trafficking victim, and she accused the journalist of publically revealing her identity.

Globe International conducted a national study of civil and criminal cases heard by the courts in 2009 regarding defamation and slander of name, honor, dignity and business reputation, especially those cases involving the media and journalists, as well as information and statements distributed via media channels.

The purpose of the study was to conduct an analysis and develop a report on civil and criminal defamation cases, false accusations and slander of name, honor, dignity and business reputation heard by courts in 2009, and develop a research study.

Articles 21, 27, 497, 511 of the Civil Code of Mongolia state that the protection of name, honor, dignity and business reputation involve grounds for liability for damage caused and compensation of non-material damage, while the Criminal Code of Mongolia includes articles on regulation of cases dealing with slander (110) and defamation (111).

The research team referred to the following sources in developing the study:

- Archives of the Capital City Court, covering cases heard by 9 district courts
- Research conducted by 21 aimag (province) courts.

Globe International has been conducting similar studies since 1999, and has found that the number of defamation cases against media and journalists fell by 8 between 2008 and 2009.

In 2009, there were no cases of defamation or slander, as defined by the Criminal Code of Mongolia, involving media organizations or journalists.

Comparative data of cases

Year	Civil cases		Criminal cases		Total
	Total cases	Involving media	Total cases	Involving media	
1999	30		3		33
2000	39				39
2001	31	11	4		46
2002	44	37	2	2	85
2003	28	18	1	1	48
2004	40	40	1	1	82
2005	29	25	1	1	56
2006	36	31	3	3	73
2007	33	33			66
2008	39	25	5	5	74
2009	44	17	1	-	62
Total	393	237	21	13	664

Nationally, in 2009, there were 1 criminal and 44 civil cases of defamation, slander of name, honor, and dignity and business reputation investigated by the prosecution agency and heard by the courts. Of these, 17 journalists and media organizations were called as defendants in civil defamation cases.

As to location, 13 cases in Ulaanbaatar and 4 cases settled outside the capital involved media organizations and journalists.

In 2008, 65% of claimants were politicians, authorities and public officials, which increased to 73% in 2009. This alone demonstrates that politicians, authorities and public officials commonly use criminal defamation law as a censorship of the media.

The amounts of compensation and awards demanded from civil and criminal defamation cases have been increasing year on year. In 2008, the largest fine imposed by the court was one million MNT (about US\$850); in 2009 this increased to 2,200,000 MNT. The lowest amount of compensation granted to the plaintiff by a court was 500,000 MNT in Ulaanbaatar, 200,000 MNT outside the capital. This supports the view that plaintiffs use civil defamation legislation as an economic censorship tool.

Regarding court decisions, the number of journalists and media outlets who lose their cases has been increasing. In 2008, 71.4 per cent of civil cases were decided in favor of the plaintiff, which rose in 2009 to 82.4 percent.

CHAPTER TWO. MEDIA LEGAL FRAMEWORK

2.1. CHANGES IN THE LEGAL ENVIRONMENT

Since the last World Press Freedom Day, there have been some positive advances in the media and legal environment. Many documents have been processed, orders issued and draft laws developed. All of the criteria, such as development of new technology, reform of traditional media, rapid progress in modern media and more media outlets (especially broadcasters), have determined the need and demand.

Globe International conducted a survey on March 2011 into a total of 418 extant laws and 1,287 laws on amendments between 1957 and 2010. In March 2011 there were 188 laws and law provisions relating to the media, information, transparency and secrecy.

According to Legal Analysis jointly conducted by Globe International and London-based international NGO Article 19, in 2001 there were 91 such laws and law provisions.

In 2010, the State Great Khural and the Government of Mongolia adopted the following essential documents:

- National Program to Ensure Information Safety for 2010-2015, approved by Government Resolution 141 of June 2, 2010.
- Concepts of National Security of Mongolia, re-approved by Resolution 48 of the State Great Khural on July 15, 2010. This contains a separate part entitled Information Safety. This seems more progressive since it is based on principles of human rights and obliges full citizen participation and public accessibility.
- The Government approved a National Program for Transferring of Radio and Television Broadcasting to Digital Technology by Resolution 275 of October 27, 2010, by which radio and television broadcasts in Mongolia will become completely digitised at midnight on July 31, 2014.
- A Guide for the Trend in Regulation of Radio and Television Services was approved by Government Resolution 276 of October 27, 2010.

The Communications Regulatory Commission issued two orders: the General Regulatory Conditions and Requirements for Television and Radio Broadcasting, and the General Regulatory Conditions and Requirements for Digital Content Service, which came into force as from March 1, 2011.

Further, the following public institutions are working on 10 bills and resolutions relating to information and media:

Office of the President

- Bill on Media Freedom

Working Group of the State Great Khural (Parliament)

- Bill on Freedom and Right to Access Information

Ministry of Justice and Home Affairs

- Bill on Mass Media Law
- Bill on Media Freedom

General Intelligence Agency

- Bill on Draft Revision to the Law on Guarding State Secrets
- Bill on Cyber Safety

Information, Communications Technology and Post Authority

- Bill on Information Safety
- Bill on Content Protection

On January 21, 2011, the government submitted a bill on Information Transparency, Freedom and Right to Access Information. The Parliamentary State Structure Standing Committee held an open discussion on the bill with civil society representatives. Thereafter, parliament approved the bill on April 21, 2011, with 86.6% support after further discussion. The Mongolian public and journalist community believe the Law will be adopted at this spring parliamentary session.

This bill ensures citizen rights to access information from government institutions and authorities, involving activity, human resources, budget and finance, and openness of information regarding procurement of goods, works and services with state funds.

The Communications Regulatory Commission, based on the Government Resolution entitled Guide Trends on Regulation of Radio and Television Services, issued two orders: the General Regulatory Conditions and Requirements of Television and Radio Broadcasting, and the General Regulatory Conditions and Requirements of Digital Content Service, which have both been implemented since March 1, 2011.

The Regulatory Committee is tasked to implement control on the above conditions and requirements in cooperation with the Authority for Fair Competition and Consumer Protection, the Intellectual Property Office, the Ministry of Justice and Home Affairs, the General Police Authority and the National Emergency Management Agency. The Regulatory Committee is tasked to create a permanent monitoring and control system.

If there should be violation of these General Conditions and Requirements, the Regulatory Committee, depending on the type of violation, is empowered to impose economic liabilities as specified in a special license agreement, or may suspend

or invalidate the special license. Globe International considers the Regulatory Committee powers as potential media censorship.

2.2. GUARANTEE OF FREEDOM OF EXPRESSION

Constitution of Mongolia

Freedom of expression is protected by Article 16 of the Constitution of Mongolia, which states:

The citizens of Mongolia shall enjoy the following rights and freedoms:

- 16) Freedom of thought, opinion, expression, speech, press and peaceful assembly. Procedures for organizing demonstrations and other assemblies are determined by law.
- 17) The right to seek and receive information, except that which the state and its bodies are legally bound to protect as secret. To protect the human rights, dignity and reputation of persons and to ensure national defense, security and public order, information which is not subject to disclosure must be classified and protected by law.

Mongolia's obligations under international law

Mongolia is a member of the United Nations, has recognized the Universal Declaration of Human Rights, and is a party to the International Covenant on Civil and Political Rights (ICCPR). As such, Mongolia is legally bound to protect freedom of expression in accordance with Article 19 of the above documents and other international law.

This is formally recognized in Article 10 of the Constitution of Mongolia, and the international law shall be in effect as domestic law.

The 2002 Criminal Law, Article 139, states that it is a crime to interrupt any lawful professional activity of journalists. However, in Mongolia, there are numerous laws that restrict freedom of expression and information.

2.3. RESTRICTIONS OF FREEDOM OF EXPRESSION

State Secrets

State secrets are protected by the General Law on State Secrecy and the Law on the List of Secret Information. The Law on State Secrecy was passed in 1995 and last amended on January 2, 2004.

Under the Law on State Secrecy, The Perception Of State Secrets provides the following definition: 'State secrets' shall be reports, documents, substances, items and proceedings which are defined as state secrets under Mongolian legislation, and which contain information, divulgence of which will cause harm to national security, in forms of definition, illustration, sign or technological solution, and are related

to matters of foreign policy, economics, science, technology, defense, intelligence, counter-intelligence and secret operations of Mongolia.

Article 11 states: "The category of confidentiality of state secrets shall depend on the seriousness of harm to state security and interests that may occur as the result of their divulgence" and state secrets fall into the following categories: most confidential, confidential and classified.

Article 5 sets out five areas of secrecy: national security; defense; economy, science and technology; secret operations; and counter-intelligence, and elucidates procedures on the punishment of criminals charged with capital offences. The Law on the List of State Secrets protects 59 types of information (for instance, 19 national security-related items, 14 defense items, 5 economics, science and technology items, and 15 intelligence items; 69.5% of such information is protected for 40-60 years or for indefinite periods.

Six types of information are categorized as most confidential, 24 as confidential and seven as classified, but 25 types of information do not belong to any of the categories.

The amendments made in the law about the List of State Secrets on April 23, 2004, provide for an indefinite period of protection for "entire information and documents related to the terrorism."

Article 87.1 states: "Disclosure of data, documents, objects or activities which constitute a state secret by a person entrusted with such data, or who has learnt them by virtue of his/her job or position: if such act does not constitute a crime of high treason or espionage, it shall be punishable by imprisonment for a term of up to 5 years."

Article 87.2 states: "The same crime, if it has caused damage in a great amount, shall be punishable by imprisonment for a term of 6 to 8 years."

Organizational privacy

The Law on the Privacy of Organizations, adopted on May 16, 1995, extends the regime of secrecy to private organizations. This law effectively requires organizations to establish a regime of secrecy and to develop internal procedures to protect such secrets (Article 5.1). The impact of this is somewhat mitigated by Article 6 of the law, which lists a number of areas which may not be kept confidential. It is prohibited to withhold information if the information pertains to activities, products, services, techniques and technologies which affect the public health or environment, or contains information on poisonous or radioactive substances held by an organization which may cause public harm or harm the environment should its procedures on storage and protection be breached. The information also cannot be protected if it is about a crime or if it should be revealed to the public in accordance with law.

Article 164 of the Criminal Law makes it a crime, punishable by a fine or arrest for a period of three to six months, if financial secrets or secrets on activities are unlawfully obtained or disclosed. If the harm is substantial, it is punishable by up to three years' imprisonment.

2.4. DEFAMATION AND LIBEL LEGISLATION

Reputations are protected in both the civil and criminal laws of Mongolia.

In Criminal Law, effective since September 1, 2002, provisions 110 and 111 define the crimes of dissemination of libel and insult, and provide for detainment for one to six months.

The above provisions of the Criminal Law were interpreted on October 29, 2007, by the Supreme Court of Mongolia, with explanations of terms such as reputation and honor, insult and disgrace, libel, public, and previous criminal convictions.

Globe International does not accept the above interpretations as being sufficiently advanced. In a review of the interpretation, our legal advice was that the definitions of the terms of reputation and honor do not conform to international standards, and that the definition of insult and libel as a crime of form is not suitable. Specifically, the statement that 'libel is a crime of form' means that if allegedly libelous information is found to be false, the case should be considered a crime.

The Civil Code was amended in 2002 and protects a citizen's name, honor, reputation and business reputation by Article 21.

Below are a few examples by which journalists can be criminally charged for alleged breaches of the Criminal Code.

Under the Criminal Code, a fine and arrest for up to three months may be imposed 'if privacy is disclosed' (136.1), 'if obscenity is advertised' (123), 'if citizen's correspondence is violated' (135), 'if extreme religious ideas are advertised or distributed' (144.1), and 'if facts of criminal cases are disclosed without the permission of inspectors, detectives, prosecutors and judges' (257.1).

This law defines state officials as judges, prosecutors, inspectors, detectives, other police, customs and tax officers, and other state inspectors with special legal powers.

2.5. MEDIA FREEDOM

The State Great Khural (Parliament) of Mongolia adopted the Media Freedom Law on August 28, 1998. Article 2 of this law prohibits the adoption of any law restricting media freedom and freedom of media outlets. Article 3 bans censorship and obliges media outlets to take responsibility for their publications and programs, and Article 4 prohibits state ownership of mass media.

The Mongolian Parliament passed the Public Radio and Television Law on January 27, 2005, after seven years of delay. Establishment of a public broadcaster has been the most important step taken by the Mongolian authorities towards consolidating media freedom in recent years. The Public Radio and Television Law came into force on July 1, 2005. The Mongolian National Radio and Television organization was dissolved and a new public broadcaster, Mongolian National Broadcasting (MNB), was registered with the Ministry of Justice and Home Affairs on February 8, 2006.

In 2009, Office of the President initiated a new version of the Media Freedom Law; a draft was widely discussed by journalists, media representatives and the public, but has not yet been submitted to the Parliament. This new law involves

some significant changes to protection of editorial independence, making media ownership transparent and setting up legal grounds for a Press Council.

2.6. MEDIA OWNERSHIP

The lack of transparency of media ownership in Mongolia is contrary to the concept of pluralism and serves to foster hidden agendas and the provision of partisan information to the public, creating societal distortions and confusion. As a result, it is very difficult for the Mongolian public to discern who is telling the truth and much confidence is lost in the media and journalists.

In the recent years, there has been wide public discussion on the situation should media ownership not be independent, but no measures have been taken to improve the situation. In fact, the media concentration process has worsened. Provisions of the law prohibiting unfair competition concern the media, but there have been no case of use of this law.

Mongolia still lacks important laws guaranteeing freedom of information and protection of confidential sources, and lacks proper complete legislation on media ownership, media concentration and general broadcasting.

However, the above-mentioned Concepts of the National Security of Mongolia now contains a provision that 'media ownership should be transparent.' In addition, Article 4 of the General Regulatory Conditions and Requirements of Television and Radio Broadcasting, issued by the Communications Regulatory Commission, contains the statement, 'Investor and special license holder shall submit the following information to the Regulatory Committee in order to disclose ownership and maintain independent, open and ethical broadcasting.'

- 4.1.1. Ownership percentage of the holder and investor (if foreign invested, then name of the foreign country);
- 4.1.2. Name, address and telephone number of the Special License holder;
- 4.1.3. Organization of the legal entity, names and nationality of the management team.

The Regulatory Committee shall publicly disclose information about ownership transparency.

2.7. JOURNALIST CONFIDENTIAL SOURCES

In Mongolia there is no legislation guaranteeing the protection of confidentiality of journalist sources. On March 11, 2005, the Confederation of Mongolian Journalists adopted a Code of Conducts of Journalists, which does not work in practice.

Provision Four. A journalist shall protect a source of information obtained in confidence in any case.

Code of Conduct of Journalists

2.8. SELF-REGULATION

The order General Regulatory Conditions and Requirements of Television and Radio Broadcasting was issued by the Communications Regulatory Commission and came into force from March 1, 2011. Under this order, a television, radio or cable channel shall have a common professional ethical code; an ethical committee responsible for its implementation; and a Regulatory Committee to support the establishment of the ethical committee and its stable operations.

* * *

Mongolian journalists still cannot obtain information from government agencies, officials or employees, and they cannot access government documents. It is violation of democratic principles of governmental openness and transparency and citizen rights to receive objective information. If journalist rights are violated, even in the pursuit of the most basic information, it is extremely difficult for them to provide the public with accurate and in-depth information.

The lack of transparency of media ownership in Mongolia is contrary to the concept of pluralism and serves to foster hidden agendas and the provision of partisan information to the public, creating societal distortions and confusion. As a result, it is very difficult for the Mongolian public to discern who is telling the truth and much confidence is lost in the media and journalists.

Journalists experience a range of pressures and interrogations that force them to disclose the identity of their sources, which in turn places their sources of information under threat. As a result, the media cannot fulfill their role as a government watchdog. Society will never function effectively if the value of investigative journalism is undermined.

Every attack and threat to journalist lives and property because of pursuit of the truth should be considered a serious offence and a crime. Unfortunately, Mongolian police and the courts are unable to carry out their duties to determine the truth and impose proper punishments.

It is common practice in Mongolia for politicians, officials and public servants to use provisions of the Criminal Code and Civil Law for media censorship. Those in power use their authority and official positions to quash the truth, to suppress fair criticism and to cover up wrongdoings.

The increase in criminal charges against journalists for critical articles threatens the development of a healthy society, as well as the public right to receive accurate information, causing serious damage to democracy and public interests.

The UN Declaration, reaffirmed on December 1, 2000, underlines the following: "Two threats to freedom of expression and the free flow of information and ideas have now reached crisis proportions in many parts of the world: attacks on journalists and others exercising their right to freedom of expression, and the abuse of restrictive defamation and libel laws."

Further it states, "All Member States should review their defamation laws in order to ensure that they do not restrict the right to freedom of expression and to bring them into line with their international obligations."

After the UN Joint Declaration, many countries have amended or made changes in their defamation laws.

As a UN Member State, Mongolia should take decisive measures, repeal criminal defamation laws, and meet its obligations to the UN and international society, Globe International believes.