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FREEDOMS OF OPINION AND EXPRESSION

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FREEDOMS OF OPINION AND EXPRESSION

This submission was produced by “Globe International Center”¹, a member of the HR NGO Forum. The topics of the draft submission were discussed at a civil society meeting held on August 2, 2014.

The topic of this particular submission was not amongst those included in the recommendations of the UN Human Rights Council, but the selection of this topic is justified for the reason that even after the 2010 NGO submission to the UNHRC, the situation concerning the freedoms of opinion and expression for Mongolian citizens has become alarming due to current political, legal and regulatory conditions, particularly since the Government has taken steps towards restricting digital freedoms and public officials have increased their pace in filing criminal defamation cases.

A. International Obligations of Mongolia

Mongolia is a signatory to the Universal Human Rights Declaration and became party to the International Covenant on Civil and Political Rights (ICCPR) in 1974. According to the terms of the covenant, the international accords stipulated in the ICCPR are valid as domestic law and take precedence over any and all domestic laws in any circumstance that proves to show a contradiction between the two sets of laws. A legal precedent for courts to use the ICCPR has been set since the covenant was officially translated and published in 2005, in the first issue of the magazine “Turiin medeelel” (State Information).

The UN Human Rights Committee’s 101st session in New York, March 14 - April 1, 2011, discussed the Mongolian government’s report on the implementation of the ICCPR, and in the concluding observations noted that “(t)he State party should consider decriminalizing defamation and ensure that measures are taken to protect journalists from threats and attacks. It should also ensure that all allegations of such threats and attacks are immediately and thoroughly investigated, and that the perpetrators are prosecuted.”

In accordance with Article 19 of the ICCPR² and Article 16.17 of the Constitution of Mongolia, restrictions on the freedoms of opinion and expression should only be imposed by law. However, the reality is different in Mongolia.

B. Constitution and Domestic Legislation

Mongolia has guaranteed its citizens’ freedoms of opinion and expression, the right to publish and the right to information, according to Articles 16.16 and 16.17 of the Constitution of Mongolia, chartered in 1992. Parliament enacted a Law on Media Freedom (1998), a Law on Public Radio and Television (2005), a Law on Information Transparency and the Right to Information (2011) and media and information freedoms and the media sector are regulated by hundreds of other laws, such as the law on Advertising and the Law on Telecommunications etc. All types of censorship are banned by the Law on Media Freedom.

Civil and criminal defamation is part of Mongolia’s civil law, criminal law and election laws. For example, the 2012 Law on Presidential Elections contains many defamation provisions (33.5.4, 33.7.12, 33.11) and the Authority for Fair Competition and Consumers Rights, government agency, has the power to take complete control over the content of election coverage and, upon their decision, the authority to terminate the

¹ Globe International Center has been promoting freedoms of opinion and expression since its establishment in 1999 and it is a member of the IFEX, Forum Asia and GFMD

² Article 19(3) of the ICCPR

operations of broadcast stations for a period of up to three months. This mandate also applies to information web sites and mobile phones. It is concerned that government censorship revoked direct government censorship. In accordance with Mongolia's Civil Law, authors and journalists must prove the truth of their publications and programs.

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 Television and Radio 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 media in Mongolia.

On January 5, 2013, the Government adopted Resolution No. 1, "A Unified System for Website Comments." Based on this resolution, the CRC adopted the "Procedure on the Regulation of the Comments on Websites" on February 27, 2013, labeled decision No 5.

It is regretful that the above documents and Government resolutions stand in contradiction to the regulations and principles outlined in Mongolia's Constitution and codified international standards, and no success has been made even after holding numerous discussions and exchanging many ideas in the society.

C. Issues

C.1. Digital Freedom and the Right to Anonymity

Official Registration and Filtering

The principles of freedoms of opinion and expression should apply equally to online media as well as in any other sphere of civil life. However, according to provision 7.1 of the "General Condition and Requirement on the Digital Content," web sites serving more than 3,000 visitors a day during a month, must register with the CRC and, according to provision 7.3, they must use a government specified filtering system.

The filtering program can be found at <http://www.happywebs.mn> and contains a total of 108 words, 86 in Cyrillic and 22 in Latin. It operates by changing "filtered" words into asterisk. For example, if a user writes "sex" or "terrorist" in Latin, it will directly be changed into (**).

By obliging websites to be registered and to use the filtering program, the Government's action violates the international law to which it is a party.

The Right to Anonymity

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 resolution implementation 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. News and information websites place the IP addresses of their users on the tops of the comments generated by the user.

Mongolia does not have legal protections for whistleblowers or for journalists' confidential sources, and it tends to prohibit journalists to remain anonymous.

Content Restriction and Censorship

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 Intellectual 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.

Since 2012, a total of 172 websites have been blocked in Mongolia due to copy rights violations. The CRC publicizes the list of blocked websites at www.black-list.mn.

The latest instance of government intervening to block a website occurred when the Prime Minister's private company was criticized. This reveals that the obvious and overt motive behind blocking and closing down websites "in violation" of the law does not concern copyright issues, rather it is directly an issue of censorship. In accordance with the stipulated rules, the CRC should warn and send prior notice to the service providers based on statements and letters.

On July 3, 2014, the news website amjilt.com reported that the "PM's company Khaan Jims" was polluting the Tuul river, as evidenced and documented by photos. The following day, a female officer from the CRC called to the web site and explained that "she was calling due to complaints made by Khaan Jims. She instructed amjilt.com to remove the article and post a retraction; otherwise, the website would be placed on the blacklist within an hour. After three hours of the call taking place, the website was blocked in Mongolia. The website is still not operational³.

The media NGOs in Mongolia protested this course of action and OSCE⁴ has issued a press release. However, Khaan Jims produced and aired a one-hour paid program at the same time. We are insistent that Khaan Jims action was a serious incursion that breached both the public's right to know and media freedom.

Independence of the CRC and legitimate restriction of free expression

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

³ <http://globeinter.org.mn/?cmd=Record&id=1131&menuid=367>

⁴ <http://www.osce.org/fom/121076>

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 registered⁵. 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.

Recommendations

1. Dissolve the 2013 Government Resolution No. 1 and abolish government control over opinions and expressions;
2. Dissolve the so-called “Conditions and requirements” and regulatory rules;
3. Amend the relevant laws to provide the CRC with full independence, public participation, transparency and public control and repeal the current system in which the PM appoints and dismisses representatives to the CRC;
4. Repeal the restrictions on free opinions and expressions in digital platforms and dissolve the decisions made on registration and filtering;
5. Amend the relevant laws on content restriction to make them consistent with the Article 19 principles.

C2. Use of the criminal defamation

Mongolia’s Criminal Law includes insult (Article 110) and libel (Article 111) as criminal offences and stated sanctions provide for fines, arrest and detainment for a period of up to six months or imprisonment for 2-5 years. The authorities use these laws to disclose whistleblowers and confidential sources and to threaten journalists and other citizens.

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. 7,800 USD)⁶.

Criminal defamation has become alarming for social media users.

⁵Letter of the Ministry of Justice, 29.08.2014, Ref. 4/3496

⁶<http://globeinter.org.mn/?cmd=Record&id=1074&menuid=367>

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.⁷

In accordance with free expression monitoring reports by Globe International Center, there were 27 criminal defamation cases between 2005 and 2012 and only in 2013-2014, the number reached 13⁸. All the plaintiffs of criminal defamation cases in Mongolia are elected authorities, powerful public officials and public organizations.

We applaud the law on Crime drafted by the Ministry of Justice and submitted to Parliament which decriminalizes defamation. Media professionals are concerned that the MPs will block the legislation.

Recommendations

1. By encouraging the draft law on Crime which repeals criminal defamation, we call on the Government to be consistently committed to and to be a leader in respecting free expression;
2. Courts should use international laws at trials that concern cases on free expression and they should raise awareness and educate lawyers, judges, defense lawyers and prosecutors on Article 19 and UN HRC comments No. 34;
3. Protect privacy, guarantee the right to anonymity and allow the journalists remain anonymous;
4. Provide legal protections for whistleblowers and journalists' confidential sources.

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⁷ <http://www.osce.org/fom/122969>