

LEGAL ANALYSIS

Mongolia's Draft Law on the Freedom to Hold Peaceful Demonstrations and Gatherings

Introduction

Mongolia's Parliament recently expressed interest in adopting a Draft Law on the Freedom to Hold Peaceful Demonstrations and Gatherings ("draft law"), including through creating a working group to finalize deliberations on the draft law. ICNL received an informal translation of an October 2024 revised version of the draft bill from local partners and has prepared the below summary analysis at their request. The analysis compares key provisions of the draft law to international legal standards on the freedom of peaceful assembly; it does not constitute a full comment and does not address every issue with the bill, but rather highlights key issues. For questions or more information, please contact asia@icnl.org.

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The draft law contains several positive provisions, including the protection of spontaneous gatherings¹ and counterdemonstrations,² the obligation of individuals and legal entities to refrain from interfering with assemblies,³ the prohibition of targeted surveillance of assembly participants without legitimate legal grounds,⁴ the explicit recognition that individual violent protestors do not render an entire assembly violent,⁵ the protection of assembly participants' right to legal assistance after a forced dispersal of an assembly,⁶ and transparency and redress mechanisms for law

¹ Draft law, Section 5.8.

² Draft law, Section 6.4.

³ See Draft law, Section 6.1, 6.2, and 6.3 as examples.

⁴ Draft law, Section 11.9.

⁵ Draft law, Section 12.4.

⁶ Draft law, Section 12.8.

enforcement decisions on assemblies.⁷ The draft law should retain such protections in its next version to protect assembly rights in accordance with international law.

However, the draft law also contains concerning provisions which restrict assembly rights in violation of international law. This comment discusses those provisions and provides recommendations to reform the law to comply with Mongolia's international legal obligations.

International Law

Article 21 of the International Covenant on Civil and Political Rights (ICCPR) protects the right of peaceful assembly.⁸ Restrictions on this right must be (1) in conformity with the law, (2) necessary in a democratic society; and (3) in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.

To be "in conformity with" the law, a provision must be sufficiently precise to enable an individual to assess whether his or her conduct would be in breach of the law, and to foresee the likely consequences of any such breach (the principle of legality).⁹ For it to be "necessary," the restriction must be proportionate to one of the enumerated legitimate aims (the principle of legitimacy). A restriction is proportionate where it is the least restrictive means required to achieve the purported aim (the principle of proportionality).¹⁰

The right to freedom of expression is implicit in and supplements the freedom of peaceful assembly, as participants in a procession impart and receive information and ideas. Thus, even when a law specifically governs public meetings and processions, it will affect freedom of expression. This freedom is protected under Article 19 of the ICCPR.

Analysis

I. OVERBROAD DEFINITION OF "NON-PEACEFUL" ASSEMBLY

ISSUE: The draft law provides an overbroad definition of a "non-peaceful" assembly, which can restrict legitimate assemblies.¹¹

⁷ Draft law, Section 13.

⁸ Mongolia ratified the ICCPR in 1974.

⁹ See United Nations General Assembly, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai*, U.N.DOC. A/HRC/20/27 (2012), para. 28. See also United Nations General Assembly, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue*, U.N. DOC A/HRC/17/27 (2011), para. 69.

¹⁰ See *id.*

¹¹ Section 5.6 states "A demonstration or gathering organized in a manner that poses a risk to human life, health, safety, or property is understood to be non-peaceful."

BEST PRACTICE AND ANALYSIS: The U.N. Human Rights Committee explains that “violence” in the context of assemblies “entails the use by participants of physical force against others that is likely to result in injury or death, or serious damage to property.”¹² Section 5.6 of the draft law prohibits a wider range of assemblies by defining any assembly that poses a risk to human “health” or “safety” or property to be “non-peaceful.” This restriction on assembly rights fails the legality test because the concepts of “health” and “safety” are vague and grant authorities broad discretion for interpretation. For example, a police officer could deem an assembly “non-peaceful” because some attendees are coughing, which poses a risk to other attendees’ health. Likewise, a police officer could interpret any minor property damage to render an assembly “non-peaceful.” Adopting the language recommended by the U.N. Human Rights Committee could balance such risks.

RECOMMENDATION: Revise Section 5.6 to read “A demonstration or gathering is “non-peaceful” if its participants use physical force against others that is likely to result in injury or death, or serious damage to property.” This section must be read with Section 12.4 of the draft law which recognizes that violence by one person or a group of persons during an assembly does not deem the entire assembly non-peaceful.

II. ONLY CITIZENS HAVE THE RIGHT TO ORGANIZE ASSEMBLIES

ISSUE: The draft law only allows citizens of Mongolia to organize assemblies, which excludes non-citizens from fully exercising their assembly rights without a legitimate basis.¹³

BEST PRACTICE AND ANALYSIS: International law protects all persons to exercise the right of peaceful assembly, regardless of nationality.¹⁴ The right to peaceful assembly includes organizing assemblies.¹⁵ Preventing foreign nationals and stateless persons from organizing assemblies restricts their assembly rights and does not appear to further a permissible aim, therefore failing the principle of legitimacy. This restriction also undermines one of the draft law’s key aims of “accepting diversity of opinions.” Foreign nationals and stateless persons may have different perspectives and insights from citizens; preventing them from organizing assemblies may exclude diverse opinions.

RECOMMENDATION: Revise Section 5.1 to read “all persons” rather than “citizens.”

¹² General Comment, para. 15.

¹³ Section 5.1 states “Citizens have the right to lawfully organize and participate in peaceful demonstrations and gatherings (hereinafter referred to as “demonstrations and gatherings”) in public and private areas with the purpose of delivering their opinions on certain issues to the public and government organizations.

¹⁴ General Comment, Para. 5.

¹⁵ General Comment, Para. 12.

III. PRIOR REGISTRATION OF ASSEMBLIES IN CERTAIN PLACES

ISSUE: Organizers must register assemblies planned to take place on roads, which could give authorities discretion to prevent assemblies from occurring in places with the most impact.¹⁶

BEST PRACTICE AND ANALYSIS: It is considered a best practice under international law for states to refrain from adopting an “authorization” regime which requires state approval before assemblies may proceed.¹⁷ Where authorization regimes persist, international law recommends that authorities automatically grant authorization in the absence of compelling reasons to reject the request.¹⁸ The prior registration requirement under Section 8.3 violates this best practice. While prior registration might serve a legitimate purpose, such as giving law enforcement advance notice to prepare to facilitate an assembly in these high-traffic places, the less restrictive measure of requiring simple notification would serve the same aim.

RECOMMENDATION: Revise Section 8.3 to change “prior registration” to “prior notification.”

IV. VAGUE RESTRICTIONS ON THE PURPOSES OF ASSEMBLIES

ISSUE: The draft law prohibits assemblies that promote war, discriminate, sabotage, call for a coup d’etat, or harm national security and public order by inciting disorder.¹⁹ Without further guidance on the actions that amount to “inciting disorder,” these restrictions grant authorities broad discretion to determine that an assembly has violated the draft law.

Analysis: A government may restrict content that is propaganda for war, or that advocates national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence.²⁰ The Rabat Plan of Action offers a balancing test to determine whether speech has incited discrimination, hostility or violence: to determine whether speech is considered incitement, a person can weigh the context, speaker’s position, speaker’s intent, content and form of the speech, extent of the speech (i.e., the reach, magnitude and size of the audience, whether it is public), and likelihood of causing incitement.²¹ While Section 7.5 appears to be aimed at prohibiting the types of speech restricted under international law, it does not provide guidance for law enforcement to determine that an action has “incited disorder.” Without this guidance, authorities

¹⁶ Section 8.3 states “A demonstration or gathering on the roadway needs a prior registration and a response.”

¹⁷ A/HCR/20/27, para. 58.

¹⁸ General Comment, para. 73.

¹⁹ Section 7.5. states “It is prohibited to organize or participate in demonstrations and gatherings with the following purpose: (7.5.1) promote war, discriminate, sabotage, call for cout [sic] d’etat;(7.5.2) harm national security and public order by inciting disorder.”

²⁰ General Comment, para. 49 (discussing Article 20 of the ICCPR).

²¹ Rabat Plan of Action, para. 29.

have broad discretion to determine that an assembly has incited disorder. For example, law enforcement might prohibit a pro-labor assembly of 10 ordinary citizens who call for onlookers to join them to block a road leading to a factory known for using child labor. Although a traffic disruption could lead to disorder, the small size of the assembly and the fact that the participants do not appear to have outsized public influence makes it unlikely that it would garner much attention. These factors make it unlikely that this assembly would incite disorder. Including the balancing test from the Rabat Plan of Action could help law enforcement make such an analysis and focus their resources on assemblies that might actually harm Mongolia's national interests.

RECOMMENDATION: Revise Section 7.5. to prohibit only assemblies that constitute propaganda for war, or that advocate national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence. Consider including the balancing test from the Rabat Plan of Action in Section 7.2. as guidance for law enforcement to determine that an assembly purpose constitutes incitement.

V. BLANKET BANS ON ASSEMBLIES IN CERTAIN PLACES

ISSUE: The draft law bans gatherings in certain places, including train stations, medical organizations, the State House, and any "public facility of heightened importance."²² There are less restrictive ways to promote public order, health, or safety.

BEST PRACTICE AND ANALYSIS: Peaceful assemblies should be permitted in all spaces to which the public has or should have access.²³ These include places with historical significance or official buildings.²⁴ Under international law, blanket bans on assemblies in such spaces are considered disproportionate restrictions on the right to peaceful assembly.²⁵ There may be legitimate grounds for restricting assemblies in the places listed in Section 7.1, such as promoting public safety by ensuring that assemblies don't block access to medical services. However, prohibiting *all* assemblies in these places is not the least restrictive way to meet these aims: international law recommends that authorities justify any restrictions on assembly location on a case-by-case basis, and to allow, as far as possible, participants to assemble within sight and

²² Section 7.1. states "7.1. It is prohibited to organize or participate in demonstrations and gatherings in the following places:

- 7.1.1. Mongolia's border strip;
- 7.1.2. airports, train stations and stops;
- 7.1.3. medical organization;
- 7.1.4. State House and its territory;
- 7.1.5. prison and its security strip;
- 7.1.6. public facility of heightened importance and their protection strip;
- 7.1.7. land under special state protection."

²³ General Comment, para. 55.

²⁴ General Comment, para. 56.

²⁵ General Comment, para. 38.

sound of their target audience, or at whatever site is otherwise important to their purpose.²⁶ As an example, if hospital workers want to demonstrate in front of their workplace to increase their wages, authorities could ask that they leave an open path for people to access the hospital, rather than banning all assemblies there. This would allow the hospital workers to assemble within sight of the hospital administrators who control their wages while still protecting public health by providing a pathway to the hospital. Section 9.7 grants law enforcement sufficient power to negotiate the place or time of an assembly with organizers, so a blanket ban on assembly location is unnecessary.

RECOMMENDATION: Remove Section 7.1.

VI. BLANKET BAN OF ASSEMBLIES DURING A STATE OF EMERGENCY

ISSUE: The draft law gives authorities the power to ban assemblies by law during a state of emergency,²⁷ which undermines people’s ability to mobilize in times of heightened need for advocacy.

BEST PRACTICE AND ANALYSIS: As noted, blanket bans on assemblies based on their time, place, and manner are considered disproportionate restrictions of assembly rights under international law. Rather than allowing authorities to ban all assemblies during emergencies, a less restrictive way to meet legitimate aims, such as protecting public order or public health, would be to assess assemblies on a case-by-case basis to determine if there are ways to facilitate an assembly while addressing risks. For example, during a pandemic, a country that institutes a state of emergency could request protesters to socially distance and wear masks, rather than prohibiting the assembly. COVID-19 saw many governments demonstrate best practice and make accommodations to allow for the safe exercise of the freedom of assembly. Facilitating assemblies during states of emergency is particularly important because states of emergency may exacerbate hardships and marginalization: assemblies are one way to mobilize action against those effects.

RECOMMENDATION: Remove Section 7.3.

VII. PROHIBITION OF NIGHTTIME ASSEMBLIES

ISSUE: The draft law bans assemblies that begin at nighttime, which can undermine the significance of or participants’ ability to attend some assemblies.²⁸

²⁶ General Comment, para. 53.

²⁷ Section 7.3 states “If case of a nationwide or a partial state of emergency or war was declared, or a disaster, dangerous phenomenon or a catastrophic incident occurred, it can be prohibited by law to organize demonstrations and gatherings in that territory until the named cause is eliminated.”

²⁸ Section 7.8 states “In cases other than when demonstrations and gatherings have not stopped on their own and have carried on, it is prohibited to organize demonstrations and gathering during the night-time.”

BEST PRACTICE AND ANALYSIS: As established earlier, states should refrain from placing restrictions on the time, content, and manner of assemblies. Although authorities may have legitimate reasons to limit assemblies that begin at nighttime, such as to limit disturbance to people living nearby, they must weigh the impact of the nighttime gathering against the restriction on assembly rights.²⁹ For example, a candlelight vigil which honors a deceased community member may be most appropriate for nighttime and may not significantly disturb people who live nearby. Prohibiting such an assembly merely because it takes place at nighttime would not further a legitimate aim. Moreover, because many people work during the daytime, prohibiting nighttime assemblies could make it more difficult for those people to exercise their assembly rights.

RECOMMENDATION: Remove Section 7.8.

VIII. OVERBROAD RESPONSIBILITIES OF ASSEMBLY PARTICIPANTS

ISSUE: Assembly participants have several duties, including ensuring public safety and order³⁰ and refraining from interfering with traffic.³¹ These obligations might deter people from participating in assemblies.

BEST PRACTICE AND ANALYSIS: Assembly organizers and participants are expected to comply with the law including any legal requirements made of an assembly and encourage peaceful conduct during an assembly.³² However, it is the state's duty to promote public safety and order by protecting assembly participants and onlookers.³³ Private individuals and legal entities do not have the knowledge or resources to do so. Similarly, it is the duty of the state to facilitate traffic during an assembly, including through rerouting pedestrian and vehicular traffic in an area where there is a planned gathering.³⁴ International law emphasizes that assembly organizers should not be held responsible for the unlawful behavior of others except in the exceptional circumstance where evidence shows that the organizers could reasonably have foreseen and prevented injuries or other damages.³⁵ Placing an obligation on assembly organizers and participants to ensure public safety in particular may deter them from exercising their assembly rights because they fear punishment for failing to protect other assembly participants or prevent them from interfering with traffic.

RECOMMENDATION: Remove Section 10.6.1 and 10.6.8.

²⁹ See General Comment, para. 54.

³⁰ Section 10.6.1 states “[A participant of a demonstration/ gathering shall undertake the following duties]: help provide social order and public safety in places of demonstration/ gatherings.”

³¹ Section 10.6.8 states “[A participant of a demonstration/ gathering shall undertake the following duties]: not to interfere with traffic.”

³² General Comment, para. 65.

³³ General Comment, para. 24.

³⁴ A/HRC/20/27, para. 41.

³⁵ General Comment, para. 65.

IX. FORCED DISPERSAL OF PROHIBITED ASSEMBLIES

ISSUE: Law enforcement may disperse an assembly that violates the draft law,³⁶ which does not comply with the best practice of dispersing assemblies only in exceptional cases.

ANALYSIS: Under international law, authorities should only disperse assemblies in exceptional cases where the assembly is no longer peaceful or if there is clear evidence of an imminent threat of serious violence that cannot be reasonably addressed with more proportionate, targeted measures.³⁷ Blanket dispersals of prohibited assemblies, as envisioned by this draft law, are not permissible under international law because there are less restrictive ways to protect public order or safety, or another legitimate aim. For example, if an assembly takes place in a prohibited place, the state could deploy law enforcement officers who are trained to facilitate assemblies to stand by: this would allow the assembly to continue while preparing law enforcement officers to protect assembly-goers and the public if any violence or imminent threat of serious violence ensues.

RECOMMENDATION: Revise Section 12 to make clear that law enforcement should only disperse assemblies where the assembly is no longer peaceful or if there is clear evidence of an imminent threat of serious violence that cannot be reasonably addressed with more proportionate targeted measures.

X. APPLICATION OF CRIMINAL SANCTIONS

ISSUE: Individuals and legal entities that violate the draft law are subject to criminal sanctions,³⁸ which may deter some people from exercising their assembly rights.

BEST PRACTICE AND ANALYSIS: International law emphasizes that any criminal sanctions imposed on organizers or participants of a peaceful assembly for their unlawful conduct must be proportionate, non-discriminatory, and based on explicitly defined offenses under law.³⁹ The U.N. Special Rapporteur on freedom of peaceful assembly and of association explicitly warns that states should not apply criminal sanctions to assembly organizers who fail to notify them of a planned gathering.⁴⁰

³⁶ Section 12.1 states "If [sic] case the threats describe in this law inevitably arise during a demonstration/ gathering, the head of the territorial police organization shall make the decision to forcibly disperse it and immediately inform the National Human Rights Commission of Mongolia." Section 12.3 states "Organizing a demonstration/ gathering in a place or a for a purpose prohibited by law, or formation of a prohibited situation during an un-prohibited demonstration/ gathering will serve as a ground for forced dispersal."

³⁷ General Comment, para. 85.

³⁸ Section 14.2 states "Individuals and legal entities who breached this law will be a subject to liabilities specified in the Criminal Law or Law on Offences."

³⁹ General Comment, para. 67.

⁴⁰ A/HRC/20/27, para. 29.

RECOMMENDATION: Authorities should remove Section 14.2, as criminal code provisions already exist to deter illegal behavior, and otherwise ensure that any measures imposed on protesters are proportionate and rights compliant.

Conclusion

We recognize the several positive, enabling provisions in the draft law that support the meaningful exercise of the freedom of assembly. At the same time, however, we note that the provisions outlined in this analysis are not in line with best practice and international standards on the freedom of assembly. Mongolia has a vibrant civic space and culture of participation in public affairs, including past peaceful protest movements. To ensure continued protection of the right to freedom of assembly in Mongolia, legislators should undertake consultations with civil society and international experts on the freedom of assembly, and consider the above recommendations to improve the draft law.

ICNL stands ready to provide additional information or technical assistance to civil society organizations, lawmakers, and government and international actors, as helpful and appropriate.

Respectfully submitted. November 2024.