

Comments on the draft Law on the Freedom of Assemblies

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Introduction

Right to assemble to express opinions is an important foundation of democracy and a means of citizen participation. In a democratic society, people do not need any regulations to be able to assemble and express their opinions individually or together with others, it is not necessary that the Government ‘enacts a specific law on public events and assemblies, as control of such events may be left to general policing and the rights in relation to them may be subject to the general administrative law.’¹ However situations may arise during the exercise of fundamental rights such as the right of peaceful assembly that “pose a threat to public order and where necessity would demand state intervention”², the State will only be able to intervene on the basis and in accordance with the grounds and procedures prescribed by law, and this is why many countries have enacted special laws on protests/ assemblies. Consequently, any law or regulation related to the right of peaceful demonstrations and gatherings is, in essence, not about regulating the citizens’ right to exercise the right to protest, but a regulation concerning the state’s intervention in the exercise of this right.

In Mongolia, the freedom of citizens to hold peaceful protests is a Constitutional right. A separate Law on Peaceful Protest Procedures adopted in 1994 in accordance with the Constitutional provision is still in force today. This law has played “a historical role in shaping public expectation of full-scale enjoyment of the freedom to protest peacefully and consolidating democratic principles”.³ However, growing need to clarify vaguely defined concepts, add procedural guidelines related to protection mechanisms, clearly articulate grounds and procedures for limiting the right to protest, as well as an emerging need to account for new forms of expression brought by technological advancements called for a revision of the current law, and in 2024, a new draft *Law on the Freedom of Demonstrations and Gatherings* was introduced.

This brief is a human right review of the draft *Law on the Freedom of Demonstrations and Gatherings*. Our analysis is loosely based on the three main principles recommended by the Venice Commission to be clearly articulated in the in the national legislation governing freedom of assembly, that are:

- the presumption in favour of holding assemblies,
- the state’s duty to protect peaceful assembly, and
- proportionality.⁴

Analysis of the draft Law on the Freedom of Demonstrations and Gatherings

I. Conceptual issues

1. It is highly commendable that the law is named after the human right. This way, it can be safely assumed that the law, while guaranteeing enjoyment of the Constitutional right to organize and

¹ Venice Commission (2014). Compilation of Venice Commission Opinions Concerning Freedom of Assembly (revised July 2014). 2. Definition of Assembly, p.6

² *ibid*, page 11

³ National Human Rights Commission (2023). State of the Human Right and Freedoms in Mongolia, annual report 22, page139

⁴ Venice Commission (2014), p.13

participate in peaceful assemblies, aims to establish legal grounds for and prescribe procedures of state intervention in the exercise of this right with the goal to prevent and disrupt situations threatening public safety and social order.

2. The draft law recognizes assemblies as a means for exercising the freedom of opinion, expression and association, as well as an act of delivering one's opinion to the public and the government. This is a welcome approach that will help conceptualize peaceful protests as one way of public action and expression rather than a descent or riot.
3. The draft law also recognizes, along with planned assemblies, spontaneous gatherings as an immediate response to an event, and provides that participants of spontaneous gatherings that by nature happen without prior notification of authorities shall be protected by the police. However, one should take notice of provision 43.1 of *the Police Law* which, in order to prevent public disorder and establish control, authorizes the police to demand that a group of people disperse immediately. Accordingly, without further careful coordination between the proposed draft law and existing Police Law, a risk of the police (mis-)identifying spontaneous gathering as 'a group of people' and demanding immediate dispersal - which is technically a forced dispersal - persists.
4. A positive step is recognition of simultaneous assemblies defined as assemblies on the same issue in different locations, or assemblies on different issues in the same location. Legalizing diverse forms of assemblies is reflective of a presumption in favor of holding assemblies.
5. Reflecting the presumption in favor of holding assemblies and the state's duty to protect assemblies, the draft law prohibits adoption and enforcement of administrative normative acts aimed at limiting the right to organize and participate in peaceful protests, as well as prohibits intervening in and forcefully dispersing lawful assemblies. However, an absence of a legal definition of what constitutes a lawful (or unlawful) assembly leaves it to the police discretion to determine and decide if a specific assembly is lawful or unlawful and therefore, subject to intervention or even forced dispersal.

II. Specific issues

6. Assemblies are allowed in public and also privately-owned places, which is an important provision. Assembly locations are purposefully selected to reflect its goal (for instance, assembly against capital punishment at the Memorial to Victims of Political Repression), or to be within the sight and sound of the target audience (for instance, government policy-related assembly in front of the Parliament House), and a freedom to choose the assembly location is an integral part of the freedom to hold assemblies.
7. The draft law lists seven locations, five goals and one case of time limitation. Some of them can be reasonable, but some are vague and can be applied subjectively, while some are outright disproportionately wide blanket restrictions. They include:

Location restrictions

- **Border strip, also prison and its security strip:** special security zones not open to public access, unsuitable for demonstrations, too.
- **airports, railway stations and terminals:** critical infrastructure, and also an enclosed space with concentration of people where assemblies are banned for public safety reasons
- **Parliament House and its territory:** Parliament House as a work place of parliament members, the President and the Prime Minister is not openly accessible area, therefore, restricting access to the Parliament House for demonstrators is conceptually legitimate. But the territory of the Parliament House is a different concept. Until recently,⁵ the perimeters of the Parliament House territory was defined as "33 meters in the east and west directions, 80 meters in the south and north directions of the Parliament house", which is an area starting at the three flag poles next to the Sukhbaatar statue and extending beyond the park behind the Parliament House. Because

⁵ "Төрийн ордны нутаг дэвсгэрийн хэмжээ, зааг тогтоох тухай" 16 дугаар УИХ-ын 2001 оны тогтоол

of this regulation, assemblies were not allowed in front of the Parliament House. The Parliament decree number 37 from June 16, 2022 titled “Renewal of the size and borders of the territory of the Parliament House, and making some areas openly accessible to the public” limits the territory of the Parliament House by physical structures of the House itself and the attached ceremonial complex, effectively making the space in front of the Parliament House and the park behind it a public space.

- **healthcare organizations:** hospitals and other healthcare facilities are essentially publicly-accessible service places and total ban on assemblies in their proximity is a blanket restriction. Assemblies in the vicinity of healthcare organizations can be burdened by additional conditions aimed at maintaining health service provision, such as ban on blocking the entry and exits, , use of loud speakers, making noises after 10pm, etc.
- **critical national object, its protection strip:** 30 premises named in the Government decree # 281 form 2017 titled “A list of critical national objects placed under the protection of the police and the national army” belong here. Among them are Embassies, National Broadcast, facilities that produce or store important documents or data such as passport printing facility or data center, also infectious disease labs, power plants and urban water supply sources, etc. It is reasonable that assemblies are banned in these locations. However, inclusion of “provincial, capital city, soum, inter-soum, urban district courts and court houses” makes it impossible to hold an assembly related to court conduct or court decision within the sight and sound of the relevant court, which may render this provision as disproportionately wide. Instead of a blanket ban, specific conditions aimed at ensuring smooth court operation can be applied to assemblies in the vicinity of court houses, such as not using loud speakers while the court is in progress, not blocking entryways and exits, while safety of judges and other participants on the process should be handed to the law enforcement organization.
- **facilities under the special state protection:** They include, according to the Law on Special State Protection, Parliament House and its territory, offices, residences and cars of the Parliament Speaker, President and Prime Minister and, according to the Government decree #65 from 2012, offices of all Ministries, Persecutor’s office, Anti-Corruption Agency, Capital City Administration, national archives, total of 38 buildings and locations. Similarly with the court described above, the law needs to allow for assemblies related to functioning of or decisions by ministries, persecutors and the Anti-Corruption agency to take place in their vicinity with added conditions aimed at preventing interference with the regular functioning of these agencies and law enforcement providing protection to public employees.

Prohibited goals

Article 7.2 prohibits assemblies intended to promote war, discriminate or commit acts of sabotage, to call for the usurpation of state power by illegal means, or to cause disorder harmful to national security or public order. These are general concepts that can be interpreted in different ways, and in the absence of a clear-cut definition and criteria/ indicators, can be interpreted in different ways including ways that puts demonstrators at risk, and in a common sense, constitute criminal intent unrelated to the freedom of expression. These provisions must be removed from the law on the right to peaceful assembly.

Time restrictions

Article 8.6 prohibits assemblies at night. Article 88.1 of the *Labor Law* defines *night time* as starting at 10:00 pm local time and ending at 6:00 am the next morning. This time restriction effectively bans assemblies that carry on overnight and for consecutive days, and leaves the participants unprotected after 10:00 pm, and makes it possible to impose criminal or administrative offence charges as violators of this law. Although intended to preemptively manage the risk of nighttime public disorder and violence, this restriction abandons the presumption of peacefulness of assemblies and presumption in favor of holding assemblies, violates the rule of risk assessment-based proportionate intervention, and constitutes a blanket restriction. It is recommended that this Article of the draft

law is revised to remove the blanket ban on nighttime assemblies, and instead, introduce a case-based assessment of risk for violence and public disorder, and implement proportionate interventions.

Restrictions related to organizers and participants

Positively, the law allows for assemblies to be organized by individuals, legal entities, and organizations without legal persona, which enables unregistered civil society organizations, civic movements and active citizens to engage. Mongolian citizens can act as organizers as well as participants of assemblies. But foreign citizens and stateless persons cannot organize assemblies; they can only participate in assemblies organized in accordance with Mongolian laws and regulations. This provision may be in violation with the international conventions that guarantee the freedom of speech of immigrants and stateless persons. Additionally, it is unclear how the lawfulness of any given assembly can be determined, making this provision act as a pre-emptive prevention of assembly participation by foreign citizens and stateless persons.

Persons with mental health problem who are unable to fully comprehend the nature of his/her actions and their consequences can be prevented from organizing or participating in assemblies. Restrictions such as this one are difficult to implement as they are based on privacy-protected information and it is impossible to establish unless the individual chooses to disclose his/her condition. The assembly organizers are not liable for persons with mental health problem participating in the assemblies.

Special civil servants can be prevented from organizing or participating in assemblies, if prescribed in relevant laws. According to the Civil Service Law, Article 13.1, special civil servants are members of the Constitutional Court, judges, persecutors; secretary of the National Security Council; Heads and officers of the Bank of Mongolia, Financial Regulatory Commission, General Election Committee, National Human Rights Commission, General Judicial Council and Judicial Disciplinary Committee, national and local Audit, Anti-Corruption Agency as well as officers and staff of the Armed Forces, Border Patrol, emergency, intelligence, state special protection, police, case registration, investigation, court decision enforcement and forensic organizations. The fact that they serve in institutions of special functions is not a valid ground for denying their civic and human rights. It is recommended that the draft law is revised to allow the uniformed personnel to enjoy their right to assembly when off-duty and without using organizational logo, uniforms or other identifiers, and that their participation in assemblies should not be used as a ground for discrimination.

The draft law bans wearing face coverings while participating in assemblies. While face covering is intended to conceal the identity, concealing one's identity may be related to a criminal intention, or to a range of other, non-criminal intentions such as the fear of retribution for participating in assemblies, and even serve as an expressive method chosen by participants. Based on the presumption of non-violent proceeding of assemblies, it is recommended to refrain from associating face covering with criminal intention and keep the traditional policing methodology of identifying criminal intent through observing individual's behavior and allowing the police to request removal of face covering of specific participants only if an individual's behavior presents reasonable suspicion for criminal intention. The blanket ban on face covering should be removed from the draft law on freedom to hold peaceful assemblies.

Other restrictions

Assemblies are prohibited when a state of emergency or war is declared, disasters, hazardous events, or accidents has occurred concerning the entire country or a specific territory, until the cause is resolved. To ensure public safety, restricting assemblies for a specific period of time (until the cause is resolved), on the affected territory only is justified, provided that other territories and immediate follow-up time periods are unaffected. or until the situation is resolved, limited to the affected area.

III. Procedural regulations

8. The new draft law prescribes an assembly notification system as opposed to the *de facto* permit system currently in place. Assembly organizers will become able to hold an assembly upon delivering a notification to the local police. The current law requires that the assembly is held only after the local administration registers the assembly notification delivered by the organizers, while the local administration is not restricted in its power to deny registration. The proposed notification system is more enabling than the current permit system when the organizers have to wait for approval from the administration.
9. Assembly notification should be submitted to the Aimag Police Authority at least 48 hours prior to the event in provincial areas, and in the capital city, to the Capital City Police Authority at least 24 hours prior. However, the assembly notification will be considered as delivered upon handing it to the authorized staff member of the territorial police. The situation when the authorized police staff is not available to meet in person to receive the notification (on leave, business trip, sick leave, position vacancy, etc) is unregulated. Therefore, to avoid infringing the right to assembly simply due to unavailability of a specific public officer, it is recommended that the recipient of an assembly notification is the police organization (not a specific police staff member). Delivery of assembly notification can be treated as a regular written communication, and be handed to the police organization's unit in charge of general incoming correspondence; and a prompt delivery of received assembly notifications to a specific authorized staff member can be formalized through issuance of internal guidelines and procedures. Some countries even allow postal delivery of assembly notifications.
10. A different system of permits will apply for holding assemblies on the roadways and bridges, as well as at sites of historical and cultural monuments and their protective zones. Such assemblies need to apply for registration. A notification must be delivered to the territorial police at least 48 hours in advance and the police must respond within 1 working day upon receiving the notification whether or not the assembly has been registered. The law does not specify the grounds on which the police may refuse to register, or *de facto* grant permission, leaving a possibility to refuse the assembly, for example, on the grounds of obstructing the traffic flow of a road or a bridge.

A permit system is understood to help preserve and protect sites of historical and cultural heritage, however, the draft law does not specify that, nor does it define historical and cultural heritage. The Government decree #13 from 2020 lists 215 sites of *immovable* historical and cultural heritage, but the draft law does not make a reference to that decree, nor specify *immovable* heritage. Moreover, Article 10.4.2 of the draft law requires that the assembly participants refrain from damaging public property, historical and cultural heritage, property belonging to others, therefore, if this requirement is strictly enforced, there is no need for a special permit system because of the presence of a heritage artifact and assemblies in these areas may be treated as a regular assembly with a notification system in place.

Requirement to register assemblies that involve roadways and bridges is disproportionately restrictive. The advance of assemblies affecting roadway and bridges is an action intended to allow the police develop a plan for managing pedestrian and vehicle traffic, including rerouting and blocking. Intentional road blocking is in itself a form of protest used in some rallies.

IV. Police activities during assemblies

11. The draft law assigns the police a responsibility for ensuring the safety of the assembly organizers and participants, regardless of the presence or absence of a notification or an organizer. Thus, the police organization is assigned the dual responsibility of maintaining public safety and order, as well as protecting the protesters.
12. It is commendable that the draft law prohibits the police from taking actions aimed at interfering the assembly's ability to remain within the sight and sound of the target audience.

13. It is unclear what is meant by statement that “the police officers shall be informed about the participants of the assembly” in Article 11.4. If the police, using the provision, becomes able to stop and frisk search, check the documents, and temporarily detain the assembly participants for the purpose of “obtaining information”, this will lead to human right violations. This particular part of this Article needs to be revised and formulated as a specific activity of a police officer.

V. Forced dispersal

14. Assemblies organized in prohibited locations or for prohibited goals, or formation of a prohibited situation during a non-prohibited assembly are a subject to forced dispersal. The decision to forcibly disperse will be made by the head of the territorial police organization. In the section 6 of this analysis we presented our argument that some restricted locations can be managed without a blanket ban, while some of the prohibited goals are too general and wide-coverage and can be interpreted subjectively and applied in a way that puts the protesters at risk. It is necessary to revise the list of prohibited places and goals as they serve as a ground for the forced dispersal of assemblies so that they all comply with the international human right convention and recommendations by UN Human Rights Committee and the Venice Commission regarding the assembly rights.
15. Although a decision to forcibly disperse an assembly is an independent decision by the head of the police, he can take this decision only if the information and facts provided by the national security and law enforcement agencies confirm the presence of a prohibited situation or factors leading to this situation. What looks like an attempt to include multiple parties in the decision, those parties can qualify either a higher manager or a direct subordinate of the territorial police organization. Facts and information alone may not be sufficient for a decision, therefore, the draft law should seek to incorporate assembly-related risk assessment guidelines.
16. The draft law requires immediate notification of the National Human Rights Commission after the forcible dispersal of an assembly and although it is not clear who is responsible for sending the notification, the language of the Article implies that the head of the police organization who made the decision will also notify the National Human Right Commission.
17. Importantly, draft law specifies that violence, damage to the health and property of others committed by one person or a group of people during assembly is not a reason to forcibly disperse the entire assembly.

VI. Other issues

18. The draft law provides that interference with the mass media’s ability to transmit information to the public during assemblies is not allowed, and the work of journalists, human rights defenders, external observers, lawyers and advocates will be supported. However, it does not specify the responsible agent.
19. Violation of this law will incur criminal or administrative responsibility in accordance with the Criminal Code or the Law on Violations. There can lead to serious risks.

The Law on Violations contains a stand-alone Article 5.8 titled “Violations of Assembly Regulations” , which lists 6 types of violations, each of which is punishable with fines or imprisonment for a period of seven to thirty days in addition to compensation of damaged incurred. They are:

- for organizing assemblies in prohibited locations, without registering with the authorized organization, before the legal timeline after the delivery of notification arrived, and changing the goals of the assembly in the process turning it into a prohibited assembly,
- for purposefully interfering with the assembly which is organized in compliance with the law,
- for organizing illegal assemblies,
- for having someone else go on a hunger strike in public locations,

- for having an intoxicated person or a person with mental disability participate in an assembly,
- for exerting pressure or offering money in exchange for participating in an assembly,
- if an organizer or a participant has a weapon, toxic substances, explosives, орчин тойрон, any item or animal that poses danger to the environment, human life and health.

This provision effectively bans spontaneous assemblies, make it possible to charge assembly organizers if an intoxicated or mentally ill person joins an assembly. Any item can be deemed as possibly posing danger to the environment, human life or health, but this vague and uncertain idea serves as a ground for a fine or imprisonment. Moreover, the vaguely-termed “illegal assemblies” definition of which cannot be found in any laws has been introduced to serve as a ground for charging the assembly organizers.

We need an expert opinion on whether a fundamental human right such as assembly right can be subjected to the Law on Violations. This section of the Law on Violations need to be revised to harmonize with the current draft Law on the Freedom of Assembly or removed.

