

Comments on the draft Law on the Freedom of Assembly

Draft law from October 2024
By Open Society Forum

Introduction

This analysis is a review of the revised draft *Law on the Freedom of Demonstrations and Gatherings* circulated in October 2024 and is an updated version of our human right analysis of the initial draft law circulated in April 2024. Right to assemble to express opinions is a fundamental human right and a means of citizen participation in a democratic society.

People do not need any regulations to be able to assemble, 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 Special laws on protests/ assemblies are enacted to lay the grounds for and prescribe procedures of Government intervention in the exercise of a fundamental right to hold peaceful assembly in order to prevent and stop situations that “pose a threat to public order and where necessity would demand state intervention”.² Consequently, any law or regulation on the right of peaceful assembly is, in essence, not about how to exercise the right to protest, but about how the government intervenes in the exercise of this right.

In Mongolia, the freedom to hold peaceful assemblies is a Constitutional right. A separate *Law on Procedures to Hold Demonstrations and Gatherings* was adopted in 1994 in accordance with the Constitutional provision and is still in force today. This law has played “a historical role in shaping public expectation of full-scale enjoyment of their freedom of assemble peacefully and consolidating democratic principles” in the 30 years of its existence.³ However, growing need to introduce additional terms and concepts, add procedural guidelines related to protection mechanisms, clearly articulate grounds and procedures for limiting the right, 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 developed and now being presented for public discussion.

Our analysis (as its previous version) 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

Review 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 main goal of the draft law is to guarantee the enjoyment of the Constitutional

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

right to peaceful assemblies, and its other goal is to prescribe how government will intervene in the enjoyment of this right with the purpose of protecting public order and safety.

2. By defining assemblies as a means of expressing one's opinion and associating with others⁵, as well as an act of delivering one's opinion, ideas and demands to the public and the government⁶ the draft law recognizes assemblies as a form of free expression and public participation.
3. The draft law also recognizes - along with planned gatherings⁷, demonstrations,⁸ hunger strikes⁹ and sit-ins¹⁰, and other traditional forms of assemblies - spontaneous gatherings¹¹ in 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.¹² 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 the *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. Another positive step is recognition of simultaneous assemblies¹³ 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. It is commendable that the draft law provides a definition of a non-peaceful assembly¹⁴, and also draws a clear line by stating that civic disobedience is not an act of violence¹⁵. However, the definition of non-peaceful assemblies are too general and can be applied to an assumed situation and contains a risk of overlapping with the definitions of civil disobedience to some degree. This highly important concept of an assembly that no longer peaceful needs to be elaborated by adding specific tests and criteria to make its definition unambiguous and undisputable.
6. The draft law prohibits adoption and enforcement of administrative normative acts aimed at limiting the right to organize and participate in peaceful protests¹⁶, as well as prohibits intervening in¹⁷ and forcefully dispersing lawful assemblies.¹⁸ 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.
7. The draft law requires that any limitation of the right to peaceful assembly should comply with the international human right standards¹⁹, which opens up opportunities for human rights organizations, citizens and independent researchers to deliver rights-based proposals to the

⁵ Article 4.1

⁶ Articles 5.1 and 5.2

⁷ Article 5.2

⁸ Article 5.3

⁹ Article 5.4

¹⁰ Article 5.5

¹¹ Article 5.8

¹² Article 11.2

¹³ Article 6.4

¹⁴ Article 5.6

¹⁵ Article 5.7

¹⁶ Article 6.5

¹⁷ Articles 6.1 and 6.3

¹⁸ Article 6.3

¹⁹ Article 6.7

draft law, as well as demand implementation practice which is compliant with the international human rights standards.

II. Specific issues

8. Assemblies are allowed in public and also privately-owned places²⁰, 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 right to hold assemblies.
9. 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 interpreted and applied subjectively, while some are outright disproportionately wide blanket restrictions. They include:

Location restrictions

- **Border strip²¹**, also **prison and its security strip²²**: special security zones not open to public access and may be unsuitable for assemblies.
- **airports, railway stations and terminals²³**: critical infrastructure, and also an enclosed space with concentration of people where assemblies are banned for public safety reasons
- **Parliament House and its territory²⁴**: as inside the Parliament House is not open access area, it might be conceptually legitimate to restrict peaceful assemblies inside it. But the territory of the Parliament House is a different concept. Until recently, 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 a rather big area starting at the three flag poles next to the Sukhbaatar statue and extending beyond the park behind the Parliament House.²⁵ Because of this regulation, assemblies in front of the Parliament House were banned and subject to forcible dispersal. Only very recently, on June 16, 2022, the Parliament Decree number 37 titled “Renewal of the size and borders of the territory of the Parliament House, and making some areas openly accessible to the public” was issued, that limits the territory of the Parliament House by the physical structure 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 organizations²⁶** are essentially publicly-accessible service places and a blanket ban of assemblies in their proximity is not legitimate. 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 strip²⁷**: 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

²⁰ Article 5.1

²¹ Article 7.1.1

²² Article 7.1.5

²³ Article 7.1.2

²⁴ Article 7.1.4

²⁵ Government Decree number 16 from 2001 *On Establishing size and borders of the territory of the Parliament House*

²⁶ Article 7.1.3

²⁷ Article 7.1.6

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 protection²⁸**: 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 should 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.

Time restrictions

In its previous version, the draft law’s Article 8.6 banned night-time assemblies, and the referenced *defined night-time* in its Article 88.1 as a timeframe between 10:00 pm local time and 6 am next morning. This time restriction effectively prevents assemblies from continuing overnight and for several consecutive days, and leaves the participants unprotected after 10:00 pm, making it possible to apply Criminal Code or Law on Offences against participants for violating this law or forcibly dispersing the assembly. It is commendable that the current version of the draft law contains a revised formulation in its Article 7.8, which reads “In cases other than when a demonstration/ gathering has not stopped on its own and has carried on, it is prohibited to organize demonstrations and gathering during the night-time”. Although more enabling than the previous version, this revised provision may obstruct spontaneous gatherings usually organized as an immediate response to an active event provided for in the Article 5.8 of the draft law. It is recommended that instead of a blanket ban on nighttime assemblies, the draft law should adopt a case-based assessment of risk for violence and public disorder and implement proportionate interventions in the context of each assembly.

Prohibited goals

Article 7.5 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 vaguely defined general concepts that, in the absence of a clear-cut definition and criteria/ indicators, can be interpreted and applied in a range of different ways, including those that put 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.

Restrictions related to organizers and participants

Positively, the law allows for assemblies to be organized by individuals, legal entities, and organizations without legal persona²⁹, which is enabling for unregistered civil society organizations, civic movements and active citizens.

²⁸ Article 7.1.7

²⁹ Article 7.2

Mongolian citizens can act as organizers as well as participants of assemblies.³⁰ But foreign citizens and stateless persons cannot organize assemblies; they can only participate in assemblies organized in accordance with Mongolian laws and regulations.³¹ 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 an 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.³² 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. On a positive note, assembly organizers are not liable for persons with mental health problem participating in the assemblies. However, Law on Offences in its Article 5.8 states that “having a person who has consumed alcohol or is mentally ill to participate in an assembly” is a punishable offence that carries a penalty of a fine or a imprisonment for 7 to 30 days.

Special civil servants can be prevented from organizing or participating in assemblies, if prescribed in relevant laws.³³ According to the Civil Service Law, Article 13.1, special civil servant 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.

It is a welcome change that the ban on wearing face coverings during assemblies has been eliminated in this version of the draft law.

Other restrictions

When a state of emergency or war is declared, disasters, hazardous events, or accidents has occurred concerning the entire country or a specific territory, the draft law allows for a ban on assemblies on the affected territory until the cause is resolved.³⁴ 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. Defining time limits of a permissible ban (until the cause is resolved) and its territorial limits (on the affected territory) is welcome improvement from the previous version of the draft law, and an important addition is introduced in the following article which specifies that a ban on assemblies does not apply to assemblies organized with the intention to protest causes for declaring emergency or war or to demand elimination of consequences of a disaster.³⁵

³⁰ Article 9.1

³¹ Article 5.9

³² Article 8.1

³³ Article 8.1

³⁴ Article 7.3

³⁵ Article 7.4

III. Procedural regulations

10. It is commendable that the draft law intends to abolish the current de facto permit system with an assembly notification system. With the assembly organizers becoming able to hold an assembly upon delivering an assembly notification to the local police 72 hours prior in provinces, and 48 hours prior in the capital city, without having to wait for a response³⁶ is more enabling to the enjoyment of the assembly rights.
11. Moreover, the revised version of the draft law provides that no notification is required for assemblies with less than 30 participants, which is an enabling provision for better enjoyment of the rights.³⁷
12. However, the assembly notification will be considered as delivered upon handing it to the authorize staff member of the territorial police.³⁸ In case the authorized staff member is a particular officer and s/he is not available to meet in person to receive the notification (on leave, business trip, sick leave, position vacancy, etc) it is unclear how to proceed. Therefore, to avoid infringing the right to assembly simply due to unavailability of a specific officer, it is recommended that recipient of an assembly notification is the police organization (not a specific 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.
13. A different system of permits will apply for holding assemblies on the roadways.³⁹ Such assemblies need to apply for a registration. A notification must be delivered to the territorial police at least 72 hours in advance and the police must respond within 1 working day upon receiving the notification whether or not the assembly has been registered.⁴⁰ Requiring permission to hold an assembly on the roadway is disproportionate, and risks violating a right to assemble. Police which received a notification of an assembly that may affect traffic flow can plan and implement traffic management such as notifying drivers, temporarily blocking the road and rerouting the traffic, etc, and thus, act in support of holding an assembly. Some assemblies and rallied even intentionally block the vehicular flow.
14. Moreover, vagueness of this provision increases the risk of violating the right as it can be interpreted and applied in a manner that is not enabling to the assembly participants. 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 simply obstructing the traffic flow. Moreover, if an assembly that did not plan to enter the roadway happens to cross into the roadway in the process, it may be interpreted as an offence is punishable with fines or imprisonment for a period of seven to thirty days according to the Law on Offences, article 5.8.

IV. Police activities during assemblies

15. 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 draft law clearly spells out a dual responsibility of the police to protect the assembly participants and to protect the public order and safety.⁴¹

³⁶ Article 9.2

³⁷ Article 9.3

³⁸ Article 9.6

³⁹ Article 8.3

⁴⁰ Articles 8.4 and 8.5

⁴¹ Article 11.1

16. 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.⁴²
17. 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

18. 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.⁴³ 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.
19. Although a decision to forcibly disperse an assembly is an independent decision by the head of the police, the draft law provides that the grounds for this decision is the information and facts provided by the national security and law enforcement agencies.⁴⁴ What looks like an attempt to include multiple parties in the decision, those parties can qualify either a superior or a direct subordinate of the 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.
20. The draft law requires immediate notification of the National Human Rights Commission after the decision of a forced dispersal of an assembly was made.⁴⁵ This will allow the National Human Right Commission to monitor the initiation and the entire process of forced dispersal.
21. The new draft law which requires that the general public is notified immediately after the forced dispersal activities are implemented⁴⁶, which is an important transparency action.
22. It is prohibited to obstruct the monitoring, observation, public information and legal advising activities by human rights defenders and independent observers during assemblies⁴⁷, which means no hindrances will be faced when recording the assemblies, interviewing the assembly participants, using the internet and mobile networks, and otherwise documenting the assembly.
23. Statement in the draft law 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 assembly⁴⁸ is an extremely important concept. This provision will serve as guarantee that no actions by a few people intending to disrupt the assembly has an effect on genuine assembly participants.

⁴² Article 11.3

⁴³ Articles 12.1, 12.2, 12.3

⁴⁴ Article 12.2

⁴⁵ Article 12.1

⁴⁶ Article 12.12

⁴⁷ Article 13.5

⁴⁸ Article 12.4

VI. Other issues

24. The draft law describes the redress procedures relevant to challenge the refusal to register an assembly. When the police refused to register an assembly, its organizer/s can file a complaint with the higher standing police organization within 3 working days upon receiving the refusal and the higher police organization has 3 working days to deliver its decision on the case. If that decision is unsatisfactory, the organizer has another three working days to file a court complaint.⁴⁹
25. 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.
26. Violation of this law will incur criminal or administrative responsibility in accordance with the Criminal Code or the Law on Offences. There can lead to serious risks.

Law on Offences contains a stand-alone Article 5.8 titled "Violations of Assembly Regulations", which 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 include, for example, the above-mentioned failure to register an assembly with the authorized organization and having an intoxicated person or a person with mentally disability participate in an assembly. There is also a term "illegal assemblies" which cannot be found in any law has been used to serve as a ground for charging the assembly organizers. Also, "carrying items or animals that pose danger to the environment, human life or health" is a very broad and vague definition applicable practically to any item. This section of the Law on Offences needs to be harmonized with this draft law.

It is extremely concerning that the draft law prescribes criminal charges for violating this law. This is especially concerning when the draft law contains some vague and controversial provisions as well as provisions that can be misused or abused to harm the assembly participants. International human rights organizations, including UN and the Venice Commission, are against applying the Criminal Code in the context of peaceful assemblies. As this may create a situation when people avoid exercising their assembly rights out of fear of criminal punishment, the section of the draft law allowing the use of Criminal Code for violating the Assembly Law needs to be removed.

⁴⁹ Articles 13.1-13.4