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# **RELIGIOUS FREEDOM (COLLECTION)**

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Mahoney Liotta  
LLP

# **Religious Freedom (Collection)**

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Constitutional Law Institute, National University of Mongolia  
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*Religious Freedom (Collection)*

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# **Elizabeth A. Clark: “Analysis of Law of Mongolia on Relationship between the State and Religious Organizations (1993) together with the Draft Law on Religious Freedom (2018)”<sup>1</sup>**

## **I. Executive Summary**

### **Focus of Analysis**

This Review analyzes the 1993 Law of Mongolia on Relationship between the State and Religious Organizations [hereinafter “1993 Law”] and assesses how this would be affected by the Draft Law on Religious Freedom of 2018 [hereinafter “2018 Draft Law”]. Because the Review is based on English versions of the Draft Law, the author notes some problems may be dealt with in other parts of the Mongolian system, or may reflect misunderstandings reflecting translation problems. I trust it will be clear when a mere problem of translation is involved if the difficulty identified does not exist in the original Mongolian version.

### **Applicable Standards**

As will become clear in the detailed analysis, I assess the Law in light of accepted international standards, as articulated in the Universal Declaration of Human Rights (“UDHR”), the International Covenant on Civil and Political Rights (“ICCPR”), and the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. Mongolia is a signatory of the ICCPR and is a member of the Organization for Security and Cooperation in Europe (OSCE/ODIHR). Article 3 of the 1993 Law recognizes the individual right to profess or not to profess any religion, recognizes the freedom of thought, speech, and convictions and bars compulsory imposition of religion. Because of their strong persuasive authority, this analysis also takes into account pronouncements of the U.N. Human Rights Committee and the U.N. Special Rapporteur on Freedom of Religion or Belief and interpretations of relevant international standards that have emerged from the Council of Europe (notably,

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<sup>1</sup> Prepared November 2021 by Elizabeth A. Clark, Associate Director of the International Center for Law and Religion Studies at Brigham Young University.



in decisions of the European Court of Human Rights and of the Venice Commission).

### **Primary Areas of Concern in 1993 Law**

A primary concern in 1993 Law is the provisions concerning registration. Registration is mandatory and not simple and transparent. Multiple local registrations are required to be able to exercise religious group rights in different localities. The Law is not clear as to the registering bodies, what happens if annual notice is not provided, and contains no lighter sanctions beyond suspending or terminating registration. Provisions are not made for registration of religious or religiously affiliated humanitarian organizations.

The 1993 Law places significant and unnecessary burdens on the right to freedom of expression and freedom of religion or belief in limiting proselyting. Blanket bans on introduction of foreign religions in an organized way and excessively broad provisions that attempt to prevent coercive or fraudulent proselyting permit arbitrary enforcement and infringement on protected speech and actions.

The 1993 Law imposes no outright restrictions on religious literature and in fact recognizes in Article 7.2 the right of religious organizations to “edit religious scriptures.” While this provision codifies an important element of freedom of religion or belief, it falls short of recognizing the associated rights of producing and disseminating religious literature that are hallmarks of the right to freedom of opinion and expression. This silence is concerning, particularly when coupled with the assertion in Article 4.4 that “activities of the monastery may be regulated...and if necessary, suspended...” in cases “when national security of Mongolia may be prejudiced.” It permits vague legal grounds upon which to penalize attempts to disseminate religious literature.

The 1993 Law enacts a number of unnecessary restrictions on the internal autonomy of religious organizations. For example, it permits the state to control “the absolute number of clergy and the location of monasteries.” The Law also imposes restrictions on internal worship practices and rules based on the state’s view of what is traditional. This includes a requirement that religious organizations “shall strictly observe its internal rule reflecting the traditional practices of the respective religion and a bar against “activity inhuman or against the tradition and the custom of Mongolian people.”

Finally, the 1993 Law permits suspension of religious activity on excessively vague grounds of potential threats to the national security of Mongolia. While states legitimately may regulate imminent threats to public order, vague national security grounds are impermissible basis for restrictions on freedom of religion or belief.

### **Positive Aspects of Draft Law and Remaining Concerns**

The Draft Law clarifies some aspects of registration and reaffirms the right to freedom of religion or belief is not dependent on legal entity status or state approval. It introduces the concept of an unregistered religious group, but does

not establish guidelines on when such a group comes into being and must give notice. Best practice would be to not require mandatory notice for unregistered individual and group activities. The Draft Law also continues the burdensome practice of requiring separate local registrations for religious organizations to be able to function in each locality. The requirement of 10 local organizations in order to create a centralized religious organization is unnecessarily burdensome. The Draft Law also contains other restrictions on registration (requirement of names of members, bars on receiving funding outside of members, etc.) and imposes an unnecessary re-registration requirement. The Draft Law should also clarify registration requirements (e.g., address) and that there are less extreme sanctions for failure to comply with administrative requirements than suspension of registration. The Draft Law does not address the limitations of the 1993 Law in terms of registration of humanitarian organizations and associations of religious organizations.

The 2018 Draft Law also extends and expands the restrictions in the 1993 Law on proselyting and sharing of religious beliefs. It helpfully removes the categorical ban on teaching “foreign” religions but introduces new concerns in barring sharing of beliefs by unregistered religious groups, imposing a long list of substantive restrictions on religious practice and sharing of beliefs, requiring formal authorization by registered churches of those engaged in proselyting, and restricting the location of proselyting. Many of these provisions are overbroad and vague, which open the way for arbitrary enforcement and unduly burdensome restrictions on freedom of religion or belief.

The Draft Law also ramps up the restrictions on production and distribution of religious materials. Only centralized religious organizations are permitted to publish, produce, export, and importing religious books and materials for public use and establishing media organizations. These are unnecessary and disproportionate limitations on freedom of expression and freedom of religion or belief.

The Draft Law expands interferences with a religious organization’s right to internal autonomy, or the ability to carry out core religious functions and determine religious beliefs free from state interference. For example, the Draft Law imposes an extensive formal structure on religious organizations, including the creation of a supervisory body and an executive body. Religious organizational structures are often themselves an aspect of religious beliefs and should not be the subject of extensive regulation. Other restrictions on internal autonomy include restrictions on the name a religious organization may choose, when it must use its funds, what sensitive financial information it must make public, the ability of sister organizations to help fund buildings,

The Draft Law retains the 1993 Law’s vague reference to limiting religious activity based on national security and introduces many more vague terms that restrict which organizations may register and how organizations may proselyte. Unclear division of responsibilities among government branches is not addressed, and the law should more clearly bar state discrimination against groups based on their religion or beliefs. The Draft Law should also clarify how the law will be enforced -- which violations of the law will be criminal and which administrative.

## II. Analysis of Issues in the Law

### A. The Right to Have or Adopt a Religion or Belief

One of the most basic rights related to freedom of religion or belief is an individual's right "to have or adopt a religion or belief of his choice."<sup>2</sup> Article 18 of the Universal Declaration of Human Rights explains that "everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."<sup>3</sup> Unlike *manifestations* of religion, which may be "subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others,"<sup>4</sup> beliefs themselves may not be regulated by the state.

The U.N. Human Rights Committee has stated that Article 18 of the ICCPR "does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice. These freedoms are protected unconditionally . . ."<sup>5</sup>

Even manifestations of religion may not be limited by the state unless they are prescribed by law, are based on a limited set of legitimating grounds, and are *necessary* to further these objectives. The Draft Law and 1993 Law limit the core right to have or adopt a religious belief by imposing mandatory registration before individuals or groups may engage in religious activity and by enacting burdensome and unnecessary registration provisions.

#### a. Imposition of Unnecessary Requirements for Registration

##### 1. 1993 Law

Article 6 and 9 of the 1993 Law create a possibility for legal entity status for religious organizations, which is a core aspect of the international right to freedom of religion or belief to have or adopt a religion or belief. Unfortunately, the provisions on registration in the 1993 Law are insufficiently precise and have in practice led to confusion and practical barriers to the exercise of the right of freedom of religion or belief. Registration procedures need to clearly indicate which state body will register religious organizations and limit any confusion about which state bodies are responsible for relationships with religious organizations. Article 5 of the 1993 Law, which designates various responsibilities for

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<sup>2</sup> ICCPR, Art. 18.

<sup>3</sup> UDHR Art. 18.

<sup>4</sup> ICCPR Art. 18.3 ("Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others").

<sup>5</sup> General Comment No. 22(48), para. 3.

relationships between state and religious organizations, is similarly unclear, at least in the English translation.

Best international practices keep the registration process simple and transparent. Registering bodies are typically either the Ministry of Justice or a Committee on Religious Affairs. Registration should not be burdensome and should not require multiple permissions from various government bodies. Registration should either be done by a national body or by a single local body in each region. If organizations register locally, the registration should be valid in other localities. Restricting the ability to practice one's belief geographically within a country based on multiple separate local registrations is overly burdensome and not necessary in a democratic society.<sup>6</sup>

These requirements of registration or licensing to engage in religious practices significantly violate religious freedom.

As the U.N. Special Rapporteur on Freedom of Religion or Belief stated:

Freedom of religion or belief is a right held by all human beings because of their inherent dignity. According to article 18, paragraph 1 of the International Covenant on Civil and Political Rights this includes the freedom, 'either individually or in community with others and in public or private, to manifest [their] religion or belief in worship, observance, practice and teaching.' The possibility of engaging in various forms of community activities thus clearly falls within the scope of freedom of religion or belief. Thus, registration should not be compulsory, i.e., it should not be a precondition for practicing one's religion, but only for the acquisition of a legal personality status.<sup>7</sup>

The European Court of Human Rights, in interpreting Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("European Convention"),<sup>8</sup> which parallels Article 18 of the ICCPR, held that a state mandate to register all religious activity "would amount to the exclusion of minority religious beliefs which are not formally registered with the State and, consequently, would amount to admitting that a State can dictate what a person must believe. The Court cannot agree with such an approach and considers that the limitation on the right to freedom of religion [at issue in the case] constituted an interference which did not correspond to a pressing social need and was therefore not necessary in a democratic society."<sup>9</sup>

The OSCE/ODIHR Guidelines on the Legal Personality of Religious or Belief Communities provides useful guidance on the question of mandatory registration: "State permission may not be made a condition for the exercise of the freedom of religion or belief. The freedom of religion or belief, whether manifested alone or in community with others, in public or in private, cannot be made subject to prior registration or other similar procedures, since it belongs to human beings and communities as rights holders and does not depend on official authorization. This

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<sup>6</sup> See Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, A/HRC/19/60 (22 Dec 2011), para. 44.

<sup>7</sup> 2011 Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, para. 41.

<sup>8</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature by the Council of Europe on 4 Nov. 1950, entered into force 3 September 1953 [hereinafter "European Convention"].

<sup>9</sup> *Masaev v. Moldova*, No. 6303/05 E.Ct.H.R. (12 May 2009), para. 26.

also means that . . . the legal prohibition and sanctioning of unregistered activities is incompatible with international standards.”<sup>10</sup>

I am aware of no country in Western Europe or North or South America, with the exception of Cuba, which imposes mandatory registration requirements. Even the restrictive Russian law, which had several provisions struck down by the Russian Constitutional Court and the European Court of Human Rights, does not require religious groups to register.<sup>11</sup> Other countries have also rejected this approach: in 2000 Bulgarian legislation dropped mandatory registration after receiving a negative review from the Council of Europe. The *Guidelines on Legal Personality of Religious or Belief Communities*, promulgated by the OSCE/ODIHR and the Venice Commission of the Council of Europe, which summarizes international standards and best practices, clearly confirms this point.<sup>12</sup>

Article 9.3 of the 1993 Law requires the religious organization’s address as part of the charter. While it is reasonable to require a way to reach the organizers of a religious organization, the law should indicate that a physical address owned or leased by the religious organization is not required. Requiring rental or ownership of a building at a physical address would discriminate against smaller and newer groups as well as traditional religions and others that do not worship in buildings. The OSCE Guidelines, for example, explain that “[a]ny procedure that provides religious or belief communities with access to legal personality status should not set burdensome requirements. Examples of burdensome requirements that are not justified under international law include, but are not limited to, the following: . . . that the religious organization has an approved legal address . . .”<sup>13</sup>

Article 10 provides for suspension of the activities of a religious organization for violation of law. The provision, however, overly burdens the rights to collective exercise of freedom of religion or belief. It permits suspension for any violation of law and does not have intermediate steps, such as notice and a time to cure. The OSCE Guidelines state:

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<sup>10</sup> OSCE/ODIHR, *Guidelines on the Legal Personality of Religious or Belief Communities* (2014), at 13; see also *Guidelines for Review of Legislation Pertaining to Religion or Belief*, prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief in Consultation with the European Commission for Democracy through Law (Venice Commission), adopted by the Venice Commission (Venice, 18-19 June 2004) and welcomed by the OSCE Parliamentary Assembly (Edinburgh, 5-9 July 2004)[hereinafter “2004 OSCE Guidelines”], 12. (“OSCE commitments have long recognized the importance of the right to acquire and maintain legal personality. Because some religious groups object in principle to State chartering requirements, a State should not impose sanctions or limitations on religious groups that elect not to register”).

<sup>11</sup> Federal law number 125-FZ on the freedom of conscience and religious associations (1997) (Russia); *Kimlya v. Russia*, Nos. 76836/01 and 32782/03, Eur. Ct. HR (1 Oct 2009); Constitutional Court Decision of April 13, 2000 [Russia], discussing an alleged violation of constitutional rights and freedoms by Articles 8.3, 8.4, 8.5, 9, 13, 27.3 and 27.4 of the Federal Law “On Freedom of Conscience and Religious Associations, No. 46-O, Institute of Religion and Law, “Religious Associations: Freedom of Conscience and Religion; Normative Acts and Judicial Decisions,” Moscow, Jurisprudence, 2001, at 247.

<sup>12</sup> Office of Democratic Institutions and Human Rights and the Venice Commission of the Council of Europe, *Guidelines on the Legal Personality of Religion or Belief Communities* (2014), paras. 10, 16.

<sup>13</sup> Office of Democratic Institutions and Human Rights and the Venice Commission of the Council of Europe, *Guidelines on the Legal Personality of Religion or Belief Communities* (2014), para. 25.

Considering the wide-ranging and significant consequences that withdrawing the legal personality status of a religious or belief organization will have on its status, funding and activities, any decision to do so should be a matter of last resort. In case of grave and repeated violations endangering public order, such measures may be appropriate, if no other sanctions can be applied effectively, but only when all the conditions described in Part I of these guidelines are fulfilled. Otherwise the principles of proportionality and subsidiarity as a rule would be violated. In order to be able to comply with these principles, legislation should contain a range of various lighter sanctions, such as a warning, a fine or withdrawal of tax benefits, which – depending on the seriousness of the offence – should be applied before the withdrawal of legal personality is contemplated.<sup>14</sup>

The 1993 Law should contain lighter sanctions than just removal of legal entity status. These could include permitting the organization to receive warning and time to cure violations without immediately facing suspension.

The 1993 Law also fails to provide for requirements of regular notice of the continued existence of an organization. If such notice is required, failure to submit notice should not be cause for immediate deregistration of religious entities. As indicated in the OSCE Guidelines quoted above, withdrawing legal entity status should be a last resort, not a routine consequence for failure to submit notice of continued activity. Time should be given to cure failure to give notice.

Provision also needs to be made that allows for the registration of religiously affiliated humanitarian organizations, either as subsidiary of a religious organization or as a non-profit organization. The law should also permit associations comprised of religious organizations to register as well.

## **2. 2018 Draft Law**

Article 7 of the Draft Law introduces the concept of unregistered religious groups. This is a positive step inasmuch as it reaffirms the right to freedom of religion or belief is not dependent on legal entity status or state approval. Best practice internationally, however, is not to require state notice for unregistered groups. The Draft Law also fails to state how many members a group must have. Is a group formed when two citizens meet together to discuss religion or engage in religious activity? This seems unnecessarily burdensome on the right to freedom of religion or belief and freedom of speech and the ambiguity of the law opens the way for arbitrary or discriminatory enforcement.

In any case, notice about the group should not be required to include names and addresses of all members, as this raises fears of reprisals or harassment. The U.N. Special Rapporteur has described that “the requirement that the registration application be signed by all members of the religious organization and should contain their full names, dates of birth and places of residence” is a form of obstruction of freedom of religion or belief.<sup>15</sup> The report explains that “some members may legitimately wish to keep their religious affiliation confidential and

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<sup>14</sup> Office of Democratic Institutions and Human Rights and the Venice Commission of the Council of Europe, *Guidelines on the Legal Personality of Religion or Belief Communities* (2014), para. 33.

<sup>15</sup> Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, A/HRC/19/60 (22 Dec 2011), para. 44.

those who were not included in the registration application might subsequently face difficulties when taking part in religious activities of their fellow believers.”<sup>16</sup>

Article 7.3 also bans groups from receiving donations, support and assistance from sources outside of its members. Many religious groups have links to sister organizations internationally. Limiting the ability of such organizations to give and receive financial support from abroad where such support assists with legitimate religious activity unnecessarily weakens the Mongolian organizations and in the long run, deprives Mongolia as a whole of revenue that could benefit its citizens and influence elsewhere. Regulating this type of manifestation of religion is permissible only where “pressing social needs,” such as preventing terrorist threats to public safety or public order are involved. But where that is the concern, much more narrowly drafted legislation is possible. In general, however, “the preferable approach is to allow associations to raise funds provided that they do not violate other important policies.”<sup>17</sup> It is difficult to see why it is “necessary in a democratic society” to prevent Jews in Israel or the state of Israel, for example, from funding restoration of a synagogue in Mongolia, assuming they follow normal laws on international fund transfers. OSCE norms affirm the importance of preserving religious organizations’ ability to affiliate with and maintain contacts with international co-religionists and the right of organizations to solicit and receive donations.<sup>18</sup>

In addition, OSCE norms affirm the right of national minorities to “establish and maintain their own education, cultural, and religious institutions, organizations or associations, which can seek voluntary financial and other contributions” and their right “to establish and maintain unimpeded contacts . . . across frontiers with citizens of other States with whom they share a common ethnic or national origin, cultural heritage or religious beliefs.” Barring international fund transfers for religious groups would significantly impede the ability of religious minorities to establish institutions and maintain contacts with their co-believers abroad. The broad consensus of practice in democratic states is to permit fund transfers for religious groups into their country on the same basis as for other groups. Limiting transfers for just religious groups would be discriminatory and unnecessary in a democratic society.

Article 7.9 bans groups promoting religion or carrying out any religious ceremonies while conducting charitable activities. These are unduly burdensome.

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<sup>16</sup> Ibid.

<sup>17</sup> Ibid. See also Concluding Document of the Vienna Meeting of Representatives of the Participating States of the Conference on Security and Co-operation in Europe (1989) principle 16.4 (states will respect the right of religious communities to “solicit and receive voluntary financial and other contributions”); Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, proclaimed by U.N. General Assembly resolution 36/55 (25 Nov. 1981) 6(f) (the right to freedom of religion includes the freedom “[t]o solicit and receive voluntary financial and other contributions from individuals and institutions.”).

<sup>18</sup> Concluding Document of the Vienna Meeting of Representatives of the Participating States of the Conference on Security and Co-operation in Europe (1989) para. 32; First Act of the Conference on Security and Co-operation in Europe (Helsinki, 1975) chapter 1(d); Concluding Document of the Vienna Meeting of Representatives of the Participating States of the Conference on Security and Co-operation in Europe (1989) principle 16.4 (states will respect the right of religious communities to “solicit and receive voluntary financial and other contributions”); Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, proclaimed by U.N. General Assembly resolution 36/55 (25 Nov. 1981) 6(f) (the right to freedom of religion includes the freedom “[t]o solicit and receive voluntary financial and other contributions from individuals and institutions.”).

It is best practice for charitable arms of religious entities to not engage in religious persuasion, but it may be hard in practice for many religious groups to separate charitable activities entirely from the religious activities that motivate them, particularly in the case of unregistered groups, which will likely be predominantly very small. This provision would bar groups from having prayer or favorably referring to their beliefs while carrying out charitable activities, a disproportional bar on the manifestation of religion.

Articles 7.9 and 7.3 understandably attempt to address the problems of fraud, coercion, or funding by violent extremist organizations. However, best practices internationally address these concerns directly through neutral legal provisions on fraud, coercion, and limitations on organizations engaged in international terrorism.<sup>19</sup>

The provisions in Article 8 for registration of religious organizations are helpful in bringing additional clarity to the registration process. Article 8.7 (together with 11.1), however, retain the same problem as the 1993 Law in requiring that local religious organizations only operate in the territory in which they registered. As mentioned above, this imposes mandatory registration prior to engaging in religious activities, which violates key international norms protecting the right of freedom of religion or belief.

Article 8.4 imposes the requirement of 10 local religious organizations unifying to form a centralized religious organization. This is unnecessarily burdensome. The U.N. Special Rapporteur for Freedom of Religion or Belief has criticized the situation where “some States seem to require in practice not only registration at the national level, but also a separate registration of local branches of religious or belief communities, which in turn leaves local authorities with wide discretionary powers for approving or rejecting the local registration applications.”<sup>20</sup> As mentioned above in the discussion of the 1993 Law, best practice is to either have a unified national registration provision or to permit groups to obtain registration in one province and still engage in religious activity throughout the nation.

The Draft Law also requires a burdensome mandatory re-registration. Article 44.1 states that “within one year after this law takes effect, religious organizations shall obtain permission according to Article 11 of this law and shall be registered anew to the state registration.” Re-registration of currently registered entities is unnecessary and disproportionately burdensome. The OSCE Guidelines explain, “Provisions that operate retroactively or that fail to protect vested interests (for example, by requiring re-registration of religious entities under new criteria) should be questioned.”<sup>21</sup>

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<sup>19</sup> See, e.g., Guidelines for Review of Legislation Pertaining to Religion or Belief, prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief in Consultation with the European Commission for Democracy Through Law (Venice Commission), adopted by the Venice Commission (Venice, 18-19 June 2004), welcomed by the OSCE Parliamentary Assembly (Edinburgh, 5-9 July 2004), 20; see also *Kokkinakis v. Greece*, No. 3/1992/348/421, Eur. Ct. HR (19 April 1993), Para. 17.

<sup>20</sup> Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, A/HRC/19/60 (22 Dec 2011), para. 44.

<sup>21</sup> OSCE/ODIHR, Guidelines on the Legal Personality of Religious or Belief Communities (2014), at 17.



## **Registration Requirements – Recommendations for 2018 Draft Law**

- Clarify that unregistered religious activity is permitted.
- Eliminate the requirement in Article 7 for groups to provide notice before engaging in religious activity, or at least:
  - Clarify how many members are needed before notice is required.
  - If notice is required, eliminate the requirement for a list of all members and their addresses.
  - Eliminate Article 7.3's ban on groups receiving donations, support and assistance from outside of their members
  - Eliminate Article 7.9's bans on groups promoting religion or carrying out any religious ceremonies while conducting charitable activities.
- Further simplify and clarify registration procedures. Best practice would be to eliminate the requirement that centralized religious organizations need prior registrations as local religious organizations. At the very least, the required number of prior registrations as local religious organizations should be reduced, ideally to two.
- Clarify that religious activity is not limited to the address provided in registration and that rental or ownership of a physical location is not required for registration.
- Clarify if a notice is required of continued activity of religious organizations. This should be clear that it is not requiring periodic re-registration. Notice should be simple, and the law should indicate that failure to submit notice does not result in immediate removal of legal entity status or suspension of activities.
- Add lighter sanctions than the removal of legal entity status for other non-criminal violations and the opportunity for organizations to have time to cure administrative violations.
- Drop the requirement for re-registration in Article 44.
- Provision needs to be made for registration of religiously affiliated humanitarian and charitable organizations, either as subsidiaries or affiliates of religious organizations or as non-profit organizations.
- The law should also permit associations comprised of religious organizations to register as well.

## **B. Religious Expression**

### **a. Restrictions on Sharing of Religious Beliefs**

#### **1. 1993 Law**

The 1993 Law places significant restrictions on the sharing of religious beliefs. Article 4.7 states that "it is prohibited to introduce foreign religion in an organized way to Mongolia." Article 7.7 states that "The monastery and clergy of any religion

are forbidden to force and insist to influence financially, misinform, prejudice the health and morale, and to disorient non-believers of the respective religion.” While coercive or fraudulent proselytizing may be barred under international law, the breadth and vagueness of these provisions permit arbitrary enforcement and infringement on protected speech and actions.

I recognize that religious persuasion, advocacy, and proselytism are sensitive issues and that, in a limited set of circumstances, these expressive activities may be in tensions with the rights and freedoms of others. As the Special Rapporteur for Freedom of Religion or Belief has indicated, proselytization involves four subcategories of rights: “(a) the right to conversion, in the sense of changing one’s own religion or belief; (b) the right not to be forced to convert; (c) the right to try to convert others by means of non-coercive persuasion; and (d) the rights of the child and of his or her parents in this regard.”<sup>22</sup> The European Court of Human Rights, for example, has recognized that religious freedom under Article 9 of the European Convention includes “the right to manifest [one’s] religion,’ including the right to try to convince one’s neighbor, for example, through ‘teaching,” but that religious freedom “does not, however, protect every act motivated or inspired by a religion or belief.”<sup>23</sup>

While some language in European Court cases seems to indicate that religious freedom may not protect some forms of proselytism, such as the “offering of material or social advantage or the application of improper pressure with a view to gaining new members for a church,”<sup>24</sup> it is important to note that the only restrictions of proselytism that the European Court has actually upheld are those which penalized members of the armed forces from repeatedly approaching a subordinate on matters of religion or belief, “in view in particular of the special character of the relationship between a superior and subordinate in the armed forces . . .”<sup>25</sup>

The OSCE/ODHIR Guidelines for Review of Legislation Pertaining to Religion or Belief similarly focuses on actual coercion: “If legislation operates to constrain missionary work, the limitation can only be justified if it involves coercion or conduct or the functional equivalent thereof in the form of fraud that would be recognized as such regardless of the religious beliefs involved.”<sup>26</sup> Presumably, issues of coercion, violence, or fraud are already penalized in existing law, thus eliminating the need for specific provisions dealing with religious coercion, religious violence, or religious fraud. Leaving religious coercion, violence, and fraud to the existing criminal law instead of creating separate offenses is the approach of most democratic systems and helps avoid targeting of unpopular or minority religions.

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<sup>22</sup> Interim Report of the Special Rapporteur on Freedom of Religion or Belief, A/67/303 (13 Aug. 2012), Summary.

<sup>23</sup> *Larissis and others v. Greece*, no. 140/1996/759/958-960, Eur. Ct. HR (24 February 1998), para. 45 (quoting *Kokkinakis v. Greece*, No. 3/1992/348/421, Eur. Ct. HR (19 April 1993), para. 31).

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.* at para. 49.

<sup>26</sup> Guidelines for Review of Legislation Pertaining to Religion or Belief, prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief in Consultation with the European Commission for Democracy Through Law (Venice Commission), adopted by the Venice Commission (Venice, 18-19 June 2004), welcomed by the OSCE Parliamentary Assembly (Edinburgh, 5-9 July 2004), 20.

The 1993 Law's ban of religions "misinform[ing], prejudic[ing] the health and morale, and to disorient[ing] non-believers of the respective religion" also permits unduly burdensome limitations on freedom of thought, conscience, and religion. These broad terms raise significant concerns that this provision could be applied in an inappropriately overbroad manner to penalize religious speech that opposes other religious beliefs. "Disorienting" and "misinforming" are subjective categories that are likely to be applied to newer or smaller groups, or perhaps to those who criticize traditional beliefs. "By its very nature, religious persuasion carries at least the implied message that the advocate believes he or she has something to offer that is better or truer than other beliefs."<sup>27</sup> Comparing beliefs and unfavorable judgments of other beliefs are a natural extension of the unconditional right to have or adopt a belief of one's choice. The Greek courts addressing the proselyting case of *Kokkinakis*, which was eventually resolved by the European Court, also recognized that "spiritual teaching does not amount to proselytism, even if it demonstrates the errors of other religions . . . this is because spiritual teaching is in the nature of a rite of worship performed freely and without hindrance."<sup>28</sup> The European Court has found that penalizing religious advocacy violates religious freedom rights even when an individual allegedly entered a home on false pretexts, used "skillful" analysis of scriptures to "delude" a woman and took advantage of her inadequate "grounding in religion"<sup>29</sup> or when individuals contacted a woman "in a state of distress brought on by the breakdown of her marriage."<sup>30</sup> Religious believers and organizations should be free to speak their convictions, including convictions about the truth or falsity of other beliefs, without fear that their language will be held to constitute impermissible misinforming or disorienting.

The limitation on proselytism and missionary work also violates international norms on freedom of speech and manifestations of religion. The Human Rights Committee, for example, has specifically mentioned religious speech as a type of speech protected under Article 19 of the ICCPR: "Paragraph 2 requires States parties to guarantee the right to freedom of expression, including the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. This right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others, subject to the provisions in article 19, paragraph 3, and article 20. It includes . . . teaching, and religious discourse."<sup>31</sup>

"Similar to freedom of expression," explained the U.N. Special Rapporteur for Freedom of Religion or Belief, "freedom of religion or belief has a strong communicative dimension which includes, *inter alia*, the freedom to communicate within one's own religious or belief group, share one's conviction with others, broaden one's horizons by communicating with people of different convictions, cherish and develop contacts across State boundaries, receive and disseminate

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<sup>27</sup> Matthew K. Richards et al., "Voluntary Codes of Conduct for Religious Persuasion: Effective Tools for Balancing Human Rights and Resolving Conflicts?" *Religion and Human Rights* 6 (2011), 162.

<sup>28</sup> *Kokkinakis v. Greece*, No. 3/1992/348/421, Eur. Ct. HR (19 April 1993), Para. 17.

<sup>29</sup> *Ibid*, para. 46.

<sup>30</sup> *Larissis and others v. Greece*, no. 140/1996/759/958-960, Eur. Ct. HR (24 February 1998), para. 59.

<sup>31</sup> Human Rights Comm., General Comment No. 34, U.N. Doc. CCPR/C/GC/34, (July 11–29, 2011), para. 11.

information about religious or belief issues and try to persuade others in a non-coercive manner.”<sup>32</sup>

The freedom to manifest one’s belief in community with others, which includes non-coercive sharing or teaching of belief, can only have limits as specified in Article 18 of the ICCPR, i.e., “they should be clearly and narrowly defined; they must be proportionate; and they should not be implemented in a discriminatory manner. By contrast, general provisions against ‘proselytism’, a term that often remains undefined or merely vaguely circumscribed while typically carrying negative connotations would not suffice to meet the criteria prescribed in article 18 (3).”<sup>33</sup>

One of the grounds for limiting the right to proselytism or missionary work includes the right of others not to be forced to convert. The U.N. Special Rapporteur for Freedom of Religion or Belief has also explained:

If individuals or organizations try to convert people by resorting to means of coercion or by directly exploiting situations of particular vulnerability, protection by States against such practices may prove necessary. This may amount to limiting the right to try to persuade others, which itself constitutes an important part of the forum externum dimension of freedom of religion or belief. . . . [S]uch restrictions can, however, only be justified if they strictly meet all the criteria set out in article 18 (3) of the International Covenant on Civil and Political Rights.<sup>34</sup>

The 1993 Law, however, does not merely include a ban on coercive proselyting, see Article 7.7, but categorically bans the introduction of “foreign” religion and “misinforming” or “disorienting” non-believers of their faith, which could be taken to include almost anything. These are vague and unduly restrictive of the right to expression and the right to freedom of religion or belief.

## 2. 2018 Draft Law

The 2018 Draft Law extends and expands the restrictions in the 1993 Law on proselyting and sharing of religious beliefs. Instead of having a categorical ban on teaching “foreign” religions, the law appears to bar sharing of beliefs by unregistered religious groups, imposes a long list of substantive restrictions on religious practice and sharing of beliefs, requires formal authorization by registered churches of those engaged in proselyting, and restricts the location of proselyting. Many of these provisions are overbroad and vague, which open the way for arbitrary enforcement and unduly burdensome restrictions on freedom of religion or belief.

Article 4.7 specifically protects the right to not be forced to convert, stating that “it is prohibited to force, press or threaten citizens in any form to worship or not worship religion; to hold religious rituals or ceremonies; to participate or not participate in training or religious organizations’ activities; and to donate or provide material aid for religious activities.” While the prevention of coercive

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<sup>32</sup> Interim Report of the Special Rapporteur on Freedom of Religion or Belief, A/67/303 (13 Aug. 2012), para. 27.

<sup>33</sup> Interim Report of the Special Rapporteur on Freedom of Religion or Belief, A/67/303 (13 Aug. 2012), para. 27.

<sup>34</sup> Interim Report of the Special Rapporteur on Freedom of Religion or Belief, A/67/303 (13 Aug. 2012), para. 24.

activity corresponds to international law, best practice is to rely on neutral provisions of law to address fraud and coercion generally, as mentioned above. Indeed, the Constitution of Mongolia provides that the citizens of Mongolia are guaranteed the following basic rights and freedoms: freedom of religion and non-religion.<sup>35</sup> Also, the Law of Mongolia on Children's rights dated 5 February 2016 ensures that a child has the right to freedom of religion and non-religion. Therefore, it can be argued that the provision on "prohibiting" is not necessary.<sup>36</sup>

Furthermore, coercion, threat, fraud, corruption, bribery and abuse are already addressed in the Criminal Code of Mongolia (the Criminal Code), dated 3 December 2015, and would apply to religious organizations the same as any other legal entity in Mongolia.<sup>37</sup>

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<sup>35</sup> Article 16.15 of the *Constitution of Mongolia*.

<sup>36</sup> Article 6.1.4 of the *Law of Mongolia on Children's Rights*.

<sup>37</sup> According to Article 4.4 of the Criminal Code, **coercion** is defined as follows:

1. A criminal act or omission specified in this Law that has been committed by a person due to the use of force, threat to use force, harm or harm to their rights and legitimate interests to their family member or other person. However, if the person commits the crime when they were coerced, it would not be considered as a crime.
2. A person who has committed a crime by physically or emotionally coercing others shall be considered an executor of the crime.
3. A crime committed in excess of the threat posed by others shall not be considered as coercion. [In other words, if the crime that was committed was greater than the threat that was posed to the person then the person cannot use the defense and argue that he was coerced (i.e., under someone's control or threat) to commit the crime]

Article 13.5.1 of the Criminal Code, defines **threat** as threatening others to take or not to take certain actions, threatening to use or used force to the person or their close relatives or threatening to disseminate documents and information that may be harmful to someone's legal rights and interests shall be punishable by a fine equal to MNT450,000 to MNT2,700,000, or from two hundred and forty up to seven hundred and twenty hours of community service, or a restriction of the right to travel for a term of one to six months. If the crime was committed: by a group; using weapons or specifically prepared items, the crime shall be punishable by a fine equal to MNT1,350,000 to MNT10,000,000, or a restriction of the right to travel for a term of three months to two years, or imprisonment for a term of three months to two years. (Article 13.5.2, *Criminal Code*). If the crime was committed: using authority, by an organized criminal group, the crime shall be punishable by restriction of the right to travel for a term of one to five years, or imprisonment for a term of one to five years. (Article 13.5.3, *Criminal Code*).

Article 17.3.1 of the Criminal Code, defines **fraud** and determines the sanctions. As defined in the Article 17.3, fraud is appropriation of a property or acquisition of the property rights of possessor, user or owner fraudulently, or using documents, items, electronic devices, or intentionally created an artificiality, **or taking an opportunity through religious beliefs**, or misleading others in a way of hiding reality, or abusing a trust which has arisen in a former relationship or reputation shall be punishable by a fine equal to MNT450,000 to MNT14,000,000, or community service for a term of 240 hours to 720 hours, or restriction of the right to travel for a term of six months to three years, or imprisonment for a term of six months to three years. If the crime was committed: using authority; causing serious or substantial damage to others, it shall be punishable by a fine equal to MNT10,000,000 to MNT40,000,000 or imprisonment for a term of two to eight years. (Article 17.3.2, *Criminal Code*). If the crime was committed: using authority; causing a serious or substantial damage to others, it shall be punishable by a fine equal to MNT10,000,000 to MNT40,000,000 or imprisonment for a term of two to eight years. (Article 17.3.3, *Criminal Code*). If the same crime was committed: "on a permanent basis and became a source of living; by a fraudulent method of multistage marketing, pyramid systems; by an organized criminal group [the crime] shall be punishable by imprisonment for a term of five to twelve years." (Chapter 22, *Criminal Code*. Note that Article 22.2 has been repealed).

The Criminal Code provides sanctions for a total of 11 types of corruption or bribery crimes, as follows:

- Article 22.1: abusing the authority [of the office] and official position;

A significant restriction on sharing of religious beliefs is that unregistered religious groups and individuals unaffiliated with registered religious organizations appear to be barred from teaching non-members. Article 7.8 states: “Religious groups have rights to organize religious rituals and ceremonies, as well as training on religion and religious ethics *with the participation of its group members only.*” This lack of rights for groups contrasts with rights of registered religious organizations under Article 8 of the Draft Law, which defines a religious organization as “a legal entity *with the purpose of proselytizing religion* by holding religious rituals and ceremonies, conducting training and education on religion and religious ethics, and producing books based on teachings and doctrines of a religious trend and of serving its communities, worshippers and followers openly in terms of worship and praying.”

Article 30.6 and 30.7 further limit proselyting to individuals with citizens with documents from registered religious organizations authorizing them to represent the organization.

As explained in previous sections, limiting key aspects of the right to freedom of religion or belief and restricting individuals’ ability to communicate with and receive information to only authorized representatives of registered organizations violates core provisions of international norms, particularly the right for all to have or adopt a religion of their choice. The U.N. Special Rapporteur on Freedom of Religion or Belief has explained that “registration should not be compulsory, i.e., it should not be a precondition for practicing one’s religion, but only for the acquisition of a legal personality status.”<sup>38</sup>

The European Court of Human Rights has similarly held that a state mandate to register all religious activity “would amount to the exclusion of minority religious beliefs which are not formally registered with the State and, consequently, would amount to admitting that a State can dictate what a person must believe. The Court cannot agree with such an approach and considers that the limitation on the right to freedom of religion [at issue in the case] constituted an interference which did not correspond to a pressing social need and was therefore not necessary in a democratic society.”<sup>39</sup>

The OSCE/ODIHR Guidelines on the Legal Personality of Religious or Belief Communities likewise explain that: “State permission may not be made a

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- Article 22.3: abuse of power by officials of foreign governmental organizations or international organizations;
  - Article 22.4: receiving a bribe;
  - Article 22.5: giving a bribe;
  - Article 22.6: bribing officials of foreign state organizations or international organizations;
  - Article 22.7: illegal spending and squandering of state reserves;
  - Article 22.8: misuse (spending for non-designated purposes) of budget funds;
  - Article 22.9: misuse of state owned non-budget funds;
  - Article 22.10: unjust enrichment;
  - Article 22.11: acting arbitrarily; and
  - Article 22.12: abusing the power of a legal entity.

The term “**abuse**” includes malfeasance, nonfeasance and exceeding one’s authority associated with the official duties, official position and powers of the official position contrary to the interests of the office or for accomplishing private interests. The term “official position” includes the influence associated with the position.

<sup>38</sup> 2011 Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, para. 41.

<sup>39</sup> *Masaev v. Moldova*, No. 6303/05 E.Ct.H.R. (12 May 2009), para. 26.

condition for the exercise of the freedom of religion or belief. The freedom of religion or belief, whether manifested alone or in community with others, in public or in private, cannot be made subject to prior registration or other similar procedures, since it belongs to human beings and communities as rights holders and does not depend on official authorization. This also means that . . . the legal prohibition and sanctioning of unregistered activities is incompatible with international standards.”<sup>40</sup> Limiting sharing of religious beliefs to registered religions and their authorized representatives violates core international norms of freedom of religion or belief.

The Draft Law also includes numerous overbroad substantive restrictions on religious activity and practice of registered religions. For example, Article 11.4.5 permits denial of religious entity status to a group that “proselytizes cruel, inhumane religious teachings and doctrines.” Similarly, Article 27.2.14 bars religious organizations from “proselytiz[ing] cruel, inhumane religious teachings and doctrines and [carrying] out religious activities in an illegal manner and by violating human rights.” While cruel and inhumane activities are clearly problematic and presumably already barred under existing law, the breadth and lack of definition of the provision open it up for arbitrary enforcement. Circumcision, ritual animal slaughter, and other religious practices could be considered cruel and inhumane by some.

Article 27 also imposes a long list of vague restrictions on religious organizations that will also serve to limit religious persuasion. Article 27.2.4 bars organizations from “us[ing] force or threaten[ing] to use force with the purpose of making them join the religious organization or preventing them from leaving the membership, to threaten to cause harm in terms of civil life, health, property and reputation, and to interfere by carrying out illegal activities.” Article 27.2.6 similarly bars the use of force or demands to provide donations, aid, or bribery and Article 27.2.7 bars “impos[ing] religious doctrines, to give pressure, to influence with the promise of monetary gain and [cheating] taking advantage of one’s belief or faith and using one’s vulnerability.” Article 27.2.10 bars attempts to “discriminate based on religious doctrines or views” and “to set superiority.” Article 27.2.13 bars carrying out “activities to disrupt national solidarity by creating hostility or tension based on religious doctrines and opposing views, and by inciting extremism and separatism.”

Confusingly, Article 27.2.11 bars organizations from enlisting “the individuals mentioned in Article 8.10.2 and 8.10.3. of this law to become members of the religious organization and to make them participate in proselyting activities organized by the religious organization.” The reference to specific individuals within the law seems to have shifted, however, as there is currently no Article 8.10.

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<sup>40</sup> OSCE/ODIHR, Guidelines on the Legal Personality of Religious or Belief Communities (2014), at 13; see also Guidelines for Review of Legislation Pertaining to Religion or Belief, prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief in Consultation with the European Commission for Democracy through Law (Venice Commission), adopted by the Venice Commission (Venice, 18-19 June 2004) and welcomed by the OSCE Parliamentary Assembly (Edinburgh, 5-9 July 2004)[hereinafter “2004 OSCE Guidelines”], 12. (“OSCE commitments have long recognized the importance of the right to acquire and maintain legal personality. Because some religious groups object in principle to State chartering requirements, a State should not impose sanctions or limitations on religious groups that elect not to register”).

The goal of these provisions, preventing coercion and harm to members and others, is a legitimate government aim, but the vagueness of these provisions raises the prospect of arbitrary and excessively restrictive interpretations. The OSCE Guidelines explain this balance:

“is first important to remember that, at its core, the right to express one’s convictions, beliefs, and faith can be a vital dimension of the human experience, and the right to do so is encompassed within the right to freedom of religion or belief, as well as by the right to freedom of expression. At some point, however, the right to engage in religious persuasion crosses a line and becomes coercive. It is important in assessing that line to give expansive protection to the expressive and religious rights involved . . .”<sup>41</sup>

The overbreadth of these articles and the specific targeting of religion could be used to restrict normal religious behaviors of some religious traditions. Requesting donations could be potentially seen by some as demands to provide donations (or violating Art. 4.7’s ban on forcing, pressing or threatening citizens “to donate or provide material aid for religious activities”). Granting humanitarian assistance to members could be seen as pressuring individuals to join with the promise of monetary gain. In some countries, bans on “extremist” religious views have been used to penalize minority beliefs, even when those beliefs do not involve the use or force or violence. As discussed above, barring groups from encouraging discrimination based on religion or belief or “setting superiority” could be used to bar the normal comparisons between religions that are part of a free exchange of ideas on religious topics.

Best practice in all these cases is to rely on neutral legal provisions that restrict coercive practices generally. As the OSCE Guidelines state: “If legislation operates to constrain missionary work, the limitation can only be justified if it involves coercion or conduct or the functional equivalent thereof in the form of fraud that would be recognized as such regardless of the religious beliefs involved.”<sup>42</sup>

Several articles also limit the right to try to convert others by means of non-coercive persuasion. The Draft Law has established several unnecessarily restrictive bans on proselytizing. For example, Article 30.2 limits the establishment of media organizations “with the purpose of proselytizing religion” to centralized religious organizations. Article 30.6 and 30.7 also restrict “activities to proselytize religion” to “the management, members or proselytizers appointed by the religious organizations on behalf of the religious organization” with official documentation. These restrictions, like the restrictions of sharing of religious beliefs to registered organizations discussed above, are disproportionate and unnecessary restrictions on the core right to freedom of religion or belief and freedom of expression.

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<sup>41</sup> Guidelines for Review of Legislation Pertaining to Religion or Belief, prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief in Consultation with the European Commission for Democracy Through Law (Venice Commission), adopted by the Venice Commission (Venice, 18-19 June 2004), welcomed by the OSCE Parliamentary Assembly (Edinburgh, 5-9 July 2004), 20.

<sup>42</sup> Guidelines for Review of Legislation Pertaining to Religion or Belief, prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief in Consultation with the European Commission for Democracy Through Law (Venice Commission), adopted by the Venice Commission (Venice, 18-19 June 2004), welcomed by the OSCE Parliamentary Assembly (Edinburgh, 5-9 July 2004), 20.



Article 30.4, 30.5, and 30.8 limit proselyting to particular locations. Freedom of religion or belief may be manifested “in worship, observance, practice or teaching” “either individually or in community with others and in public or private.”<sup>43</sup> This freedom to manifest may only be restricted by laws “necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others.”<sup>44</sup> It is unnecessary to place a complete ban on proselyting in residential locations, although reasonable neutral restrictions on approaching individuals or residences during resting hours may be appropriate, as would be the rights of residents to turn away those seeking to proselyte. Unless the manifestations are harming others, infringing on property rights, or endangering public safety, generalized bans on proselyting are inappropriate.

### **Recommendations – Restrictions on Sharing Religious Belief**

- Amend Article 7.8 to include people who are not members.
- Eliminate or clarify overbroad restrictions in Article 27 and those that are repetitive of existing provisions of law
- Clarify what it means in Article 27.2.13 to “disrupt national solidarity by creating hostility or tensions on religious doctrines and opposing views”. This should not be a blanket ban on disputative conversations between those with differing religious views.
- Drop 27.2.11 as it no longer applies to the existing Draft Law.
- Expand Article 30.1 and 30.2 restricting media organizations to include individuals, unregistered religions, local religious organizations, and groups. Eliminate Article 30.3.
- Eliminate 30.6 and 30.7’s restrictions on who may proselyte.
- Eliminate 30.4, 30.5, and 30.8’s restrictions on locations for proselyting.

## **b. Restrictions on Religious Literature**

### **1. 1993 Law**

The 1993 Law imposes no outright restrictions on religious literature and in fact recognizes in Article 7.2 the right of religious organizations to “edit religious scriptures.” While this provision codifies an important element of freedom of religion or belief, it falls short of recognizing the associated rights of producing and disseminating religious literature that are hallmarks of the right to freedom of opinion and expression. This silence is concerning, particularly when coupled with the assertion in Article 4.4 that “activities of the monastery may be regulated...and if necessary, suspended...” in cases “when national security of Mongolia may be prejudiced.” Similarly, the above-mentioned ban on “misinform[ing], prejudic[ing] the health and morale, and to disorient[ing] non-believers of the respective religion” may serve as legal grounds upon which to penalize attempts to

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<sup>43</sup> ICCPR Article 18.1.

<sup>44</sup> ICCPR Article 18.3.

disseminate religious literature. “Disorienting” and “misinforming” are subjective categories that are likely to be applied to newer or smaller groups, or perhaps to those who criticize traditional beliefs.

According to the Universal Declaration of Human Rights, “[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”<sup>45</sup> While Article 19 of the ICCPR allows some restrictions on free speech “(a) For the respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals,”<sup>46</sup> the 1993 Law’s broad statement of regulation when the national security may be prejudiced is too sweeping. Regardless, religious manifestations (unlike speech rights generally) may not be limited based on national security.

The U.N. Human Rights Committee has explicitly noted that freedom of expression, as protected in Article 19 of the ICCPR, includes religious discourse.<sup>47</sup> To limit this right, states “must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.”<sup>48</sup> Concerns for national security because of extremist-based violence are too broad and are disproportionate from the open-ended ban in the 1993 Law. In any case, religious manifestations (unlike speech rights generally) may not be limited based on national security; the U.N. Human Rights Committee has explained that “restrictions are not allowed on grounds not specified [in Article 18], even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security.”<sup>49</sup>

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<sup>45</sup> UDHR, art. 19; see also ICCPR, art. 19 (“1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”).

<sup>46</sup> ICCPR, art. 19.

<sup>47</sup> Human Rights Comm., General Comment No. 34, U.N. Doc. CCPR/C/GC/34, ¶ 11 (July 11–29, 2011).

<sup>48</sup> Human Rights Comm., General Comment No. 34, U.N. Doc. CCPR/C/GC/34, ¶ 11 (July 11–29, 2011), para 35.

<sup>49</sup> General Comment No. 22, para. 8 (“The Committee observes that paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security.”). Although Article 19 of the ICCPR recognizes and permits certain restrictions on free speech, the offending states have not invoked these limitations, and in any case the permissible limitations on religious speech, as part of freedom of religion, are narrower. Namely, it notes that the exercise of free speech rights “[C]arries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For the respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.” ICCPR, *supra* note 139, art. 19; *but see id.* art. 18 (no inclusion of national security in list of permissible limitations on religious freedom).

Under the “Social Gathering and March Law” Mongolia currently regulates gatherings<sup>50</sup> and marches<sup>51</sup> that are organized by Mongolian citizens, political parties and non-governmental organization organized gatherings at public streets and squares.<sup>52</sup> According to Article 8.1.2 of the Social Gathering and March Law it is prohibited to organize a social gathering and march in order to cause chaos to the detriment of national security and public order.

Also, Article 19.8 of the Criminal Code states the sanctions for carrying out extremist activities. If political or religious activities have been carried out for the purpose of illegally changing or destroying the constitutional system and state structures by force, if a certain group has been established to carry out such activity, or recruited others shall be punishable by restriction of the right to travel for a period of one to five years, or by imprisonment for a term of one to five years.<sup>53</sup>

## 2. Draft Law

Multiple articles in the Draft Law establish bans on production and importation of religious materials. Article 29.4 and 30.2 limit entities other than centralized religious organizations from publishing, producing, exporting, and importing religious books and materials for public use and establishing media organizations.

While Article 29.2 permits religious organizations to publish items for internal use, prayer, and worship, Articles 29.3 and 29.4 restrict publication of religious books and items “for public use” to centralized religious organizations, prohibiting entities other “than centralized religious organizations to publish, produce, export and import with the purpose of selling and distributing religious books, productions and other religious items.”

The Special Rapporteur notes “the very requirement of having to obtain permission to import, publish, distribute or simply own religious literature is incompatible with the international standards of freedom of religion or belief.... Limitations on human rights must be the exception and not the rule. The restrictive provisions also violate the freedom of expression as enshrined in article 19 of the International Covenant on Civil and Political Rights.”<sup>54</sup>

These provisions clearly violate international norms on freedom of speech and religion. The Universal Declaration of Human Rights provides, “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and

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<sup>50</sup> A “gathering” is defined as activity conducted by Mongolian citizens for purpose of expressing its opinion, proposal and requisite to public in regards with politic, social, economic and human rights (Article 3.1, Social Gathering and March Law).

<sup>51</sup> A “march” is defined as expression of opinion, proposal and requisite from organized citizens who march through streets and squares of the city in regards with politic, social, economic and human rights (Article 3.2, Social Gathering and March Law).

<sup>52</sup> Article 4.1, *Social Gathering and March Law*.

<sup>53</sup> Article 19.8.1, *Criminal Code*.

<sup>54</sup> 2018 *Report of the Special Rapporteur on freedom of religion or belief on his mission to Uzbekistan*, para. 82

ideas through any media and regardless of frontiers.”<sup>55</sup> Article 19 of the ICCPR recognizes that the exercise of free speech rights

carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For the respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.<sup>56</sup>

The U.N. Human Rights Committee has explicitly noted that freedom of expression, as protected in Article 19 of the ICCPR, includes religious discourse.<sup>57</sup> To limit this right, states “must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.”<sup>58</sup> Generalized bans on non-registered groups and individual from producing public religious materials are too broad and are disproportionate from the bans seen in Mongolian law.

The restrictions on Mongolian citizens’ ability to obtain and disseminate religious beliefs and materials also violates Mongolia’s OSCE commitments. Mongolia, as a member of the OSCE since 2012, has made commitments that it will “allow religious faiths, institutions and organizations to produce, import and disseminate religious publications and materials”<sup>59</sup> and that it will “respect the right of individual believers and communities of believers to acquire, possess, and use sacred books, religious publications in the language of their choice and other articles and materials related to the practice of religion or belief.”<sup>60</sup> Similarly, Mongolia has committed to “ensure that individuals can freely choose their sources of information. In this context they will . . . allow individuals, institutions, and organizations, while respecting intellectual property rights, including copyright, to obtain, possess, reproduce and distribute information of all kinds.”<sup>61</sup>

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<sup>55</sup> UDHR, Art. 19; see also ICCPR, Art. 19 (“1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”).

<sup>56</sup> ICCPR, Art. 19.

<sup>57</sup> Human Rights Comm., General Comment No. 34, U.N. Doc. CCPR/C/GC/34, ¶ 11 (July 11–29, 2011).

<sup>58</sup> Human Rights Comm., General Comment No. 34, U.N. Doc. CCPR/C/GC/34, ¶ 11 (July 11–29, 2011), para 35.

<sup>59</sup> Conference on Security and Cooperation in Europe, Jan. 17, 1989, *Concluding Document of the Vienna Meeting of Representatives of the Participating States, Question Relating to Security in Europe, Principles*, ¶ 16(c) (Jan. 19, 1989) [hereinafter *Vienna Concluding Document*]. para. 16.10.

<sup>60</sup> *Vienna Concluding Document*, para. 16.9.

<sup>61</sup> *Vienna Concluding Document*, para. 34. The states reaffirmed that, “[E]veryone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards. In particular, no limitation will be imposed on access to, and use of, means of reproducing documents of any kind, while respecting, however, rights relating to intellectual property, including copyright.” Conference on Sec. & Co-operation in Eur., June 5–29, 1990, Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, ¶ 9.1 (1990). See also Conference on Sec. & Co-operation in Eur., Dec. 5–6, 1994, Budapest Summit, Towards a Genuine Partnership in a New Era, Part VIII, ¶ 36 (1994) (“The participating States reaffirm that freedom of expression is a fundamental human right and a basic component of a democratic society.”); Organization for Sec. & Co-operation in Eur., Charter for European Security (Nov. 19, 1999), para. 26 (“We reaffirm the importance of . . . the free flow of information as well as the public’s access to

## **Restrictions on Religious Materials**

- Eliminate the restriction on religious groups' ability to produce and publish religious materials in Article 29.2.
- Eliminate Article 29.3 and 29.4's restriction of publishing, producing, exporting, and importing religious materials for public use to centralized religious organizations.
- Eliminate or narrow the 1993 Law's restriction in Article 4.4 that "activities of the monastery may be regulated...and if necessary, suspended..." in cases "when national security of Mongolia may be prejudiced."

## **C. Autonomy**

### **1. 1993 Law**

Article 4.3 of the 1993 Law expresses a standard of autonomy for religious organizations in Mongolia. By professing that "state organizations and their officials shall not interfere in the internal affairs of the monastery, unless otherwise provided by legislation...", the law recognizes an important principle of religious autonomy. However, the second half of this article that creates an exception as "provided by legislation" leaves much room for government discretion to pass additional laws that permit state officials to interfere in the internal affairs on the monastery. And indeed, as discussed below, the Draft Law raises some of these challenges.

Article 4.8 of the Law states that "the absolute number of clergy and the location of monasteries are regulated and controlled by the state." While the state has important interests in regulating land use and ensuring that registered religious organizations meet legal minimum requirements for registration, the state should have no interest or control of the absolute number of clergy or the number and location of religious buildings, so long as these fit within generic land use regulations.

The right of autonomy of religious organizations has been recognized as a basic element of the international right to freedom of religion or belief. As the U.N. Human Rights Committee has stated, "the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as, *inter alia*, the freedom to choose their religious leaders, priests and teachers . . ." <sup>62</sup> The OSCE/ODIHR Guidelines state that "states should observe their obligations by ensuring that national law leaves it to the religious or belief community itself to decide on its leadership . . . [and] the structure of the community and methods of appointment of the clergy. . ." <sup>63</sup> OSCE commitments

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information. We commit ourselves to take all necessary steps to ensure the basic conditions for . . . unimpeded transborder and intra-State flow of information . . .").

<sup>62</sup> General Comment No. 22(48), para. 4.

<sup>63</sup> OSCE/ODHIR Guidelines on the Legal Personality of Religious or Belief Communities (2014), para. 31.

also recognize the right of religious communities to “establish and maintain freely accessible places of worship or assembly.”<sup>64</sup>

Article 7.3 and 7.5 raise autonomy concerns in imposing restrictions on internal worship practices and rules based on the state’s view of what is traditional. Article 7.3 states that religious ceremonies “may be freely held in accordance with traditional rules of the respective religion” and 7.5 states that “the monastery shall strictly observe its internal rule reflecting the traditional practices of the respective religion. Any activity inhuman or against the tradition and the custom of Mongolian people are prohibited.” Defining religious beliefs and practices is a core part of the internal autonomy of religious organizations. The OSCE/ODHIR Guidelines explain that “In the regime that governs access to legal personality, states should observe their obligations by ensuring that national law leaves it to the religious or belief community itself to decide on its leadership, its internal rules, the substantive content of its beliefs, the structure of the community and methods of appointment of the clergy and its name and other symbols.”<sup>65</sup>

This right of religious autonomy has also been broadly supported by the European Court of Human Rights and wide array of other legal systems.<sup>66</sup> Indeed, it is one of the most ancient and vital aspects of religious freedom, going back historically at least to Magna Carta. Regulating manifestations of religion is permissible by laws “necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others.”<sup>67</sup> But where religious autonomy is the concern, the “necessity” constraint insists on legislative restrictions that are drafted as narrowly as possible.

## 2. Draft Law

Multiple provisions of the Draft Law are clear interferences with a religious organization’s right to internal autonomy, or the ability to carry out core religious functions and determine religious beliefs free from state interference.

There are several articles that attempt to interfere with the internal organization and autonomy of a religious organization. Article 16-22 imposes an extensive formal structure on religious organizations, including the creation of a supervisory body and an executive body.

Typically, such details are determined by the organization itself and expressed in the organizational charter. While the state can impose certain standards for boards of organizations operating within its borders, these articles unnecessarily abridge the right to autonomy of religious organizations. Most religious associations’ organizational structure reflects core religious beliefs about religious leadership and authority.

The OSCE/ODIHR Guidelines explain that

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<sup>64</sup> Concluding Document of the Vienna Meeting of Representatives of the Participating States of the Conference on Security and Co-operation in Europe (1989) para. 16.4.

<sup>65</sup> OSCE/ODHIR Guidelines on the Legal Personality of Religious or Belief Communities (2014), para. 31.

<sup>66</sup> See, e.g., *Metropolitan Church of Bessarabia v. Moldova*, ECHR App. 45701/99 (13 Dec. 2001); *Serif v. Greece*, ECHR App No. 38178/97, (14 Dec. 1997); *Hasan and Chaush v. Bulgaria*, ECHR App. No. 30985/96, (2000); Gerhard Robbers, ed., *Church Autonomy* (2001).

<sup>67</sup> ICCPR Article 18.3.

The state must respect the autonomy of religious or belief communities when fulfilling its obligation to provide them with access to legal personality. In the regime that governs access to legal personality, states should observe their obligations by ensuring that national law leaves it to the religious or belief community itself to decide on its leadership, its internal rules, the substantive content of its beliefs, the structure of the community and methods of appointment of the clergy, . . . Considering the wide range of different organizational forms that religious or belief communities may adopt in practice, a high degree of flexibility in national law is required in this area.”<sup>68</sup>

The Draft Law’s provisions unnecessarily limit the autonomy of religious organizations by restricting their core right to internally structure in accordance with their religious beliefs. While the state has a reasonable need to identify the organizers of an association and those legally responsible for it, the Draft Law’s extensive directions on organizational structure, such as on the roles of supervisory and executive boards, may well infringe on the religious beliefs of organizations with other internal structures.

The right of autonomy of religious organizations has been recognized as a basic element of the international right to freedom of religion or belief. As the U.N. Human Rights Committee has stated, “the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as, *inter alia*, the freedom to choose their religious leaders, priests and teachers . . .”<sup>69</sup> The OSCE/ODIHR Guidelines state that “states should observe their obligations by ensuring that national law leaves it to the religious or belief community itself to decide on its leadership . . . [and] the structure of the community and methods of appointment of the clergy. . .”<sup>70</sup>

This right has also been broadly supported by the European Court of Human Rights and wide array of other legal systems.<sup>71</sup> Indeed, it is one of the most ancient and vital aspects of religious freedom, going back historically at least to the Magna Carta. Regulating manifestations of religion is permissible by laws “necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others.”<sup>72</sup> But where religious autonomy is the concern, the “necessity” constraint insists on legislative restrictions that are drafted as narrowly as possible. The Law’s imposition on the right of religious organizations to select their leadership and determine their qualifications would create a significant restriction on the international right to religious autonomy.

Article 9 also imposes unnecessary restrictions on the autonomy of religious organizations in their choice of name. 9.1 requires that religious organizations “shall have names with the content expressing its religious activities” and 9.4 limits the use of terms such as “Mongol, Mongolian, National, Public, and United” to organizations legally operating on the territory of Mongolia for more than 50

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<sup>68</sup> OSCE/ODHIR Guidelines on the Legal Personality of Religious or Belief Communities (2015), para. 31.

<sup>69</sup> General Comment No. 22(48), para. 4.

<sup>70</sup> OSCE/ODHIR Guidelines on the Legal Personality of Religious or Belief Communities (2014), para. 31.

<sup>71</sup> See, e.g., *Metropolitan Church of Bessarabia v. Moldova*, ECHR App. 45701/99 (13 Dec. 2001); *Serif v. Greece*, ECHR App No. 38178/97, (14 Dec. 1997); *Hasan and Chaush v. Bulgaria*, ECHR App. No. 30985/96, (2000); Gerhard Robbers, ed., *Church Autonomy* (2001).

<sup>72</sup> ICCPR Article 18.3.

years. State restrictions on the name of religious is problematic because naming itself can be a form of religious exercise or a manifestation of certain religious beliefs. In its Guidelines, the OSCE has explained that “states should observe their obligations by ensuring that national law leaves it to the religious or belief community itself to decide on . . . its name and other symbols.”<sup>73</sup>

Article 38.3 requires that religions post certain financial information online, stating that “if religious organizations received monetary and other property and funding from foreign citizens and stateless persons, information on actual expenditure and usage shall be reported on the organizational website along with the relevant documentation at once.” Articles 39.4 and 43 requires religions to upload sensitive information into a public database.

Article 38.5 states that “monetary donations given by individuals and legal entities shall be spent within the given deadline decided by the donors and if there is no such timeline indicated by the donors, donated amount shall be spent within one year since receiving the donation.”

Article 28.8 also prohibits “for other entities than religious organizations to build religious monuments, statutes and stupas for the public worship that cover large physical space.”

Article 36.2 requires that religious organizations “shall address permanent jobs in the Charter and make employment contracts with citizens suitable for those jobs or positions.”

While the state has a reasonable need to ensure that religious organizations’ financial activities fit within guidelines for being tax-exempt and to ensure that religious organizations are not engaged in wire fraud, money laundering, and other crimes, the Draft Law imposes additional unnecessary restrictions on the finances of religious organizations. The Draft Law penalizes religious organizations for receiving financial assistance from foreign states (Art. 27.2.8). The OSCE Guidelines for Review of Legislation Pertaining to Religion or Belief directly address this type of provision: “States have a variety of legitimate reasons for regulating fund transfers of various types. However, provisions that discriminate against religious groups on religious grounds should not be permitted.”<sup>74</sup> In a similar vein, The European Court of Human Rights disapproved of discriminatory actions against some religions in the sphere of granting visas.<sup>75</sup>

Many religious groups have ties to sister organizations internationally. Limiting the ability of such organizations to give and receive financial support from abroad where such support assists with legitimate religious activity unnecessarily weakens the Mongolian organizations and ultimately, deprives Mongolia as a whole of revenue that could benefit its citizens. Regulating this type of manifestation of religion is permissible only where “pressing social needs,” such as preventing terrorist threats to public safety or public order, are involved. But where that is the concern, much more narrowly drafted legislation is possible. In

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<sup>73</sup> OSCE/ODHIR Guidelines on the Legal Personality of Religious or Belief Communities (2015), para. 31

<sup>74</sup> Guidelines for Review of Legislation Pertaining to Religion or Belief, prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief in Consultation with the European Commission for Democracy Through Law (Venice Commission), adopted by the Venice Commission (Venice, 18-19 June 2004), welcomed by the OSCE Parliamentary Assembly (Edinburgh, 5-9 July 2004), 20.

<sup>75</sup> See *Nolan v. Russia*, No. 2512/04, Eur. Ct. HR (12 Feb 2009).



general, however, “the preferable approach is to allow associations to raise funds provided that they do not violate other important policies.”<sup>76</sup> It is difficult to see why it is “necessary in a democratic society” to prevent Jews in Israel or the state of Israel, for example, from funding restoration of a synagogue in Mongolia, assuming they follow normal laws on international fund transfers. OSCE norms affirm the importance of preserving religious organizations’ ability to affiliate and maintain contacts with international co-religionists and the right of organizations to solicit and receive donations.<sup>77</sup> These rights should permit religious organizations to hire non-citizens as well as citizens. Allowing reasonable flexibility and autonomy in financial matters also suggests that religious organizations should not need to indicate all permanent jobs in their charter.

In addition, OSCE norms affirm the right of national minorities to “establish and maintain their own education, cultural, and religious institutions, organizations or associations, which can seek voluntary financial and other contributions” and their right “to establish and maintain unimpeded contacts . . . across frontiers with citizens of other States with whom they share a common ethnic or national origin, cultural heritage or religious beliefs.” Barring international fund transfers or other support for religious groups would significantly impede the ability of religious minorities to establish institutions and maintain contacts with their co-believers abroad. The broad practice on this subject in democratic states is to permit fund transfers for religious groups into their country on the same basis as for other groups. Limiting transfers for religious groups alone would be discriminatory and unnecessary in a democratic society. Moreover, the provisions in the Draft Law are unnecessary because the “Law on Combating Money Laundering and Terrorism Financing” dated 31 May 2013 covers these concerns by regulating all fund transfers from outside of Mongolia. The banks and other institutions are required to report to the Bank of Mongolia any cash transactions or foreign remittance transactions that equal or exceed MNT20 million (approx. US\$7,307) within five business days after such transaction is made.<sup>78</sup>

In addition, financial structuring of religious organizations is often a matter of internal autonomy and the right to manifest religion “in community with others.”<sup>79</sup> The European Court of Human Rights has repeatedly held that governments may

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<sup>76</sup> Ibid. See also Concluding Document of the Vienna Meeting of Representatives of the Participating States of the Conference on Security and Co-operation in Europe (1989) principle 16.4 (states will respect the right of religious communities to “solicit and receive voluntary financial and other contributions”); Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, proclaimed by U.N. General Assembly resolution 36/55 (25 Nov. 1981) 6(f) (the right to freedom of religion includes the freedom “[t]o solicit and receive voluntary financial and other contributions from individuals and institutions.”).

<sup>77</sup> Concluding Document of the Vienna Meeting of Representatives of the Participating States of the Conference on Security and Co-operation in Europe (1989) para. 32; First Act of the Conference on Security and Co-operation in Europe (Helsinki, 1975) chapter 1(d); Concluding Document of the Vienna Meeting of Representatives of the Participating States of the Conference on Security and Co-operation in Europe (1989) principle 16.4 (states will respect the right of religious communities to “solicit and receive voluntary financial and other contributions”); Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, proclaimed by U.N. General Assembly resolution 36/55 (25 Nov. 1981) 6(f) (the right to freedom of religion includes the freedom “[t]o solicit and receive voluntary financial and other contributions from individuals and institutions.”).

<sup>78</sup> Article 7.1, *Law on Combating Money Laundering and Terrorism Financing*.

<sup>79</sup> European Convention Art. 9.

not attempt to influence the internal structuring of religious organizations.<sup>80</sup> Funding flows, including those across borders, may reflect an organization's hierarchical or congregational structuring and reflect the beliefs and internal affairs of the organization. Legitimate concerns about money laundering or financing of terrorist organizations should be dealt with in legislation that applies to all money transfers and does not single out religious groups.

Similarly problematic is the requirement that religious groups post reports to the extent that this involves public posting (Draft law Art. 39.4, 43). While the state has a legitimate need to know the amount of taxable income of religious organizations and to receive reports on the distribution of government-allocated funds, or to receive regular reports to ensure that the organization still exists, to the extent this requirement involves public posting of income places disproportionate burdens on religious organizations and may expose them to wrongdoing, theft, or intimidation by others. The Draft Law should be clarified to state that only organizations receiving government-allocated property need to report on the use of that property.

### **Autonomy - Recommendations**

- Eliminate Article 9's restrictions on the ability of a religious organization to choose its own name.
- Drastically simplify the organization required of registered religious associations in Articles 16-22 to permit a variety of religious structures instead of a business organization structure.
- Eliminate Article 27.2.8's limitation on funding from foreign governments.
- Eliminate Article 28.8's limitation on funding of religious structures.
- Drop Article 38.5's restriction on when religious organizations may use donations.
- Drop Article 38.3, 39.4, and 43 to the extent that these require religious organizations to upload financial reports publicly

## **D. Excessive Control and Vagueness**

### **1. 1993 Law**

Article 4.4 of the 1993 Law permits regulation and suspension of religious activity where national security of Mongolia "may be threatened." There is no definition or litmus test provided by which to determine if state national security is in fact threatened. This is concerning because of the possibility for leaders to apply excessive discretion in cases of perceived threat—or no threat at all—and subsequently suspend the religious meetings, rites, and activities of religious groups. In line with the European Court of Human Rights' standards, limitations

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<sup>80</sup> *Serif v. Greece*, No. 38178/97, Eur. Ct. HR (14 Dec. 1997); *Hasan and Chaush v. Bulgaria*, No. 30985/96 Eur. Ct. HR (26 October 2000); *Metropolitan Church of Bessarabia v. Moldova*, No. 45701/99, Eur. Ct. HR (13 Dec. 2001).

on freedom of religion or belief must reflect neutral and impartial<sup>81</sup> state conduct and avoid imposing arbitrary constraints.<sup>82</sup>

The 1993 Law is unclear about the relationship between different levels of the state and religious organizations and also between Buddhist and non-Buddhist organizations. Article 4.2 permits the state to give preference to Buddhism “to respect national unity and the historic tradition and civilization of the Mongolian people,” but states that “this provision shall not put obstacles for citizens to follow other religions.” Having a state preference for a religion involved in the history and traditions of the state does not violate international norms of freedom of religion or belief, and the 1993 Law wisely spells out that this should not prejudice individual citizens’ abilities to follow other religions. This provision, however, would be more effective if it was more clearly stated. In line with international commitments to and declarations in favor of non-discrimination, such as the 1981 U.N. Declaration on Elimination of All Forms of Discrimination Based on Religion or Belief,<sup>83</sup> the provision would be more clear if it explicitly barred state discrimination on the basis of religion or belief in application of the 1993 Law and other general legal provisions. This should make it clear that state discrimination in registration, visa applications, land use, and other common interactions with the state is illegal. To the extent this is designed to also cover non-discrimination by private individuals and groups, such as employment, there should also be an exemption for religious organizations so that they may hire based on religion or belief.

Article 5 of the law divides determination and implementation of the relationship between religion and the state among the parliament, president, and national and regional governments. This unnecessarily complicates the regulation of religion. Best practices in most countries is to center interactions with religious organizations either with a centralized government organ or with a branch of the ministry of justice that handles organizational registration generally.

As mentioned in previous sections, a number of Article 7’s limitations are vague, opening the door to arbitrary and discriminatory enforcement. For example, the bar against inhuman activities or those against the traditions and customs of the Mongolian people are excessively vague, as are restrictions on misinforming and disorienting non-believers of the religion.

## 2. Draft Law

One of the most significant problems with the Draft Law is the amount of excessive control that is given to the government and the approach this reflects. Under a Soviet-influenced regime, state officials and offices were designed to control religion as well as other aspects of private life. A commitment to international norms and the rule of law suggests that the state’s role is instead seen as facilitating individual and collective freedom of religion or belief in its territory. Security challenges from extremism and other criminal actions are

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<sup>81</sup> *Metro. Church of Bessarabia v. Moldova* (ECHR, Dec. 13, 2001, App. No. 45701/99) ¶ 116.

<sup>82</sup> *Metro. Church of Bessarabia v. Moldova* (ECHR, Dec. 13, 2001, App. No. 45701/99) ¶ 118;

*Manoussakis and Others v. Greece* 23 E.H.R.R. 387 (1997) (ECHR, Sep. 26, 1996) ¶¶ 43-53.

<sup>83</sup> 1981 Declaration, A/RES/36/55, art. 4.

generally best addressed through traditional criminal law and law banning actions that endanger others, rather than regulating the existence of groups or transmission of beliefs.

The Draft Law should be adapted to reflect this commitment to freedom of religion or belief. There are several articles in the Draft Law that are problematic. Reoccurring terms such as “inhumane” and “cruel” are used throughout the documents and can be interpreted broadly. Although a note at the end of Chapter 2 attempts to define “cruel, inhumane religion,” the examples provided fail to create a comprehensive understanding of cruelty and inhumanity, leaving much to be wanted in terms of clarity. For example, there is no explanation of what “preach[ing] intolerance towards atheism” or “denying other religions” might look like. Would statements that atheism or belonging to other religions are insufficient or result in extra-temporal consequences be deemed as intolerant? Best practice would be to eliminate the relevant provisions. Similarly, Article 4.4 is excessively vague in its prohibition of “grant[ing] superiority, restrict[ing] others and discriminat[ing] in any form because of differences in religion or faith.”

Other articles that need clarification or elimination include Article 8.8, which uses the term “inhumane regulations” and Article 11.4.5 and 12.3.3, which use the terms “cruel, inhumane religious teachings and doctrines.” It is not clear, for example, if ritual animal slaughter would be considered cruel. Article 27.2.4 refers to using “force” with the purpose of making someone join a religious sect but is vague about the definition of “force.” Similarly, in Article 27.2.6, the words “demand” and “force” are vague. Article 27.2.10 states “...to discriminate based on religious doctrines and views, to restrict one’s rights, to set superiority.” Additionally, clarification is needed with Article 27.2.13, “to carry out activities to disrupt national solidarity by creating hostility or tension based on religious doctrines and opposing views, and by inciting extremism and separatism.”

There are already laws that cover these issues, and general practice is to use existing law for a more even-handed application. For example, Article 8.1.4 of the “Law on the Legal Status of Foreign Nationals” states that foreign nationals are prohibited to carry out propaganda against the national unity of the country, to advertise or to promote inhuman religion, any form of violence, pornography and drugs that may harm national and customs and laws and regulations.<sup>84</sup> The discrimination language in Article 27.2.10 of the Draft Law is unnecessary as the Constitution of Mongolia provides that no one shall be discriminated against on the basis of nationality, ethnicity, language, race, age, sex, social origin, status, wealth, occupation, position, religion, opinion or education.<sup>85</sup> Moreover, the Mongolian Criminal Code sanctions for obstructing the right to exercise the freedom of religion or non-religion are the following: obstructing the activities of a religious organization or religious practice by using force, threatening to use force, or threatening to cause serious harm to their rights and legitimate interests shall be punishable by a fine equal to MNT450,000 to 2,700,000, or imprisonment for a period of one hundred and forty to seven hundred and twenty hours, or

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<sup>84</sup> However, even this law is vague and the terms “inhumane religious teachings and doctrines”, “inhumane religion” are unclear.

<sup>85</sup> Article 16.2, the Constitution of Mongolia.

restriction of the right to travel for a period of one to six months.<sup>86</sup> Also under the Criminal Code, if a religious organization, religious representative or missionary forcibly coerced, pressured, deceived, or promoted a violent religious ideology it/they shall be fined for MNT450,000 to MNT5,400,000 or shall be punishable by restriction of the right to travel for a term of six months to one year, or by imprisonment for a term of six months to one year.<sup>87</sup>

Many of these vague terms deal with questions of beliefs or speech that create tension or dissent among religions. The European Court of Human Rights has repeatedly reaffirmed the principle that “Although . . . it is possible that tension is created in situations where a religious or any other community becomes divided, . . . this is one of the unavoidable consequences of pluralism. *The role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other* . . . .”<sup>88</sup>

In his introduction to the Rabat Plan of Action, the U.N. High Commissioner has similarly explained that

restrictions must be formulated in a way that makes clear that its sole purpose is to protect individuals and communities belonging to ethnic, national or religious groups, holding specific beliefs or opinions, whether of a religious or other nature, from hostility, discrimination or violence, rather than to protect belief systems, religions or institutions as such from criticism. The right to freedom of expression implies that it should be possible to scrutinize, openly debate and criticize belief systems, opinions and institutions, including religious ones, as long as this does not advocate hatred that incites violence, hostility or discrimination against an individual or group of individuals.<sup>89</sup>

Article 27.2.3 prohibits religious organizations from “forc[ing] the members, followers and others to denounce their own rights and to create advantageous environment for the religious organization.” This appears to be addressing concerns of fraud where religious organizations would persuade individuals to transfer money or property on false pretenses. It is important that this kind of fraud, as mentioned earlier, be addressed the same as other non-religious fraud so as to avoid prosecuting religious organizations for receiving uncoerced donations.

The Draft Law’s excessively vague standards open the door to administrative abuse of discretion and impermissible discrimination on the basis of religious beliefs. This ignores the call of the 1981 U.N. Declaration on Elimination of All Forms of Discrimination Based on Religion or Belief to “make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.”<sup>90</sup> The European Commission for Democracy through Law (the “Venice Commission”) and the OSCE Advisory Panel of Experts remind

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<sup>86</sup> Article 14.4.1, *Criminal Code*.

<sup>87</sup> Article 14.4.2, *Criminal Code*.

<sup>88</sup> *Serif v. Greece*, European Court of Human Rights (ECtHR), App. No. 38178/97, 14 December 1999) (emphasis added).

<sup>89</sup> Annual report of the United Nations High Commissioner for Human Rights: Addendum, Report of the United Nations High Commissioner for Human Rights on the expert workshops on the prohibition of incitement to national, racial or religious hatred, A/HRC/22/17/Add.4 (11 Jan. 2013), para. 11.

<sup>90</sup> 1981 Declaration, A/RES/36/55, art. 4.

states that “[i]t is important to bear in mind that legislation may not be necessary with regard to many of the issues for which a State might be considering enacting laws. Sometimes special legislation dealing with religious issues is proposed . . . but that might in fact be better addressed by normal criminal or administrative actions.”<sup>91</sup>

The Draft Law should be amended to eliminate vague terms to prevent discretionary application of the law and criminalization of religious activity. International norms and the rule of law suggest that a state’s role is to facilit[ate] individual and collective freedom of religion or belief in its territory. The Draft Law should be revised to reflect this commitment.

The state has a legitimate role to place in ensuring that the public square remains open to religious and secular views and to combating actions threatening security and public order. However, the state’s role is not to determine the proper balance of various secular and religious beliefs in society or oppose particular beliefs that it may consider less socially harmonious, but instead to facilitate space for individual belief or nonbelief and to oppose actions (not beliefs) that threaten security and public order.

Article 45 imposes legal liability, including criminal liability, for violations of the Draft Law. It should be clarified what actions are criminal (such as those endangering life or health) and which are voluntary or at most administrative violations. The OSCE Guidelines explain:

Some States attach significant penalties (serious fines or imprisonment) to breaches of laws related to religion and belief activities. Although minor fines for minor breaches of an administrative regulation may be appropriate, it is not appropriate to punish a simple administrative mistake as if it were a violation of the criminal law or to make it punishable by punitive administrative penalties. Serious penalties for small registration mistakes, for example, would raise serious questions about whether the rights of religion and belief are being infringed by a pretextual reliance on the criminal law. Whereas serious penalties may be appropriate when the law is proscribing activities that are typically part of a traditional criminal code (such as prohibitions of murder, assault and battery, or theft), they are much less likely to be appropriate when there is a simple breach of an administrative procedure. So, for example, it presumably would be appropriate (though perhaps redundant) to enact a law that specifically prohibits physical assaults on the clergy or that prohibits using religious association status as a cover for a criminal enterprise. However, it presumably would be inappropriate to attach criminal penalties to a mere failure to register a religious association per se. State laws that include onerous registration requirements while attaching criminal penalties to a failure to register are particularly suspect.”<sup>92</sup>

### **Vagueness – Recommendations**

- Clarify that Article 4.2 of the 1993 Law explicitly bars state discrimination on the basis of religion or belief in application of the 1993 Law and other general legal provisions. This should make it clear that state discrimination in registration, visa applications, land use, and other common interactions with the state is illegal.

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<sup>91</sup> 2004 OSCE Guidelines at 8.

<sup>92</sup> 2004 OSCE Guidelines for Review of Legislation Pertaining to Religion or Belief, at 24.

- Article 4.4 of the 1993 Law should be dropped
- Clarify and simplify which office is responsible for religious affairs
- Eliminate or clarify vague and overbroad terms, such as
  - “inhumane regulations” in Article 8.8
  - prohibition of “grant[ing] superiority, restrict[ing] others and discriminat[ing] in any form because of differences in religion or faith” in Article 4.4
  - “cruel, inhumane religious teachings and doctrines” in Article 11.4.5 and 12.3.3
  - “demand” and “force” in Article 27.2.4 and Article 27.2.6
- Eliminate Article 27.2.13’s provision “to carry out activities to disrupt national solidarity by creating hostility or tension based on religious doctrines and opposing views, and by inciting extremism and separatism” or clarify that this does not include the tension caused by differences in belief
- Clarify Article 45 as to what actions are criminal (such as those endangering life or health) and which are voluntary or at most administrative violations.

# Appendix

## Universal Declaration of Human Rights (1948)<sup>1</sup>

### Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

### Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

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<sup>1</sup> The Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A), <https://www.un.org/en/about-us/universal-declaration-of-human-rights>



# International Covenant on Civil and Political Rights (1966)<sup>1</sup>

## Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

## Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

## Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

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<sup>1</sup> Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

## **Article 20**

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

## **U.N. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981)<sup>1</sup>**

The General Assembly,

Considering that one of the basic principles of the Charter of the United Nations is that of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action in co-operation with the United Nations to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Considering that the Universal Declaration of Human Rights and the International Covenants on Human Rights proclaim the principles of non-discrimination and equality before the law and the right to freedom of thought, conscience, religion or belief,

Considering that the disregard and infringement of human rights and fundamental freedoms, in particular of the right to freedom of thought, conscience, religion or whatever belief, have brought, directly or indirectly, wars and great suffering to mankind, especially where they serve as a means of foreign interference in the internal affairs of other States and amount to kindling hatred between peoples and nations,

Considering that religion or belief, for anyone who professes either, is one of the fundamental elements in his conception of life and that freedom of religion or belief should be fully respected and guaranteed,

Considering that it is essential to promote understanding, tolerance and respect in matters relating to freedom of religion or belief and to ensure that the use of religion or belief for ends inconsistent with the Charter, other relevant instruments of the United Nations and the purposes and principles of the present Declaration is inadmissible,

Convinced that freedom of religion or belief should also contribute to the attainment of the goals of world peace, social justice and friendship among peoples and to the elimination of ideologies or practices of colonialism and racial discrimination,

Noting with satisfaction the adoption of several, and the coming into force of some, conventions, under the aegis of the United Nations and of the specialized agencies, for the elimination of various forms of discrimination,

Concerned by manifestations of intolerance and by the existence of discrimination in matters of religion or belief still in evidence in some areas of the world,

Resolved to adopt all necessary measures for the speedy elimination of such intolerance in all its forms and manifestations and to prevent and combat discrimination on the ground of religion or belief,

Proclaims this Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief:

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<sup>1</sup> Proclaimed by General Assembly resolution 36/55 of 25 November 1981, <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-all-forms-intolerance-and-discrimination>

## **Article 1**

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.

3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

## **Article 2**

1. No one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or belief.

2. For the purposes of the present Declaration, the expression "intolerance and discrimination based on religion or belief" means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

## **Article 3**

Discrimination between human beings on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations.

## **Article 4**

1. All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.

2. All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or belief in this matter.

## **Article 5**

1. The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.

2. Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle.

3. The child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.

4. In the case of a child who is not under the care either of his parents or of legal guardians, due account shall be taken of their expressed wishes or of any other proof of their wishes in the matter of religion or belief, the best interests of the child being the guiding principle.

5. Practices of a religion or belief in which a child is brought up must not be injurious to his physical or mental health or to his full development, taking into account article 1, paragraph 3, of the present Declaration.

## **Article 6**

In accordance with article 1 of the present Declaration, and subject to the provisions of article 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms:

(a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;

(b) To establish and maintain appropriate charitable or humanitarian institutions;

(c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;

(d) To write, issue and disseminate relevant publications in these areas;

(e) To teach a religion or belief in places suitable for these purposes;

(f) To solicit and receive voluntary financial and other contributions from individuals and institutions;

(g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;

(h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;

## **Article 7**

The rights and freedoms set forth in the present Declaration shall be accorded in national legislation in such a manner that everyone shall be able to avail himself of such rights and freedoms in practice.

## **Article 8**

Nothing in the present Declaration shall be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights and the International Covenants on Human Rights.

## **The Constitution of Mongolia (1992)**

### **Article 9 [Church]**

- (1) The State shall respect the Church and the Church shall honor the State.
- (2) State institutions may not engage in religious activities and the Church may not pursue political activities.
- (3) The relationship between the State and the Church is regulated by law.

### **Article 14 [Equality, Right to Personality]**

- (1) All persons lawfully residing within Mongolia are equal before the law and the courts.
- (2) No person may be discriminated on the basis of ethnic origin, language, race, age, sex, social origin or status, property, occupation or post, religion, opinion, or education. Everyone is a person before the law.

### **Article 16 [Citizen's Rights]**

The citizens of Mongolia are enjoying the following rights and freedoms:

- 15) Freedom of conscience and religion.

### **Article 19 [Responsibility, Restrictions]**

- (1) The State is responsible to the citizens for the creation of economic, social, legal, and other guarantees ensuring human rights and freedoms, for the prevention of violations of human rights and freedoms, and restoration of infringed rights.
- (2) In case of a state of emergency or war, the human rights and freedoms as defined by the Constitution and other laws are subject to limitation only by a law. Such a law may not affect the right to life, the freedom of thought, conscience, and religion, as well as the right not to be subjected to torture or inhuman and cruel treatment.
- (3) In exercising one's rights and freedoms, one may not infringe the national security or rights and freedoms of others or violate public order.

## **Conclusion of the Constitutional Court of Mongolia (1994.01.12, №1)**

### *Review Of A Dispute About Violation Of Some Provisions Of The “Law On Relationship Between The State And Religious Organizations/Monasteries” Of The Constitution*

The Conclusion of the Constitutional of Mongolia (the CCM) was made on 11 January 1994 in suite 251 of the Government House. The session of the CCM of Mongolia was chaired by N.Jantsan, a Member of the CCM, and attended by Members including G.Nyamdoo, Ts.Tsolmon, S.Jantsan (Member presenting report), and D.Chilkhaajav.

B.Tsendeekhuu, the Secretary of the CCM, participated as the Secretary of the session of the CCM.

Ch.Gan-Ulzii and Ch.Zorigtbaatar, Members of the Parliament, participated as the Authorized Representatives of the Parliament representing the parties in dispute.

Other participants include R.Gonchigdorj and D.Lamjav, representing citizens who consider that Articles 4.7, 4.8, 7.5, 7.6, 9.2, and 12.2 of the Law on Relationship between the State and Religious Organizations/Monasteries contradict to the Constitution, and D.Dashdendev, a citizen who filed a petition claiming that Articles 4.1, 4.7, 7.6, and 9.1 of the same Law contradict to the Constitution, and N.Altanchimeg, a citizen claiming that Articles 4.2, 8.2, 13.2 and 13.3 of the same Law contradict to the Constitution.

**A group of citizens, including D.Lamjav**, stated in their petition to the CCM dated 13 December 1993 that “Article 4.7 of the Law on Relationship between the State and Religious organizations/Monasteries adopted by the 1993 fall session of the Parliament providing “... *It shall be prohibited to carry out organized activities to introduce a religion from outside*”, Article 4.8 providing “*the absolute number of monks and priests and the location of temples and monasteries shall be controlled by the state*”, Article 7.5 providing “*It shall be prohibited to carry out any activity against the traditions and customs of the Mongolian people*”, Article 7.6 providing “*Religious preaching, training, and promotion of religions other than Buddhism, Islam, and shamanism in Mongolia shall be carried out on the basis of the official opinion of the headquarter of that respective religion*”, Article 9.2 providing “*The official opinion of the Buddhist or Muslim headquarter in Mongolia shall be obtained for establishing a monastery or mosque*”, Article 12.2 providing “*A foreign national or stateless person, other than those who arrive to Mongolia through a religious organization for a religious purpose, shall be prohibited to*

*carry out religious propaganda*” contradict to Article 16.15 of the Constitution of Mongolia which provides “A citizen of Mongolia shall have the freedom of conscience and religion”, and Article 18.5 which provides “In allowing the foreign nationals and stateless persons under the jurisdiction of Mongolia to exercise the basic rights and freedoms provided for in Article 16, the State of Mongolia may establish necessary restrictions upon the rights other than the inalienable rights spelt out in international instruments to which Mongolia is a Party...”, and Article 14.2 which provides “No person may be discriminated on the basis of ... religion, ...”, Article 10.3 which provides “The international treaties to which Mongolia is a Party become effective as domestic legislation upon the entry into force of the laws on their ratification or accession”. Such violations show the preference for one religion over others and discrimination against religions other than Buddhism and Islam”. And they requested to review the compliance of the Law on Relationship between the State and Religious organizations/Monasteries with the Constitution.

**D.Dashdende**v, a citizen, stated in his petition submitted to the CCM on 17 December 1993 that “Articles 4.2, 4.7, 7.6 and 9.1 of the Law on Relationship between the State and Religious organizations/Monasteries fully contradict Chapter 1 of the same Law, the Constitution, and Articles 18, 19 and 26 of the Universal Declaration of Human Rights. They are full of discrimination and stifling the freedom of Christians. I hope that you will help us to have a law that protects the rights of Christians passed”.

**N.Altanchimeg**, a citizen of Khoroo 18 of Bayanzurkh District, and B.Tserendash, a citizen of Khoroo 6 of Sukhbaatar District, stated in their petition submitted to the CCM that “the provision “*The state shall respect the dominance of the Buddhism in Mongolia to honor the unity and historic tradition of the civilization of Mongolian people*” violates Article 1.2 of Chapter 1 and Article 14.2 of Chapter 2 of the Constitution of Mongolia”.

Article 8.2 of the Law on Relationship between the State and Religious organizations/Monasteries which provides “*The dissemination of religious teachings and gatherings in the state schools and other state organizations are prohibited*” contradicts Article 16.16 of the Constitution, as well as Article 13.2 and 13.3 of the same law, which provide with respect to the imposition of administrative sanctions, contradict to Article 19.1 of the Constitution”.

**G.Lkhagvasuren**, Coordinator of the Religious Affairs Council of the President of Mongolia, responded to the CCM “It is considered that this draft law was developed in compliance with the Constitution to guarantee the right of people to worship and to regulate relations between the state and religious organizations. It is not a secret that foreign religions are introduced in an organized manner. Therefore, it should be banned in order to protect the national security and unity of the people”.



**Ts.Elbegdorj**, Member of the Parliament of Mongolia, responded to the CCM "If this law only regulated the relationship between the state and religious organizations/monasteries, we would not have to argue. But it went beyond such a relationship and covered many religious issues, and some provisions of this law contradict the provisions of the Constitution of Mongolia by trying to establish regulations and restrictions on the right to worship, which is an inalienable right of all the people".

**Gandantegchilen monastery, the Mongolian Buddhist Center**, stated in its official letter delivered to the CCM: "Buddhism has been the state religion several times throughout Mongolia's history, and it is a religion that has been worshiped for hundreds of years, along with which certain art, culture, and science have been introduced, so the State should respect it. And therefore, the Law on Relationship between the State and Religious organizations/Monasteries is in line with the feelings of the people and believers".

In their letter, **70 students from the National University of Mongolia**, including D. Otgonbaatar and S. Sukhbaatar, and citizen J. Lhamsuren stated that: "The state's legal certification of the dominant position of Buddhism is in line with the unity, historical traditions, and interests of the people and does not restrict the right to worship. [We] hope that the Law on Relationship between State and Religious organizations/Monasteries would remain the same."

In their request submitted to the CCM, citizens J. Batbayar, B. Tserendorj, S. Altanzul, and D. Oyungerel stated: "This law violates the Constitution and restricts our intellectual freedom. One provision of this law contradicts the other, and many of its provisions violate the Constitution."

**Ch.Gan-Ulzii and Ch.Zorigbaatar**, the authorized representatives of the State Great Khural, stated at the session of the CCM: "Respecting the predominant position of Buddhism is a declaratory provision with a fundamental basis in the Constitution. Therefore, the Constitution has not been violated. The most persecuted religion in Mongolia is Buddhism. We have a reason to repent before that religion. It will be respected because the majority of the population worships it.

It cannot be denied that the introduction of religion from abroad in an organized way would affect Mongolia's independence and security. In general, international human rights covenants specify the conditions under which freedom of worship can be limited. The restrictions applied to the other provisions in question are also related to it. We believe that this law does not violate the Constitution."

**R.Gonchigdorj, D.Lamjav, D.Dashdendev, and N.Altanchimeg, the Claimant**, stated at the session of the CCM that "The Law on Relationship between State and Religious organizations/Monasteries contradicts conceptually to the Constitution of Mongolia, and it seriously violates the Constitution while all religions have equal rights under the Constitution and the right of worship of Mongolians and foreigners is declared equally thereunder.

This law put Buddhism and Muslim religions above other religions and blocks religious education and promotion by foreigners, and restricts the freedom of worship to all worshipers who do not have churches/monasteries in Mongolia.

This serious distortion of the view of the Constitution of Mongolia would lead to the danger of damaging the reputation of our country at the international level. Therefore, not only the issues we argue about in the Law on Relationship between State and Religious organizations/Monasteries should be invalidated, but the entire law should be invalidated."

## **ANALYSIS:**

There are grounds to consider that Articles 7.6, 9.2, and 12.2 of the Law on Relationship between State and Religious organizations/Monasteries violate the applicable provisions of the Constitution of Mongolia.

The provision, which prohibits preaching, teaching, and promotion of religions other than Buddhism, Muslim, and Shamanism outside the religious organization/monastery of the respective religion implies that the religious organization/monastery restricts the right of other believers to carry out preaching, teaching, and promotion of other religions that are not in Mongolia.

The provision, which states that the official opinion of the governing body of that religion in Mongolia shall be obtained for the establishment of Buddhist and Muslim churches/monasteries implies that the state is involved in the internal affairs of religious organizations.

The provision, which prohibits foreign citizens and stateless persons to carry out religious promotion except for those who have come to the country through religious organizations for religious purposes, implies infringing on the inalienable right of all foreign citizens and stateless persons, except those who came to the country for religious purposes, to worship and promote their religion.

There are no grounds to consider that the provisions of Articles 4.2, 4.7, 4.8, 7.5, 8.2, 9.1, and 13.2 and 13.3 of the Law on Relationship between State and Religious organizations/Monasteries are in violation of the applicable provisions of the Constitution of Mongolia.

Article 4.2 of the law which states that "The state shall respect the dominance of the Buddhism in Mongolia to honor the unity and historic tradition of the civilization of Mongolian people. This shall not hinder the citizens to practice other religions" is declaratory and is in line with provisions of the Preamble of the Constitution of Mongolia, which states that the national unity shall be cherished and the traditions of national history and culture shall be inherited, and the Article 9 of the Constitution of Mongolia stating that the State shall respect religions. Therefore, it is consistent with the Constitution.

Article 4.7 of the law, which states that "...it is prohibited to introduce a religion from a foreign [country] in an organized way" does not violate Articles 18 and 19.3 of the International Covenant on Civil and Political Rights, to which Mongolia is a party, in the context of restrictions in the case of the deliberate introduction of any religious sect with inhumane activities that may harm national unity, security, social order, nation's health, and the historical traditions and customs of the Mongolian people.

Article 4.8 of the law: "The absolute number of monks/reverends, and the locations of churches/monasteries are regulated and controlled by the state", Article 7.5 of the law: "The churches/monasteries shall strictly observe its internal

rules reflecting the traditional practices of the respective religion. Any activities inhuman or against the tradition and the custom of Mongolian people are prohibited", Article 8.2 of the law: "The dissemination of religious teachings and gatherings in the state schools and other state organizations are prohibited", Article 9.1 of the law: "The Citizens' Representatives Meeting of the capital city/aimag shall review the application submitted by a citizen for establishment of a church/monastery together with its charter, and shall make a decision on issuing the permission", Article 13.2 of the law: "If the violation of Articles 3.5, 4.3, and 12.2 of this law is not subject a criminal liability, the court will impose a fine of up to MNT15,000", and Article 13.3 of the law: "If the violation of Articles 3.2, 3.3, 4.6, 4.7, 7.5, 7.6, 7.7, and 8.2 of this law is not subject a criminal liability, the court will impose a fine of up to MNT5000-25000" are matters that fall within the scope of the statutory regulation of relationship between the state and monasteries according to Article 9.3 of the Constitution of Mongolia. Therefore, it is deemed that they have not violated the Constitution of Mongolia.

The following **CONCLUSION** is issued at the session of the CCM under Article 66.2 of the Constitution of Mongolia, and Article 19.1 of the Law on the CCM of Mongolia:

1. that it is deemed that Article 7.6 of the Law on Relationship between State and Religious organizations/Monasteries: "It is prohibited to carry out preaching, teaching and promotion of religions other than Buddhist and Muslim religion and shamanism in Mongolia outside the temples of that religion", Article 9.2 of the Law on Relationship between State and Religious organizations/Monasteries: "For the establishment of Buddhist and Muslim temples, the official opinion of the governing office of that religion in Mongolia must be obtained", and Article 12.2 of the Law on Relationship between State and Religious organizations/Monasteries: "It is prohibited for foreign citizens and stateless persons to carry out religious promotion except for those who have come to the country through religious organizations for the purpose of religious teachings" have violated Articles 10.3, 14.2, and 16.15 of the Constitution of Mongolia, respectively.

2. that the provisions of Articles 4.2, 4.7, and 4.8, 7.5, 8.2, 9.1, and 13.2 and 13.3 of this law do not violate the applicable provisions of the Constitution of Mongolia.

3. that the Great Khural of Mongolia is advised, within 15 days following the receipt of this conclusion, to notify us about how our conclusion was resolved.

CHAIRPERSON

N. JANTSAN

MEMBERS

G. NYAMDOO

T. TSOLMON

S. JANTSAN

D. CHILKHAJJAV

# Law Of Mongolia On Relationship Between The State And Churches/Monasteries (1993)

## CHAPTER ONE GENERAL PROVISIONS

### Article 1. Purpose of the Law

The purpose of the law is to set guarantee of the citizen's freedom of religion proclaimed in the Constitution of Mongolia and to regulate the relationship between the state and churches/monasteries.

### Article 2. Legislation on Relationship between the State and Churches/Monasteries

The legislation on relationship between the state and churches/monasteries shall consist of the Constitution of Mongolia, Law of Mongolia on State Registration of Legal Persons, this law and other legislative acts enacted in conformity therewith.

[/This Article was amended law dated 29 January 2015/](#)

### Article 3. Citizen's Freedom of Religion

1. The choice of religion is the individual right of the citizen.
2. It is prohibited to force a citizen to practice religion, and to restrict his/her freedom.
3. Activities of discrimination, humiliation, or division of persons on the ground of the religious differences and the choices of their belief are prohibited.
4. The citizen's freedom of religion shall be exercised and regulated only according to legislations of Mongolia concerning to the citizen's freedom, health, moral principles, national security and public order, and the obligations specified in the international treaties to which Mongolia is a party.
5. The citizen's religious status shall not be written in official documents unless the bearer of the document desires to do so.

## CHAPTER TWO RELATIONSHIP BETWEEN THE STATE AND CHURCHES/MONASTERIES

### Article 4. Basis of the Relationship between the State and Churches/Monasteries

1. The relationship between the state and churches/monasteries in Mongolia is based on the principle where the state respects religions, and the religions honors the state.

2. The state shall respect the dominance of the Buddhism in Mongolia in order to honor the unity and historic tradition of the civilization of Mongolian people. This shall not hinder the citizens to practice other religions.

3. The state organizations and their officials shall not interfere in the internal affairs of the churches/monasteries, unless otherwise provided by the legislations.

4. In case when national security of Mongolia may be prejudiced, the state shall have the power to regulate activities of the churches/monasteries through consultations, and if necessary, to cease their activities.

5. The churches/monasteries and their reverends/monks shall honor and follow the legislations of Mongolia.

6. The churches/monasteries shall not undertake functions of the state organizations, and it is prohibited to engage in, participate in and finance any political activities for the seizure of state power.

7. It is prohibited to use the reputation of religion and citizens' faith for the benefits of political parties, organizations and officials, and to introduce a religion from a foreign [country] in an organized way.

8. The absolute number of monks/reverends, and the locations of churches/monasteries are regulated and controlled by the state.

#### **Article 5. Determination and Implementation of Relationship between the State and Churches/Monasteries**

1. The basis for the state policy on religions and churches/monasteries shall be determined by the Parliament of Mongolia.

2. The President of Mongolia shall regulate the relationship between the state, churches/monasteries, and religions in the interest of the unity of people and national security.

3. The Government of Mongolia, the capital city and aimag Governors shall respectively be in charge of organizing and implementing the state's relationship with the churches/monasteries.

### **CHAPTER THREE RELIGIOUS ORGANIZATIONS**

#### **Article 6. Religious Organizations**

The permitted monasteries, churches, datsans (religious schools) and religious centers and their head organizations which are established for the purposes of meeting the religious and spiritual needs of the faithful, and engaging in activities of theological education, worship and prayer chanting are defined as religious organizations /hereinafter referred to as "churches/monasteries"/.

#### **Article 7. Legal Basis for Activities of the Churches/Monasteries and Monks/Reverends**

1. The monks/reverends engaging in religious activities shall have civil rights and obligations under the legislations of Mongolia.

2. The churches/monasteries and monks/reverends freely provide services to the faithful including creating worship items, books and scriptures, conducting religious ceremonies and ministering.

3. The religious ceremonies may freely be held in compliance with traditional rules of the respective religions upon the request of the faithful in chosen places which are not specifically prohibited by this law and other legislations.

4. The churches/monasteries have the right to independently, or through its administrative body, submit any of their issues to the state organizations of any level and deal with them.

5. The churches/monasteries shall strictly observe its internal rules reflecting the traditional practices of the respective religion. Any activities inhuman or against the tradition and the custom of Mongolian people are prohibited.

6. [/This Article was annulled under law dated 14 January 1994/](#)

7. Any religious organizations, monks/reverends are forbidden from forcing its religion to the non-faithful, pressure them, attract them financially, deceive them, prejudice their health and morale, and disorientate them.

8. The churches/monasteries may pay social insurance premium allowing its monks/reverends receive pensions and benefits. The monks/reverends are covered by the health insurance on a voluntary basis.

9. The labor relations of the contracted employees of the churches/monasteries are regulated by the relevant legislations.

10. The issues of foreign relations of the churches/monasteries shall be regulated through consultations with the authorized state organizations.

## **Article 8. Religious Trainings**

1. Religious education may be given at religious schools and by home schooling.

2. The dissemination of religious teachings and gatherings in the state schools and other state organizations are prohibited. This provision shall not apply to scientific teachings on the religious culture and heritage of religious knowledge.

3. The religious school shall have responsibility for teaching the disciplines of civil education to its students. The state administrative body in charge of education shall provide certain amount of cost required for the above in accordance with the regulations approved by the Government, and provide teaching personnel and place professional controls thereon.

## **Article 9. Establishment of Churches/Monasteries**

1. The Citizens' Representatives Meeting of the capital city/aimag shall review the application submitted by a citizen for establishment of a church/monastery together with its charter, and shall make a decision on issuing the permission. Upon the issued permission, the state administrative body in charge of state registration shall register the church/monastery. [/This Article was amended law dated 29 January 2015/](#)

2. [/This Article was annulled under law dated 14 January 1994/](#)

3. Each church/monastery shall have its charter. The charter shall stipulate the following issues:

- 1/ name and address of the church or the monastery;
- 2/ religious affiliation, organizational structure and its composition at the commencement of its activities;
- 3/ appliance and form of its activities;
- 4/ provision of religious items;
- 5/ amount of initial capital and the actual financial possibilities for its activities and further expansions and development;
- 6/ grounds for being a legal entity; and
- 7/ other issues.

4. The church/monastery shall officially inform the Citizens' Representatives Meeting of the capital city/aimag and the state administrative body in charge of state registration of legal persons of the amendments to its charter from time to time.

[/This Article was amended under law dated 29 January 2015/](#)

5. The permission to establish a church/monastery shall not be granted or the granted permission shall be revoked in case its charter and amendments thereto contradict the legislations of Mongolia. If the church/monastery does not agree with such decision, it may file a complaint on this issue with the court in compliance with the legislations.

#### **Article 10. Cease of Activities of Churches/Monasteries**

1. The activities of churches/monasteries shall be ceased on following grounds:
  - 1/ Decision by the church/monastery to cease its activities; or
  - 2/ Decision by the issuing authority to cease the activities of such church/monastery in case the court determined that there was a violation of legislations of Mongolia.

2. The organization that made decision on ceasing the activities of the church/monastery shall officially notify of the same to the state administrative body in charge of state registration, and have such church/monastery deregistered.

[/This Article was amended under law dated 29 January 2015/](#)

3. In case the church/monastery disagree with the decision to cease its activities, it may file a complaint with the court in accordance with legislations.

#### **Article 11. Regulations of Property and Business Relations of a Church/Monastery**

1. The relations with respect to the business and property of a church/monastery shall be regulated by relevant legislations of Mongolia.

2. The church/monastery shall register historical and cultural monuments which cannot be detached from ground and other immovable properties under its possession or ownership with the state registration of properties, and register information regarding the monuments with the registration of cultural heritage and its database in compliance with the legislations on protecting cultural heritage.

[/This Article was restated under laws dated 9 January 1997 and 15 May 2014/](#)

~~3. The monastery may use for the purpose of worship the required objects of historical and cultural heritage from the reserve of the museums and libraries under contracts or agreements.~~

[/This Article was annulled under law dated 15 May 2014/](#)

4. The church/monastery may engage in a business activity within the extent of its properties which is required for conducting its religious activities and meeting its household needs.

5. In case the activities of the church/monetary is ceased permanently, the properties initially contributed by the founders shall be distributed to them upon their claims. The remaining part of the assets shall be transferred to a church/monastery in consideration of the monks/reverends suggestions, or if in case of impossibility, it shall be transferred to the state.

## **CHAPTER FOUR MISCELLANEOUS**

### **Article 12. Application of the Law on Relationship between the State and Churches/Monasteries to Foreign Citizens and Stateless Persons**

1. The Law of Mongolia on Relationship between the State and Churches/Monasteries shall apply to foreign citizens and stateless persons in the territory of Mongolia.

2. [/This Article was annulled under law dated 14 January 1994/](#)

### **Article 13. Liabilities for Violators of Legislation**

1. An individual or a legal person which is in violation of this law shall be subject to liabilities under the Criminal Code and the Infringement Law.  
[/This Article was restated under law dated 4 December 2015/](#)

Parliament Speaker

N.Bagabandi



APPROVED BY  
MINISTER OF JUSTICE  
AND HOME AFFAIRS

TS.NYAMDORJ

## Concept Of The Revised Law On The Relationship Between The State And The Monastery (2018)

### One. Rationale and Necessity to Develop this Revised Law

Chapter Two, “Human Rights and Freedoms,” of the Constitution of Mongolia, codifies and guarantees religious freedom as indispensable human rights by stating that all persons legally residing in Mongolia have “freedom of conscience and religion,”<sup>1</sup> “no persons shall be discriminated against on the basis of ... religion, opinion [...]”,<sup>2</sup> and that “In case of a state of emergency or war, the human rights and freedoms as defined by the Constitution and other laws are subject to limitation only by a law. Such a law may not affect the right to life, the freedom of thought, conscience and religion, [...]”<sup>3</sup>

The National Security Concept of Mongolia,<sup>4</sup> adopted in 2010, defines that issues to ensure religious freedom of the citizens have crucial impacts on ensuring security of culture, civilization, national unity, and information, all of which are components of national security.

In addition, Mongolia joined the International Covenant on Civil and Political Rights,<sup>5</sup> International Covenant on Economic, Social and Cultural Rights,<sup>6</sup> International Convention on the Elimination of All Forms of Racial Discrimination,<sup>7</sup> Convention on the Elimination of All Forms of Discrimination against Women,<sup>8</sup> and Convention of the Rights of the Child,<sup>9</sup> all of which obligate the government to ensure religious freedom for its citizens.

Thus, adopting and enforcing the Law on the Relationship between the State and the Monastery in 1993 enabled multiple religious organizations to co-exist and operate in Mongolia and the issuance of permission to found churches, temples and monasteries started in 1994.

According to the National Statistics Office of Mongolia (NSO), there were 93 churches, temples and monasteries operating in 1993 at the national level,<sup>10</sup>

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<sup>1</sup> Article 16.15 of the Constitution of Mongolia.

<sup>2</sup> Article 14.2 of the Constitution of Mongolia.

<sup>3</sup> Article 19.2 of the Constitution of Mongolia.

<sup>4</sup> Resolution No. 48 adopted on July 15, 2010 by the State Great *Khural* (Parliament of Mongolia).

<sup>5</sup> Mongolia ratified it on November 18, 1974.

<sup>6</sup> Mongolia ratified it on November 18, 1974.

<sup>7</sup> Mongolia acceded to it on **March 31**, 1969.

<sup>8</sup> Mongolia acceded to it on July 20, 1981.

<sup>9</sup> Mongolia acceded to it on July 5, **1970**.

<sup>10</sup> “Activities and Impacts of Foreign and International Religious Non-Governmental Organizations in Mongolia” study. Law Enforcement University. 2017.

whereas in 2004 it went up to 225,<sup>11</sup> and in 2016 a total of 350 churches, temples and monasteries were counted.<sup>12</sup>

Only at the metropolitan level, there were 35 churches, temples, and monasteries operating as of 2000, which was multiplied by 8 times, or reached 286 in 2014;<sup>13</sup> as of May 2016, it became 330,<sup>14</sup> and 44 new religious organizations were founded in the past two years.<sup>15</sup>

Apart from these institutions, the number of clairvoyants, fortunetellers, shamans, female shamans and individuals who conduct religious and faith-based rituals privately, without the status of religious organization or legal entity increased.

When comparing the data on the status of religion among population groups in Mongolia since 1992, the percentage of people who worship particular religions, as well as the number of various religious sects and trends have changed significantly.

For instance, according to a 2003 survey commissioned by the Secretariat of the National Security Council of Mongolia, 22.9 percent of the participants answered that they do not worship any religion, whereas this percentage increased to 38.6 percent in 2010 (2010 Population and Housing Census). Furthermore, 66.8 percent of the 2003 survey participants answered that they believe in Buddhism, whereas it went down to 53 percent in 2010.

Based on these data, it can be concluded that as the activities of religious organizations expand in Mongolia, citizens' attitudes towards religion and the status of conscience and religion change, strongly affecting all sectors such as social, cultural, educational and economic spheres.

According to an investigation by the Ministry of Justice and Home Affairs (MoJHA), there are 848 legal entities operating in the religious sector representing 6 different types of religion and 20 sects as of 2016, 54.2 percent of which are Christian, 34.6 percent Buddhist, 5.1 percent Islamic and the remaining 6 percent of other type of religious organizations.<sup>16</sup>

While it is impossible to regulate outcomes of this widespread change by the Law on the Relationship between the State and Monastery, many challenges have emerged when it comes to enforcement of the law, because the scope of legal regulations is restricted to the relations related to religious organizations only; further, forms upon which relations of religions are monitored are defined as temples, monasteries, religious schools (*datsan*), and centers based the characteristics of the traditional religion or Buddhism (Christian organizations usually operate in the name of conventions and gatherings).

In 1994, Article 7.6 of the Law on the Relationship between the State and the Monastery, which states, "The cultivation, propaganda, and education of any religion with the exception of Buddhism, Islam and Shamanism are prohibited in Mongolia beyond the monasteries and churches of the respective religions," Article 9.2, which states, "Official opinions and conclusions from the administrative centers of the respective religions in Mongolia are necessary when

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<sup>11</sup> Report of the 2014 Census on Churches, Monasteries and Religious Organizations in the Capital City.

<sup>12</sup> NSO data, 2016. [www.nso.mn](http://www.nso.mn).

<sup>13</sup> Report of the 2014 Census on Churches, Temples and Monasteries in the Capital City.

<sup>14</sup> NSO data, 2016. [www.nso.mn](http://www.nso.mn).

<sup>15</sup> Results of the investigation conducted by the Working Group formed by Order A/73 by the Minister of Justice and Home Affairs in 2016.

<sup>16</sup> Ibid.

founding a Buddhist or Islamic monastery, temple or church,” and Article 12.2, which states, “Other foreign citizens and stateless persons than those who arrived in the country through the invitation of religious organizations for religious purpose are prohibited to conduct religious propaganda or promotion” were annulled by the Constitutional Court decisions,<sup>17</sup> deemed as violating Articles 10.3, 14.2 and 16.15 of the Constitution of Mongolia.

In addition to this change, 5 other amendments were made to the Law on the Relationship between the State and the Monastery within 25 years since it took effect.

For example, in 1995 amount of penalty imposed on institutions, individuals and officials who violated the law was increased; in 1997 duties for the churches, temples and monasteries to register historical and cultural items and other real estate properties that are integral to the land of their ownership or property to the state registration were added; Moreover, relevant amendments were made following the revisions of the Law on the Protection of Cultural Heritage, Law on the State Registration of Legal Entities, and the Offence Code.<sup>18</sup>

However, these amendments were made due to the legal reform of other sectors or the amendments made to those laws, rather than resolving the challenges facing the relationship between the State and religious organizations or in relation to religious activities.

Therefore, taking into account of the necessity and requirements of the current social and legal reforms, one of the main areas to improve the legislations of Mongolia until 2020<sup>19</sup> proposes an objective to amend the Law on the Relationship between the State and the Monastery to “Clarify or improve the monitoring, registration and permission-granting systems, as well as accountability mechanisms on the activities of religious organizations.”<sup>20</sup>

Additionally, a MoJHA assessment<sup>21</sup> on the status of the implementation of the Law on the Relationship between the State and the Monastery concluded that “law enforcement is insufficient and there are many legal violations such as carrying out religious activities due to regulatory loopholes and without any control by masking religious activities in the name of NGO and other forms of legal entities, harming citizens psychologically and financially by taking advantage of their faith, and recruiting under-aged children to take part in religious activities.”

According to the NSO data, a total of 350 churches, temples and monasteries were counted in 2016, whereas there were 439 religious organizations officially registered<sup>22</sup> at the State Registration Office of Legal Entities the same year.

On the other hand, the MoJHA investigation revealed that there were 848 religious organizations,<sup>23</sup> 41.5 percent of which, or 352 of them were functioning without permission.<sup>24</sup> This is because the legal regulations defining religious organizations are unclear and the laws do not clearly regulate whether branches

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<sup>17</sup> Constitutional Court decision of February 1994. [www.legalinfo.mn](http://www.legalinfo.mn).

<sup>18</sup> Law on the Relationship between the State and the Monastery. [www.legalinfo.mn](http://www.legalinfo.mn).

<sup>19</sup> Resolution No. 11 of January 11, 2017 by the State Great *Khural* (Parliament of Mongolia).

<sup>20</sup> Objective 160 of the main areas to improve the legislations of Mongolia until 2020.

<sup>21</sup> MoJHA, 2018. Assessment Report on the Status of the Implementation of the Law on the Relationship between the State and the Monastery.

<sup>22</sup> Official letter No. 2/10283 of December 11, 2017 to the MoJHA from the Intellectual Property and General Authority for State Registration.

<sup>23</sup> Report of the investigation conducted by the MoJHA in 2016.

<sup>24</sup> Results of the investigation conducted by the Working Group formed by Order A/73 by the Minister of Justice and Home Affairs in 2016.

or representative offices of churches, temples and monasteries should obtain special permission or not.

Thus, there are not a few cases in which not only non-governmental organizations (NGO), educational, health and media organizations, but also organizations registered as for-profit legal entities carried out religious activities, exploiting the weaknesses in control and registration.<sup>25</sup>

For example, a study shows that there are about 40 international NGOs<sup>26</sup> carrying out religious activities as of 2017, but it is impossible to identify how many NGOs are working on religious activities while covering up their work by different objectives and forms of actions.

According to the NSO, there were 1,731 monks and priests registered as of 2016, 1,327 of whom are Buddhist, 345 Christian, 46 Islamic and 13 are of Baha'i, Moon and Shaman.<sup>27</sup>

Moreover, the number of individuals who work as clairvoyants and fortune-tellers, as well as male and female shamans has increased in recent years and since they do not belong to particular churches or monasteries, they serve citizens according to the rules of their own.

Therefore, it indicates the necessity that not only all citizens and social groups should comply with legal norms towards implementing religious freedom, but also the scope of the law should apply to both religious organizations (churches, temples and monasteries) and individuals who carry out religious activities privately.

Even though provincial and metropolitan Citizens' Representative Khurals (hereinafter "CRKh") decide to grant permission to establish a church or monastery or not, the law does not specify conditions of granting permission and/or the grounds on which it could deny permission, leaving the decision of which criteria to adopt to the power or authority of the local CRKh.

Although there is no legal provision that mandates provincial and metropolitan CRKhs to produce and enforce regulations to grant permission for churches and monasteries and to monitor their activities, the capital city and 7 provinces comply with the regulations approved by the relevant CRKh, while there is no such special regulation in the remaining 14 provinces.<sup>28</sup>

Even though the efforts to obligate the CRKhs to produce and adopt regulations on the gaps unregulated by the law may seem appropriate, risks of different local governments coming up with varying criteria and of changing criteria depending on the perceptions and attitudes of the CRKh members of the time lead to the derailment of the unified policy of Mongolia on religious matters and making the principles of equal application, consistency and sustainability of the law inconsistent and irregular.

Although the number of churches and monasteries may vary depending on demographic situations of particular locations, challenges arise as local CRKhs

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<sup>25</sup> The list of organizations carrying out religious activities which needed to be investigated and annexed in the results of the investigation conducted by the Working Group formed by Order A/73 by the Minister of Justice and Home Affairs in 2016 included organizations with the status of NGOs, non-banking financial institutions, Co.Ltds, hospitals, trade centers, schools, kindergartens, children's camps and press.

<sup>26</sup> "Activities and Impacts of Foreign and International Religious Non-Governmental Organizations in Mongolia" study. Law Enforcement University. 2017.

<sup>27</sup> NSO data.

<sup>28</sup> MoJHA, 2015. Report of the monitoring and investigation on the activities of religious organizations operating in Mongolia, commissioned by the Minister of Justice and Home Affairs.

grant permission, there is no unified policy on this matter and the overall control and registration is weak.

For example, 25 percent of religious organizations operating in the capital city as of 2014 are in Bayanzurkh district, 19 percent in Songinokhairkhan district, and 16 percent in Bayangol district. 61.3 percent of these religious organizations are Christian churches and 65 out of 92, or 71 percent of all the religious organizations operating in Bayanzurkh district only are Christian.<sup>29</sup>

Furthermore, it is urgently needed to specifically regulate the issues of recruiting under- aged children to take part in religious activities and of providing them with religious education.

When comparing the statistics of the past 9 years (2007-2016) based on the NSO data, the number of those who study at religious schools has decreased.

**Source:** National Statistics Office (NSO) of Mongolia: 2016

| Year                | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 |
|---------------------|------|------|------|------|------|------|------|------|------|------|
| Number of disciples | 2251 | 1820 | 1273 | 1564 | 1362 | 779  | 591  | 342  | 269  | 163  |

As of 2016, 63.8 percent of children studying at religious schools are studying Buddhism, 14.7 percent Christianity, and 21.4 percent Islam.<sup>30</sup>

In 2014, a joint study by the National Authority for Children (NAC) and the UNICEF, covering 2,282 children who participate in activities of churches and monasteries in 21 provinces and 3 districts of the capital city, discovers that there are 502 children permanently residing in churches and monasteries.<sup>31</sup>

This raises doubt in terms of the actual number of children studying at religious schools. According to the NSO data of 2016, there are 2,581 children learning religion at home,

2.4 percent of whom are studying Buddhism, 19.9 percent Christianity, 2.5 percent Islam, while 77.6 percent of them are studying other religions such as Shamanism, Baha'i and Moon.<sup>32</sup>

The statistic showing that the number of children studying religion at home is multiple times more than those studying at religious schools is a pressing issue that needs serious attention in the future.

According to a survey<sup>33</sup> conducted in 2012 by the National Human Rights Commission of Mongolia (NHRCM) among 290 children studying at 62 religious schools including 54 Buddhist temples and monasteries, 7 Christian schools and one Islamic one, it is common that children acquire insufficient or even none of basic civil education, or that the training is merely formalistic or without adequate quality. For example, 30 children who reside in 11 out of 54 schools providing Buddhist schooling responded that they had dropped out of school and never learned any content of the secondary school curriculum and there were even children who started residing in monastery since the age of 6 and had never experienced going to school.

<sup>29</sup> Report of the 2014 Census on Churches, Monasteries and Religious Organizations in the Capital City.

<sup>30</sup> NSO data. <https://www.nso.mn>

<sup>31</sup> NAC and UNICEF Joint Assessment Report, 2014. Reasons why children participating in church and monastery activities and residing in monasteries are attracted to the churches and monasteries.

<sup>32</sup> NSO data. <https://www.nso.mn>

<sup>33</sup> NHRCM, 2014. 12<sup>th</sup> Report on the Status of Human Rights and Freedoms in Mongolia.

These realities indicate the necessity to specify the requirements and conditions of the activities to provide religious education, to establish religious schools based on special permission, to pay attention to the registration information of the learners, and to codify the issues of providing religious education through home schooling.

Therefore, based on the above-mentioned legal and practical needs, the relations which were regulated by the hitherto Law on the Relationship between the State and the Monastery would be expanded to ensure the state policy on religion and to guarantee the religious freedom for citizens and the name of the law would be changed into “The Law on Religious Freedom.”

## **Two. Regulatory Relations and Scope of the Revised Law**

Since there were significant changes in the nature and content of social relations which have been regulated by the Law on the Relationship between the State and the Monastery, adopted in 1993, the draft will be expanded as the Law on Religious Freedom and will be developed in the form of a revised law according to Article 25 of the Law on Legislations.

The draft of the Law on Religious Freedom will be revised based on the concept of the Constitution of Mongolia and in line with the international human rights treaties Mongolia is party to, in the following contexts:

1. The scope of the law will be expanded by specifically codifying the principles that are related to protecting all forms of violations against religious freedom of citizens. The scope of this law will apply not only to religious organizations, but also to religious groups without the status of legal entity and to those who carry out religious activities on their own.
2. Taking into account of improving the guarantee of religious freedom of citizens, the revised law will be in line with the Constitution of Mongolia and the fundamental principles of the international treaties Mongolia joined. Within the framework of this objective, detailed regulations on implementing the principle of “the State shall respect religion and religion shall honor the State,” as stipulated in the Constitution.
3. The definitions that religious organizations shall be established in the forms of Buddhist traditions such as temples, monasteries, religious schools and centers, and that their activities shall be restricted to rituals, gathering, chanting and educational activities will be changed. Citizens will have opportunities to unite on a voluntary basis and enjoy their religious freedom with or without the status of legal entity, but actions to carry out religious activities in the name of or masked by other forms of legal entities will be prohibited, regulating that these actions will be held legally liable by the Criminal Code and Offense Code. Religious organizations will have two types such as local and centralized organizations depending on the scope of the territory in the revised law, with different formulations in terms of requirements and the structure for their founders, management and organization.
4. New regulations will be put in place by defining to which extent under-aged children should take part in religious activities; determining the participation of parents, legal guardians and caregivers when children choose, change and deny their own religion and implement their rights to religion; and clarifying the mandatory permission to take from parents and legal guardians when having under-aged children to participate in activities of

- churches, temples and monasteries.
5. Legal grounds will be codified for the work of the Council in charge of religious matters which is mandated to regulate inter-religious relations, to provide the unified policy and organization to ensure the implementation of religious freedom for citizens by creating the comprehensive systems of permission, registration and monitoring systems related to establishing religious organizations.
  6. With the purpose of strengthening the independence of religious groups and religious organizations, the conditions and requirements for their activities will be defined in line with the Constitution of Mongolia. Also regulations to make operational and financial information of religious groups and religious organizations transparent and open will be developed. To this end, issues on how to register the income of religious groups and religious organizations and donations given to them and to monitor the donations and funding from foreign citizens and organizations will be clarified, obligating religious organizations to produce operational and financial reports and to report regularly.
  7. Areas of activities carried out by religious groups and religious organizations will be clarified and the regulations to implement the activities to proselytize religion for the public will be in developed line with the principle to guarantee civil rights to religious freedom.
  8. When defining the state policy on religion, forms of the government supporting and collaborating with religious organizations will be defined in terms of granting religious organizations with tax and other deduction and exemption, and providing assistance to religious organizations to protect, preserve and rehabilitate the historical and cultural valuables, sites and items that are in their ownership or property.
  9. Requirements and conditions on the activities to provide religious education will be clarified, obligating the religious schools to obtain special permission to establish them, and clearly defining how the central state administrative organizations in charge of internal affairs and educational issues to monitor the activities of religious schools.
  10. Grounds of renewing and dissolving religious organizations will be developed. The grounds to dissolve will not only include the decisions of the religious organization, but also the conditions where it cannot operate normally any more or went bankrupt, and that it seriously violated the prohibition and restriction imposed by law.
  11. Transitional regulations and proposals to amend other relevant laws will be developed together towards ensuring religious organizations to be registered by the renewed registration according to the new regulations on registration stated in the law.

### **Three. Potential Socio-Economic and Legal Consequences after Adopting the Revised Law**

Adoption of the Law on Religious Freedom (revised version) will enable the conditions for citizens to enjoy the rights to religious freedom and gaps and loopholes in the spheres of legal regulations will be eradicated, making the regulations overarching and comprehensive.

Although there would be certain costs borne in relation to the law enforcement, it would be significantly important to ensure civil rights and to strengthen national security and solidarity of the people.

Calculation of the costs borne in relations to the law enforcement upon its adoption will be evaluated according to Article 18 of the Law on Legislations.

#### **Four. Alignment of the Revised Law with the Constitution of Mongolia and other Laws**

The revised law will be developed in line with the Constitution of Mongolia, international treaties Mongolia ratified, the Law on State Registration of Legal Entities, the National Security Concept and other relevant legislations.

Impacts of the revised law will be assessed according to Article 17 of the Law on Legislations, further improving the final version in terms of increased possibility of the law to be applied in practice, and its coherence, and reviewing its overlapping points, loopholes and gaps.

In regards to this revised law, other relevant revised laws including the one to annul the existing Law on the Relationship between the State and the Monastery, adopted in 1993, will be developed.



## Introduction to Revised Draft Law on Religious Freedom (2018)

### One. Purpose and Importance of the Revised Draft Law

One of the specific laws adopted and enforced in the first few years of Mongolia's transition to a democratic, open society, in line with the concept and principles of the Constitution of Mongolia was the Law on the Relationship between the State and the Monastery, adopted in 1993.

This law then allowed multiple religious organizations to co-exist and operate in Mongolia and the issuance of permission to found or establish churches, temples and monasteries started in 1994.

In Mongolia, there were 93 churches, temples and monasteries operating in 1993 at the national level,<sup>1</sup> whereas in 2004 it went up to 225,<sup>2</sup> and in 2016 and 2017, a total number of 350 and 344 churches, temples and monasteries were counted, respectively.<sup>3</sup>

As of 2017, 52.3 percent of religious organizations operating in the country is Christian, 39.5 percent Buddhist, 6.1 percent Islamic and the remaining 2.1 percent is of other types of religious organizations.<sup>4</sup>

Apart from these institutions, the number of clairvoyants, fortunetellers, shamans, female shamans and individuals who conduct religious and faith-based rituals privately, without the status of religious organization or legal entity has increased.

Based on these data, it can be concluded that as the activities of religious organizations expand in Mongolia, citizens' attitudes towards religion and the status of conscience and religion change, strongly affecting all sectors such as social, cultural, educational and economic spheres.

While it is impossible to regulate outcomes of this widespread change by the existing Law on the Relationship between the State and Monastery, many challenges have emerged when it comes to the enforcement of the law, because the scope of legal regulations is restricted to the relations related to religious organizations only and the forms to monitor the relations of religions are defined as the forms of temples, monasteries, religious schools (*datsan*), and centers based on the characteristics of the traditional religion or Buddhism (Christian organizations usually operate in the name of conventions and gatherings).

Overall, 5 different amendments were made to the Law on the Relationship between the State and the Monastery within 25 years since it took effect, but these amendments were made due to the legal reform in the sector or the amendments made to these laws, rather than resolving the challenges facing the relationship between the State and religious organizations or barriers related to religious activities.

Thus, there are not a few cases in which not only non-governmental organizations (NGO), as well as educational, health and media organizations, but also organizations registered as for-profit legal entities have been carrying out

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<sup>1</sup> "Activities and Impacts of Foreign and International Religious Non-Governmental Organizations in Mongolia" study. Law Enforcement University. 2017.

<sup>2</sup> Report of the 2014 Census on Churches, Monasteries and Religious Organizations in the Capital City.

<sup>3</sup> National Statistics Office data, 2016. [www.nso.mn](http://www.nso.mn).

<sup>4</sup> Results of the investigation conducted by the Working Group formed by Order A/73 by the Minister of Justice and Home Affairs in 2016.

religious activities, exploiting the loopholes in legal regulations, and weaknesses in monitoring and registration.<sup>5</sup>

According to an investigation conducted by the Ministry of Justice and Home Affairs (MoJHA), there are 848 legal entities operating in the religious sector representing 6 different types of religions and 20 different kinds of religious sects as of 2016, 41.5 percent of which or 352 of them were functioning without any permission.<sup>6</sup>

As of 2017, there are 1,529 monks and priests registered, 1,303 of whom are Buddhist, 197 are Christian, 26 Islamic and 3 are of Baha'i, Moon and Shaman.<sup>7</sup>

Moreover, the number of individuals who work as clairvoyants and fortune-tellers, as well as male and female shamans has increased in recent years and since they do not belong to particular churches or monasteries, they serve citizens according to the rules of their own.

Therefore, it indicates the necessity that not only all citizens and social groups should comply with legal norms towards implementing religious freedom, but also the scope of the law should apply to both religious organizations (churches, temples and monasteries) and individuals who carry out religious activities privately.

Furthermore, it is urgently needed to specifically regulate the issues of recruiting under-aged children to take part in religious activities and of providing them with religious education.

When comparing the statistics of the past 9 years (2007-2016) based on the National Statistics Office (NSO) data, the number of disciples and pupils who study at religious schools has decreased, but the number of children studying religion at home is multiple times more than those studying at religious schools is a pressing issue that needs serious attention in the future.

Thus, taking into account of the necessity and requirements of the current social and legal reforms, one of the main areas to improve the legislations of Mongolia until 2020<sup>8</sup> proposes an objective to amend the Law on the Relationship between the State and the Monastery to “clarify and improve the monitoring, registration and permission-granting systems, as well as accountability mechanisms on the activities of religious organizations.”<sup>9</sup>

Therefore, based on the above-mentioned legal and practical needs, the relations which were regulated by the hitherto Law on the Relationship between the State and the Monastery would be expanded to ensure the state policy on religion and to guarantee the religious freedom for citizens and the name of the law would be changed into “The Law on Religious Freedom.”

## **Two. Development Process of the Revised Draft**

With regards to the development of the revised draft law, relevant studies and researches had been conducted such as the assessment on the status or consequences of the implementation of the Law on the Relationship between the State and the Monastery, study on the legal regulations of non-profit legal entities operating in Mongolia, and comparative studies of foreign countries' practices on the legal regulations of between the State and religion.

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<sup>5</sup> The list of organizations carrying out religious activities which needed to be investigated and annexed in the results of the investigation conducted by the Working Group formed by Order A/73 by the Minister of Justice and Home Affairs in 2016 included organizations with the status of NGOs, non-banking financial institutions, Company Limited (Co.Ltd.), hospitals, trade centers, schools, kindergartens, children's camps and press.

<sup>6</sup> Results of the investigation conducted by the Working Group formed by Order A/73 by the Minister of Justice and Home Affairs in 2016.

<sup>7</sup> NSO data.

<sup>8</sup> Resolution No. 11 of January 11, 2017 by the State Great *Khural* (Parliament of Mongolia).

<sup>9</sup> Objective 160 of the main areas to improve the legislations of Mongolia until 2020.

The conclusions and recommendations of these assessments and studies have been used to develop the draft of this revised law.

### **Three. Structure of the Law**

The Law on Religious Freedom has 5 Chapters and 45 Articles and it has been developed in the form of a revised draft law according to Article 25 of the Law on Legislations.

The revised draft law reflects the following new regulations as below:

1. With the purpose of strengthening religious freedom and the independence of religious groups and religious organizations, the conditions and requirements for their activities are defined in line with the Constitution of Mongolia.

Within this framework, in cases citizens, religious groups and religious organizations do not violate law, relevant legal restrictions, its grounds and guidelines have been defined based on the principles that the State shall not interfere with their activities.

Towards this end, Mongolian citizens who have reached the age of 18 are entitled to establish religious groups and religious organizations, whereas foreign citizens and stateless persons are subject to restricted regulations by having rights to join religious groups or religious organizations as members, to participate in their activities and to be employed by religious organizations.

In addition, the law does not only regulate the activities of religious organizations, but also those of religious groups and individuals who carry out religious activities privately, or the so-called religious proselytizers (monks, priests, clergyman, pastors, shamans, female shamans, etc.), without the status and mandate of legal entity.

2. Regulations, guidelines and requirements to found religious groups and organizations are set out in details, creating opportunities for citizens to unite on a voluntary basis and enjoy their religious freedom with or without the status of legal entity.

Religious groups will be established by citizens with the purpose of implementing their rights to religion collectively and their activities are restricted to be carried out only for their members and with their own funds and donations.

On the other hand, religious organizations will be founded based on special permission with two types such as local and centralized organizations and regulated to carry out activities to proselytize religion by serving their followers, providing religious training and education, and producing books and sutras on the territory as laid out in the permission. More than 10 local religious organizations of same religious sect or religious trend can unite and found a centralized religious organization and have rights to establish their own religious schools or religious media organizations, to publish religious books and productions for public use, and to manufacture and distribute other items for praying and worship.

3. Issues on how to register income of religious groups and religious organizations and donations from others and how to monitor donations and funding from foreign citizens and organizations have been clarified, obligating religious organizations to produce and submit both operational and financial reports.

Moreover, forms of how the government can support and collaborate with religious organizations have been set out, so that the state would grant them with tax and other deduction and exemption, and providing financial and other assistance to protect, preserve and rehabilitate historically and

culturally important items that are in the ownership or property of religious organizations.

Thus, the law creates environments and conditions in which government, business and political actions are separate from religious influence and that there is no religious activity to be carried out under other forms of legal entity and in the name of cultural, art and charity activities.

4. Limitations of involving under-aged children to take part in religious activities have been laid out, clearly defining the level of participation of parents, legal guardians and caregivers in terms of children choosing, changing, and denying their religion, or implementing their own rights to religion.

A new regulation is reflected to request mandatory permission to be obtained from parents and legal guardians when engaging under-aged children in religious activities and activities of churches, temples and monasteries.

5. There is a clear provision on the prohibitive actions imposed on religious groups and religious organizations with legal liabilities and relevant measures to be taken in case of violations.

It is prohibited for religious groups, religious organizations and religious proselytizers to promote cruel, inhumane religious teachings and doctrines and to carry out religious activities in manners that violate human rights and are illegal and improper otherwise.

Illegal activities do not only constitute punishment and penalty, but also become grounds on which religious organizations should be dissolved.

6. Rights and duties of the Council in charge of religious matters mandated to create conditions to provide unified policy and organization to ensure national security and the implementation of rights of citizens to religious freedom have been defined.

The revised draft law has been developed in line with the Constitution of Mongolia, international treaties Mongolia joined, the Law on State Registration of Legal Entities, National Security Concept and other relevant laws.

With regards to this revised draft law, other draft laws have been developed to amend laws such as the Law to Annul the Law on the Relationship between the State and the Monastery, adopted in 1993, Criminal Code, Offense Code, Law on the President of Mongolia, Election Law, Law on the Status of Foreign Citizens, Law on Political Parties, Law on State Stamp Duties, Law on Advertisements and other laws.

# **Draft Law of Mongolia On Religious Freedom (Revised version, 2018)<sup>1</sup>**

## **CHAPTER ONE GENERAL PROVISIONS**

### **Article 1. Purpose of the law**

1.1. The purpose of this law is to ensure that citizens enjoy freedom to worship or not to worship religion with guarantee as proclaimed by the Constitution of Mongolia, to prevent discrimination based on faith and religion, and to regulate the relationship between the State and religion, as well as common relations with regards to activities of religious organizations, religious groups, and proselytizers.

### **Article 2. Legislation on religious freedom**

2.1. Legislation on religious freedom shall consist of the Constitution of Mongolia,<sup>2</sup> Civil Code,<sup>3</sup> General Law on State Registration,<sup>4</sup> Law on State Registration of Legal Entities,<sup>5</sup> this law and other legislations developed in line with these laws.

2.2. If an international treaty to which Mongolia is party states otherwise, the international treaty shall be complied.

### **Article 3. Scope of the law**

3.1. The scope of this law applies to activities carried out by religious groups, religious organizations, and proselytizers operating on the territory of Mongolia.

### **Article 4. Civil rights to religious freedom**

4.1. All persons legally residing in Mongolia shall enjoy religious freedom with guarantee.

4.2. Citizens have rights and freedoms to participate in religious activities and to proselytize religious teachings and doctrines within the legal parameters by having faith; worshipping or not worshipping religion individually or collectively; freely selecting, changing, or refusing religion; striving for religious acts; becoming disciples or pupils at temples, monasteries, religious schools, places of worship and other venues providing religious services; founding religious groups and religious organizations; holding religious rituals and ceremonies; and taking part in religious ethics and other kinds of religious training.

4.3. When citizens enjoy their freedoms to worship or not to worship religion, they shall not hinder national security, violate human rights and freedoms of others, and

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<sup>1</sup> Literal translation: Draft Law On Freedom To Worship Or Not To Worship Religion

<sup>2</sup> The Constitution of Mongolia was published in the "State Information" bulletin, Vol 1, 1992.

<sup>3</sup> Civil Code was published in the "State Information" bulletin, Vol. 7, 2002.

<sup>4</sup> General Law on State Registration was published in the "State Information" bulletin, Vol. ...., 2018.

<sup>5</sup> Law on State Registration of Legal Entities was published in the "State Information" bulletin, Vol. ...., 2018.

disrupt public order.

4.4. It is prohibited to grant superiority, to restrict others and to discriminate in any form because of differences in religion or faith, and of the state of worshipping or not worshipping religion.

4.5. All citizens are equal before the law regardless of their differences in religion or faith, and of the state of worshipping or not worshipping religion.

4.6. If not stated otherwise by law, citizens shall not be obligated to provide information about their attitudes, positions and opinions on religion and faith.

4.7. It is prohibited to force, press or threaten citizens in any form to worship or not worship religion; to hold religious rituals or ceremonies; to participate or not participate in training or religious organizations' activities; and to donate or provide material aid for religious activities.

4.8. Confidentiality of confession is protected by law. Refusal by missionaries or preachers to testify before law enforcement agency or court about any confessions by citizens shall not constitute grounds for legal liability.

4.9. Based on Article 18.5 of the Constitution of Mongolia, relevant provisions of this law shall regulate restrictions in terms of rights of foreign citizens and stateless persons to found religious groups or religious organizations, and to promote religious teachings or doctrines.

4.10. Foreign citizens and stateless persons have rights to join religious groups or organizations, to participate in their activities and to be employed by religious organizations according to law.

## **Article 5. Children's rights to religious freedom**

5.1. Unless stated otherwise by other laws, provisions stipulated in Article 4 of this law shall equally apply to children.

5.2. It is prohibited to enlist or recruit small children, against their will and without permission from parents or legal guardians, to become members of religious groups or religious organizations, and to enroll children in religious schools or urge them participate in training, as well as religious activities and other events organized by religious groups and organizations.

5.3. Religious upbringing and education provided for children and any religious observances with the participation of children shall be suitable for their age and other characteristics without impeding children's development, health, and upbringing.

Note: The term "small children" used in this law refers to individuals whose age is below 14.

## **Article 6. Relationship between the State, and religious groups and religious organizations**

6.1. Relationship between the State and religious groups and religious organizations is based on a principle that the State shall respect religion and religion shall honor the State in Mongolia, as stipulated in the Constitution of Mongolia.

- 6.2. The State shall implement the principle stated in Article 6.1 of this law in the following context:
- 6.2.1. The State of Mongolia shall be separate from religion and shall not determine any religion, religious sect or trend as the state or official religion;
- 6.2.2. With the view to treasure and inherit sovereignty, national solidarity and historical and cultural traditions, a predominant position of Buddhism in Mongolia (hereinafter “traditional religion”) shall be respected and this shall not prevent citizens from worshipping other religions;
- 6.2.3. attitudes, positions, and opinions of citizens’ religion shall not be determined or registered;
- 6.2.4. rights of parents, guardians and caregivers to provide children with non-formal religious education, knowledge and practices based on their own faith or belief shall not be intervened in cases other than any form of restrictions, or violations of law;
- 6.2.5. religious groups or organizations shall not be forced or obligated to carry out duties imposed on governmental organizations by law, or to take part in election activity or advertising;
- 6.2.6. activities of religious groups and religious organizations shall not be intervened unless they have violated law;
- 6.2.7. In case of potential harms foreseen for the Constitutional regime of Mongolia, national security, public order, civil rights, legal interests, health and morality, the State shall regulate based on consultation, if necessary, stop the activities of religious groups or religious organizations.
- 6.3. Government organizations and public servants are prohibited to receive donation or material assistance in any form from religious groups, organizations and foreign religious organizations stated in this law.
- 6.4. Religious groups and religious organizations shall implement the principle stated in Article of this law in the following context:
- 6.4.1. religious groups and religious organizations shall not carry out duties of governmental organization imposed by law;
- 6.4.2. Legislations of Mongolia shall be complied with;
- 6.4.3. shall not participate in activities of political parties or political movements and shall not provide material and other support or assistance for political activities;
- 6.4.4. shall not use religious reputation and faith or belief of the population for making profit or for the purpose of satisfying the interests of political parties, institutions or officers.
- 6.5. Citizens, who are members of religious groups or religious organizations, working for the government, running for or participating in elections of all levels, and having memberships in political parties and other social coalitions and movements just like other citizens shall not be considered that the religious group or religious organization intervened in government activities, or those of political parties, or political movements.

6.6. When making decisions related to religious groups and religious organizations, authorized government organizations shall provide an opportunity for the religious groups and religious organizations to express their positions.

## **CHAPTER TWO RELIGIOUS GROUPS AND RELIGIOUS ORGANIZATIONS**

### **Article 7. Religious groups**

7.1. A religious group is an institution formed by citizens to implement their rights to worship religion collectively on a voluntary basis and founded without the status of legal entities.

7.2. Members of religious groups can be Mongolian citizens, or foreign citizens and stateless persons legally residing in Mongolia.

7.3. Office and assets to carry out activities of religious groups shall be provided for by its members only and it is prohibited to receive donation, support and assistance from others.

7.4. Religious groups shall notify the relevant *soum*, or district Governor's administrative office within 30 days of its formation.

7.5. The notification stated in Article 7.4 of this law shall enclose information on religious sect, trend, major teachings and doctrines of the group, clan name, surname, given name and address of residence of group members, as well as the location of office according to the approved forms.

7.6. Upon completing the notification as stated in Article 7.4 of this law, religious groups are obligated to submit a biannual operational report to the relevant *soum* or district Governor's administrative office at least once. The report shall reflect operational and financial status, as well as changes made in terms of the members of the group.

7.7. Council in charge of religious matters shall approve the notification stated in Article 7.4 of the law, information and forms to be enclosed, and reporting regulations stated in Article 7.6.

7.8. Religious groups have rights to organize religious rituals and ceremonies, as well as training on religion and religious ethics with the participation of its group members only.

7.9. Religious groups can carry out charity activities and it is prohibited to hold any form of religious ritual, ceremony or promote religion when conducting charity activities.

7.10. It is prohibited to found a religious group whose objectives and activities do not meet the requirements of law and to carry out activities stated in Article 27.2 of this law.

7.11. Provincial and metropolitan Governor's administrative offices shall produce and submit a biannual unified report on activities of religious groups operating on its territory to the Council in charge of religious matters.



## **Article 8. Religious organizations**

- 8.1. A religious organization is a legal entity with the purpose of proselytizing religion by holding religious rituals and ceremonies, conducting training and education on religion and religious ethics, and producing books based on teachings and doctrines of a religious trend and of serving its communities, worshippers and followers openly in terms of worship and praying.
- 8.2. Religious organizations are categorized as local and centralized depending on the territory on which they operate.
- 8.3. Local religious organizations can be founded by no fewer than 10 Mongolian adult citizens on a voluntary basis.
- 8.4. More than 10 local religious organizations of same religious sect or trend can be unified on a voluntary basis and found a centralized religious organization.
- 8.5. Local religious organizations can join centralized religious organizations as members.
- 8.6. Religious organizations shall operate according to regulations stated in laws and the Charter.
- 8.7. Local religious organizations shall operate on the territory defined by the permission stated in Article 11.1 of this law.
- 8.8. Religious organizations can have internal regulations reflecting the religious traditions and customs. It is prohibited to develop inhumane regulations in conflict with the traditions and customs of Mongolian people and in violation of laws.
- 8.9. It is prohibited to found a religious organization whose objectives and activities do not meet the requirements of law and to carry out activities prohibited by law.

## **Article 9. Names of religious organizations**

- 9.1. Religious organizations shall have names with the content expressing its religious activities.
- 9.2. Name of a religious organization shall consist of its name and the detailed description as "Religious Organization" or its acronym, "RO."
- 9.3. It is prohibited for other entities than those who carry out activities of religious organizations to use the description of "Religious Organization," or "RO" along with its name.
- 9.4. Signifiers such as temple, monastery, religious school, or center can be used for the name of religious organizations and centralized religious organizations legally operating on the territory of Mongolia for more than 50 years since the registration in the state registration of legal entities shall be entitled to use the words such as MONGOL, MONGOLIAN, NATIONAL, PUBLIC, and UNITED, and other words with the meaning representing the public that derive from the above- mentioned words.
- 9.5. Religious organizations shall change its name and location with the permission

of the Council in charge of religious matters.

9.6. Religious organizations are obliged to publicly inform its name when carrying out activities.

### **Article 10. Founding religious organizations**

10.1. Individuals who agreed to found a religious organization shall hold a founders' meeting to discuss and resolve the following issues:

10.1.1. to reach a decision to found a religious organization;

10.1.2. to adopt a Charter of a religious organization; and,

10.1.3. to appoint a Board.

### **Article 11. Permission to register religious organizations in the State registration**

11.1. Council in charge of religious matters stated in Article 39 of this law shall grant permission for religious organizations to register in the State registration.

11.2. Application to register local religious organizations in the state registration shall contain the following information according to the approved forms:

11.2.1. information on founders' clan name, surname or parents' names, given name, birthdate, nationality and address of residence;

11.2.2. copy of civil identification card, or national foreign passport, or equivalent document;

11.2.3. Charter of the religious organization; and,

11.2.4. Information about the territory and population where it will carry out its activities.

11.3. Application to register centralized religious organizations in the state registration shall contain the following information according to the approved forms:

11.3.1. information on the names of the founders, dates on which those organizations are founded and the addresses;

11.3.2. copy of the certificate of the state registration of legal entities;

11.3.3. Charter of a religious organization to be founded.

11.4. Permission for a religious organization to be registered in the state registration shall be rejected in the following cases:

11.4.1. if objectives and activities of the religious organization are violating particular provisions of the Constitution of Mongolia and other legislations;

11.4.2. if a founder is of a non-religious organization, or an individual who is prohibited to found a religious organization;

11.4.3. if the Charter and other application documents do not meet the legal requirements; in addition, if these documents contain contradictory information;

11.4.4. if the founder or founders does not or do not have legal ability;

11.4.5. if it proselytizes cruel, inhumane religious teachings and doctrines.

11.5. Council in charge of religious matters shall resolve the issues to grant permission for religious organizations to register in the state registration within 60 days upon receiving the application stated in Articles 11.2 and 11.3 of this law, according to the regulations to authorize or cancel the certificate of religious organizations.

11.6. If it is necessary to review the request of a religious organization to register in the state registration, the duration as stated in Article 11.5 of this law can be extended by 60 days once.

11.7. Council in charge of religious matters shall approve the forms that contain information stated in Articles 11.2 and 11.3, as well as the regulations to authorize and cancel the certificate of religious organizations stated in Article 11.5 of this law.

## **Article 12. Founders of religious organizations**

12.1. An individual who made a decision to found a religious organization and approved the Charter of the religious organization is called a founder of the religious organization.

12.2. Founder can be a member of the Board.

12.3. The following individuals are prohibited to become a founder of a religious organization:

12.3.1. foreign citizens and stateless persons;

12.3.2. those who committed crime and convicted according to Articles 14.1, 14.4, 18.6, 19.8, 19.9, 20.2, 20.3, 29.1, 29.2, 29.3, 29.8, 29.9, 29.10, and 29.11 of the Criminal Code and if it has not passed 10 years since the sentence is served;

12.3.3. a member of a religious group or religious organization which proselytizes cruel, inhumane religious teachings and doctrines and carried out religious activities in the past in order to change or destroy the constitutional system and state institution in an illegal and forceful manner, to sabotage national solidarity and to practice genocide.

12.4. An individual who provided donation, aid, or support to the religious organization after it was founded is not considered as a founder.

12.5. Assets and investments contributed to the religious organization by the founders and individuals stated in Article 12.4 of this law become the assets of the religious organization.

12.6. Founders do not have rights to own the assets of the religious organization.

## **Article 13. Charter of religious organizations**

- 13.1. A religious organization shall operate based on a Charter in line with legislations.
- 13.2. Founders' meeting shall approve the Charter of a religious organization.
- 13.3. A centralized religious organization can give directions on issues to be reflected in the Charters of its member local religious organizations.
- 13.4. The Charter of a religious organization shall address the following components:
  - 13.4.1. name, location, a type of religious organization, and the name of a centralized religious organization if it belongs to one;
  - 13.4.2. detailed information and explanations on the objective of the religious organization, basic forms of activities, religious teachings, doctrines, religious prayings, rituals and ceremonies, as well as requirements for its membership;
  - 13.4.3. grounds and regulations to renew and dissolve the religious organization;
  - 13.4.4. structure, system and founding regulations of the religious organization and mandates of its executive body;
  - 13.4.5. information on sources of organizational financing, monetary and other material sources of its assets and ownership;
  - 13.4.6. rules and regulations to amend the Charter;
  - 13.4.7. regulations to manage assets and properties once the organization ceases to function;
  - 13.4.8. other information depending on the characteristics of the religious organization.
- 13.5. The Charter of a religious organization shall be amended by the decision of an authorized institution, which will be valid once the change is made in the state registration of legal entities.
- 13.6. If the Charter of a religious organization needs to be amended with regards to issues stated in Article 13.4 of this law, the Council in charge of religious matters shall be notified in advance for further permission.
- 13.7. When registering religious organizations in the state registration, and amending the Charter, fees shall be paid as stipulated by law.

## **Article 14. Registering religious organizations in the state registration**

- 14.1. Religious organizations shall be registered to the state registration based on the permission stipulated in Article 11.1 of this law.
- 14.2. Rights of religious organizations as legal entities shall commence once they are registered to the state registration of legal entities.

14.3. Relations to register religious organizations in the state registration of legal entities shall be regulated by the Law on State Registration of Legal Entities.

### **Article 15. Management and organization of religious organizations**

15.1. An authoritative body of a religious institution shall be its Board.

15.2. Religious organizations shall have both supervisory and executive bodies.

### **Article 16. Board**

16.1. Board shall consist of donors, supporters and representatives appointed by them.

16.2. The Charter shall regulate the number and duration of appointment of Board members.

16.3. Board members shall elect their Chairperson among themselves.

### **Article 17. Mandates of the Board**

17.1. Board shall implement the following mandates:

17.1.1. to amend the Charter;

17.1.2. to renew and dissolve the religious organization;

17.1.3. to approve the annual budget of the religious organization;

17.1.4. to discuss operational and financial reports of the religious organization;

17.1.5. to appoint, dismiss, or make a contract with executive management and to determine the rights and limitations related to the management of assets; and,

17.1.6. to appoint a supervisory body.

### **Article 18. Board meetings**

18.1. Regular Board meetings shall be convened at least once a year and the Chair of the Board shall set a date for the meeting.

18.2. Ad hoc Board meetings can be convened upon request by the supervisory body.

18.3. A Board meeting is deemed valid with the participation of the majority of Board members.

18.4. A Board meeting shall be chaired by the Chairperson of the Board, or a member appointed by the Chair in his or her absence.

18.5. Chair and members of the Board shall check if the minutes of the meeting are accurately taken and sign them when satisfied.

## **Article 19. Board decisions**

19.1. If not stated otherwise in the law, Board decisions shall become valid based on the votes of the majority of the members who attended the meeting. Board decisions take a form of resolution.

19.2. When resolving issues stated in Articles 17.1.1 and 17.1.2 of this law, majority votes of the members who attended the meeting shall make the Board decision valid.

19.3. Each member who attended the Board meeting shall have one voting right.

19.4. Board has a small number of members and in case they expressed similar opinions on a particular issue in a written form, they can resolve the issue without convening a Board meeting.

19.5. Board shall determine the particular issues to be resolved based on written expressions of opinions from Board members without holding a Board meeting.

## **Article 20. Salary and remuneration for the Chair of the Board and Board members**

20.1. The Chair of the Board and Board members shall not receive any salary or remuneration for carrying out duties as such from the religious organization.

## **Article 21. Supervisory body and its rights and duties**

21.1. Supervisory body shall have three or more members.

21.2. Executive body of the religious organization is prohibited to be in the supervisory body.

21.3. Supervisory body shall have main duties to supervise and monitor financial activities of the executive management and the religious organization.

21.4. The Charter shall determine other rights and duties of the supervisory body depending on the characteristics of the activities of the religious organization.

21.5. Executive body shall be responsible for providing the supervisory body with information.

## **Article 22. Executive body**

22.1. Executive body bears the following rights and duties:

22.1.1. to manage and organize daily operations of religious organizations;

22.1.2. to manage the assets of the religious organization within the mandate authorized by the Board;

22.1.3. to have the Board discuss operational and financial reports of the religious organization;

22.1.4. other rights and duties stated in the Charter.

22.2. Other rights, duties and obligations, as well as grounds and regulations to be released from the obligations, wages and work conditions of the executive management in relation to the religious organization shall be regulated by an agreement or contract made with the Board. The Chair of the Board shall make contract with the executive body.

### **Article 23. Branches and representative offices of religious organizations**

23.1. A religious organization can form its branch or representative office.

23.2. In order to form a branch or representative office, the religious organization shall obtain permission as stipulated in Article 11.1 of this law.

23.3. Branch or representative office of the religious organization does not enjoy the rights of legal entities; the organizational Charter shall determine its rights and duties.

23.4. Management of religious organizations' branch or representative office shall be appointed by an authorized body as stated in the organizational Charter.

23.5. Branch or representative office of the religious organization shall carry out its operations only on behalf of the organization that formed it.

23.6. Local branch or representative office of a religious organization is entitled to operate only within the territory upon which the religious organization is supposed to function, as stated in Article 8.5 of this law.

23.7. Territory on which a branch or representative office of a centralized religious organization operates shall be determined by the permission stated in Article 23.2 of this law.

23.7. Branch or representative office of a religious organization shall be registered according to the regulations stipulated in the Law on State Registration of Legal Entities.

23.8. Religious organizations of foreign countries impose equal requirements to the branches or representative offices as same as local religious organizations.

23.9. Religious organizations of foreign countries shall have the branches or representative offices registered at an authority in charge of foreign citizens according to the permission granted by the Council in charge of religious matters.

### **Article 24. Renewal of religious organizations**

24.1. A religious organization can be renewed and restructured by merging, unifying, dividing or separating it based on the authorized institution and according to regulations stated by law.

24.2. It is prohibited for the religious organization to be renewed by changing the form of its organization and the main objectives.

24.3. In case of dividing or separating the religious organization, it shall be registered to the state registration of legal entities upon receiving the permission as stated in

Article 11.1 of this law.

24.4. If the religious organization is renewed and restructured, it shall be registered in the state registration of legal entities according to appropriate regulations.

### **Article 25. Dissolving religious organizations**

25.1. A religious organization shall be dissolved in the following cases:

25.1.1. Board of the religious organization decided that the organization achieved its goals and thus no longer necessary to continue its operations, or that it decided to dissolve it based on other grounds stated in the regulations;

25.1.2. disciplinary measures to dissolve it are taken according to the Criminal Code;

25.1.3. it is deemed bankrupt;

25.1.4. a penalty to deprive of rights is imposed to make the permission invalid as stated in the Offence Code;

25.1.5. permission of the religious organization is annulled;

25.1.6. other provisions stated in the law.

25.3. Court shall issue the decision as stated in Article 25.1.3 of this law according to the regulations stipulated in the Civil Procedure Law based on the requests of claimants and respondents as stated in the Bankruptcy Law, whereas the decision stated in Article 25.1.2 of this law shall be issued according to the regulations stipulated in the Criminal Procedure Law.

25.4. Council in charge of religious matters shall issue the decision as stated in Article 25.1.5 of this law, whereas that of Article 25.1.4 of this law shall be issued by the authorized officer as stated in section 6.8 of Article 1.8 of the Offence Procedure Law.

### **Article 26. Annulment of the permission of religious organizations**

26.1. Council in charge of religious matters shall annul the permission granted for the religious organization as stated in Article 11 of this law based on the following grounds:

26.1.1. in case it became impossible to carry out activities as stated in Article 8.1 of this law;

26.1.2. in case it violated what is stipulated in Articles 6.4.3 and 6.4.4 of this law.

26.2. Rights of religious organizations shall be annulled according to the regulations to authorize and cancel the certificate of religious organizations.

26.3. If the religious organization contends the decision made by the Council in charge of religious matters according to Article 26.1 of this law, it shall be entitled to appeal in court by issuing a complaint as stipulated in the Law on Judicial Procedure for Administrative Cases.

26.4. The decision made by the Council in charge of religious matters as stipulated



in Article 26.1 of this law shall constitute the grounds to dissolve the religious organization.

## **Article 27. Prohibitive items for religious organizations**

27.1. Religious organizations are prohibited to violate the Constitution of Mongolia and other legislations by their objectives and activities.

27.2. Religious organizations are prohibited to carry out the following activities:

27.2.1. to carry out or to incite activities of forced marriage, forced divorce or group marriage;

27.2.2. to carry out activities hindering the process of obtaining mandatory basic education;

27.2.3. to force the members, followers and others to denounce their own rights and to create advantageous environment for the religious organization;

27.2.4. to use force or threaten to use force with the purpose of making them join the religious organization or preventing them from leaving the membership, to threaten to cause harm in terms of civil life, health, property and reputation, and to interfere by carrying out illegal activities;

27.2.5. to pollute the environment when practicing religious rituals and ceremonies;

27.2.6. to demand or force to provide donation, aid, or bribery;

27.2.7. to impose religious doctrines, to give pressure, to influence with the promise of monetary gain and to cheat taking advantage of one's belief or faith and using one's vulnerability;

27.2.8. to receive donation from foreign governments, or legal entities or religious organizations funded by these governments;

27.2.9. to use drugs and other mentally harmful substances, and to conduct pornography and other illegal activities in relation to religious acts;

27.2.10. to call on to commit suicide, to instigate or provoke to commit suicide, to discriminate based on religious doctrines and views, to restrict one's rights, to set superiority, to commit violence, and to preach and encourage not to provide assistance to those whose life and health are in danger due to religious reasons;

27.2.11. to enlist the individuals mentioned in Articles 8.10.2 and 8.10.3 of this law to become members of the religious organization and to make them participate in proselytizing activities organized by the religious organization;

27.2.12. to carry out religious activities in order to change or destroy the constitutional system and state institution in illegal and forceful manners, and to organize and enlist others to organize these activities;

27.2.13. to carry out activities to disrupt national solidarity by creating hostility or tension based on religious doctrines and opposing views, and by inciting extremism and separatism;

27.2.14. to proselytize cruel, inhumane religious teachings and doctrines and to carry out religious activities in an illegal manner and by violating human rights;

27.2.15. other provisions stated in the law.

27.3. It is prohibited for the Chair of the Board, Board members, executive body, head of the supervisory body and members of the religious organizations to receive donations from individuals and organizations for their own benefits.

Note: "cruel, inhumane religion" is understood to be religious sects or trends which incite and preach intolerance towards atheism, deny other religions and practice rituals and ceremonies in illegal manners by using wars, terrorist acts, extremist actions, pornography, drugs, and mentally harmful substances, committing violence, discriminating and harming human life and health.

### **CHAPTER THREE RELIGIOUS RITUALS, CEREMONIES AND RELIGIOUS ACTIVITIES**

#### **Article 28. Religious rituals and ceremonies**

28.1. Religious organizations have rights to build special venues for praying, monuments, statues, stupas, facilities or temples and monasteries, in order to organize religious activities, worship, prayer and other religious gatherings to serve their communities, worshippers and followers.

28.2. It is prohibited to practice religious rituals and ceremonies and to organize religious training and gatherings at workplaces of governmental organizations.

28.3. Based on the requests of citizens, religious organizations can hold religious rituals and ceremonies in hospitals and care centers for children, elders, and people with disabilities in the special areas, offices and rooms specifically designed for this purpose. These activities shall be in line with the internal regulations of the religious organization.

28.4. Relations to hold religious rituals and ceremonies at detention centers and prisons shall be regulated according to the Law on the Enforcement of Court Decisions, as well as the internal regulations of the detention centers, prisons and penal institutions.

28.5. Unless stated otherwise by law and military rules, military offices can practice praying, religious rituals and ceremonies.

28.6. Activities of mass worship, religious rituals and ceremonies at public venues shall ensure safety and security of the public and participants, complying with the regulations set forth by law.

28.7. Prohibition mentioned in Article 28.2 of this law shall not apply to scientific training, and cultural and arts events to provide knowledge on religious history, culture and heritage at educational, cultural and arts organizations, as well as to constructing rooms and sections for praying with the purpose of ensuring the civil rights to religious freedom.

28.8. It is prohibited for other entities than religious organizations to build religious monuments, statues and stupas for the public worship that cover large physical

space.

## **Article 29. Religious books, productions and items with religious purposes**

29.1. Unless stated otherwise by law, religious organizations shall have rights to produce and acquire religious books, productions, religious publications, audio, video, audio-video recorded materials and other items and to export, import and distribute them for public use.

29.2. Religious organizations can have their own units for its internal use to publish religious books and productions and to produce other items for praying and worship.

29.3. Centralized religious organizations can publish religious books and productions and produce other items for praying and worship for public use.

29.4. It is prohibited for other entities than centralized religious organizations to publish, produce, export and import with the purpose of selling and distributing religious books, productions and other religious items.

29.5. Religious organizations are obligated to put their names on the books, productions and other published materials, audio, video and audio-video recordings to distribute for their activities to produce, publish and proselytize.

## **Article 30. Activities to proselytize and advertise religion**

30.1. Religious organizations can proselytize their religion using the media, online network and other legal methods.

30.2. Centralized religious organizations can establish media organizations with the purpose of proselytizing religion.

30.3. The organizations mentioned in Article 30.2 of this law shall be registered as religious organizations.

30.4. Unless particular citizens made request, it is prohibited in other cases to carry out activities to proselytize religion and to distribute religious books, productions, religious publications, materials, audio, video, audio-video recordings and other items in apartments and residence areas.

30.5. In cases other than receiving permission by writing, it is prohibited for the religious organizations to carry out activities at their own venues and areas organized by other religious organizations to proselytize.

30.6. Activities to proselytize religion shall be conducted by the management, members or proselytizers appointed by the religious organizations on behalf of the religious organizations.

30.7. Religious organizations shall issue official documents proving that the citizen has a right to represent the religious organization when carrying out activities to proselytize as stated in Article 30.6 of this law.

Note: "religious proselytizers" refer to the individuals who promote religious teachings and doctrines to propagate and advertise religion and carry out religious rituals, ceremonies and other activities for the mass, communities, worshippers and followers. Depending on characteristics of the religion, proselytizers have various

names, such as monks, priests, clergyman, pastors, shamans, female shamans, among others.

30.8. Proselytization activities can be carried out freely at the following locations:

30.8.1. buildings and facilities for praying and worship constructed with the purpose stated in Article 28.1 of this law and areas where these facilities are located;

30.8.2. buildings, facilities and lands owned and used by the religious organizations;

30.8.3. buildings, facilities and lands owned by others upon the permission of the owners;

30.8.4. cemeteries and cremation centers;

30.8.5. public venues, areas and squares.

### **Article 31. Charity, cultural and enlightening activities of religious organizations**

31.1. Religious organizations can carry out charity activities alone or in collaboration with charity organizations.

31.2. Religious organizations can establish museums, libraries, and organizations for medical help, services, care, or welfare with charity purposes, according to the relevant laws.

31.3. Government organizations can support charity activities, cultural and enlightening projects and programs of the religious organizations within the legal scope and collaborate with them.

31.4. It is prohibited to carry out religious rituals, ceremonies and activities to proselytize when conducting charity activities by the religious organizations as stated in Article 31.1 of this law and by the organizations stated in Article 31.2 of this law, respectively.

### **Article 32. Religious educational organizations**

32.1. Centralized religious organizations shall have rights to establish educational institutions based on obtaining special permission to carry out educational activities, apart from the permission stated in Article 11.1 of this law.

32.2. Religious schools shall have registration as religious institution.

32.3. Religious educational organizations providing elementary and basic education shall educate the learners according to the curriculum approved by the central state administrative organization in charge of educational matters.

32.4. Religious educational organizations providing secondary education can provide general education for their learners.

32.5. Other relations related to religious education shall be regulated by the Law on Education, Law on High Education, and Law on Elementary and Secondary Education.

32.6. Religious proselytizers can provide religious education through home schooling based on the request of the learner. Articles 5 and 27 of this law shall equally apply to the relations related to providing religious education through home schooling.

### **Article 33. International cooperation**

33.1. Religious organizations shall have rights to communicate and collaborate with international and foreign organizations and individuals according to their main objectives.

33.2. Religious organizations shall have rights to invite representatives of foreign religious organizations, foreign citizens and stateless persons in order for them to take part in pilgrimage, gatherings and other events, and to participate in religious education activities.

33.3. Foreign citizens and stateless persons invited to be employed by religious organizations and for the purpose stated in Article 33.2 of this law shall obtain specific category of visa as stipulated in Article 15.1.9 of the Law on the Legal Status of Foreign Citizens.<sup>6</sup>

33.4. It is prohibited for the religious organizations to communicate and collaborate with foreign organizations, foreign citizens and stateless persons carrying out activities as stated in Article 12.3.3 of this law.

### **Article 34. Property or ownership rights of religious organizations**

34.1. Religious organizations shall have rights to legally own, possess and use real estate property, religious items, monetary assets and historical and cultural sites and materials in order to implement the activities stated in the Charter.

34.2. Religions organizations shall have property or ownership rights to own their incomes, donations and contributions from citizens and organizations, as well as assets and properties transferred from the government and those gained through a legal means.

34.3. It is prohibited to confiscate mobile and real estate properties for the purpose of worship in order to satisfy the requirements of claims by the lender.

34.4. Council in charge of religious matters shall approve the list of properties for the purpose of worship and praying that are referred to in Article 34.3 of this law.

34.5. Historically and culturally priceless sites and items for the people of Mongolia with special worship and praying purposes which are in the possession of the religious organizations that had already been dissolved can be transferred to the state and local property, or transferred to religious organizations of similar religious sect and trend to own them for the purpose of worship.

34.6. Historical and cultural mobile and real estate properties owned by religious organizations shall be registered in the registration of cultural heritage.

### **Article 35. Conducting businesses by religious organizations**

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<sup>6</sup> Law on the Legal Status of Foreign Citizens was published in the "State Information" Bulletin, Vol 1, 1992.

35.1. Unless stated otherwise by law, religious organizations can run business within the purpose of the organization set out in the Charter.

35.2. Running business shall not be the main purpose of activities of the religious organizations.

35.3. The management of the religious organization shall make decisions to run business or not.

35.4. Incomes of logistics activities of the religious organizations include the following incomes:

35.4.1. service income and paid work with the purpose of donation and fundraising;

35.4.2. service fees directly related to the objectives and purposes set out in the Charter;

35.4.3. income from selling their own properties and rent, and income from savings interest;

35.4.4. income from other legal activities.

35.5. Income gained by the religious organization by running business shall be spent only for implementing the objectives and goals set out in the Charter.

35.6. It is prohibited for the religious organizations to allocate the income gained by running business for the founders, contracted employees and other individuals in direct or indirect forms as remuneration or profit.

### **Article 36. Labor relations of religious organizations**

36.1. Labor relations related to religious organizations shall be regulated by relevant laws.

36.2. Religious organizations shall address permanent jobs in the Charter and make employment contracts with citizens suitable for those jobs or positions.

36.3. Religious organizations shall pay social insurance fees and have religious proselytizers with permanent jobs covered by the pension and welfare schemes.

36.4. Religious organizations can invite volunteers to participate in their activities based on the non-paid work agreement signed with them.

36.5. Religious organizations may allocate costs for volunteers in relation to carrying out activities and for their temporary accommodation, transportation, communication, food, special clothes and items, personal safety, health insurance and service fees.

## **CHAPTER FOUR OTHER REGULATIONS RELATED TO RELIGIOUS ACTIVITIES**

### **Article 37. Other regulations related to religious activities**

37.1. The State shall regulate the following actions in relations to religious activities:

37.1.1. to grant tax and other deduction and exemption for religious organizations or not;

37.1.2. to provide financial and other support for activities to preserve, protect and rehabilitate historically and culturally significant buildings and facilities, monuments and statues, and other historical and cultural sites and items that are owned and possessed by religious organizations;

37.1.3. to monitor whether educational legislations and general standards to provide education are enforced at religious educational organizations or not;

37.1.4. to prevent from violations of human rights and freedoms due to religious activities;

37.1.5. to formalize the head of the traditional religion by the President of Mongolia in order to respect solidarity of Mongolian people and honor historical traditions of culture and civilization;

37.1.6. to organize the ceremony to worship Tengrism of sacred state mountains and hills (*ovoo*) in collaboration with religious organizations.

37.2. Activities to identify his holiness and saints (*khutagt* and *khuvilgaan*) in Mongolia shall not be separate from the activities of the head of Mongolian traditional religion.

37.3. Council in charge of religious matters shall approve the regulations to regulate the relations stated in Article 37.1.5 of this law, whereas the President of Mongolia shall approve the regulations in relations to the list of the sacred state mountains and hills stated in Article 37.1.6 of this law, procedures to worship the Tengrism of these sacred mountains and hills, locations to hold the ceremonies, funding, state intervention, religious activities and participation of monks.

## **Article 38. Funding and reporting of religious organizations**

38.1. Funding of religious organizations shall consist of the following sources:

38.1.1. income from running business in relations to implementing the goals and objectives set out in the Charter or by law;

38.1.2. donations and assistance contributed by individuals and organizations;

38.1.3. membership tax of religious organizations;

38.1.4. other sources obtained through legal means.

38.2. Religious organizations shall keep accounting books and produce financial reports by the regulations stipulated by law.

38.3. If religious organizations received monetary and other property and funding from foreign citizens and stateless persons, information on actual expenditure and usage shall be reported on the organizational website along with the relevant documentation at once.

38.4. Reports on assets and funding as stated in Article 38.3 of this law shall be submitted to the Council in charge of religious matters within March 1<sup>st</sup> of the following year.

38.5. Monetary donations given by individuals and legal entities shall be spent within the given deadline decided by the donors and if there is no such timeline indicated by the donors, donated amount shall be spent within one year since receiving the donation.

### **Article 39. Transparency of activities by religious organizations**

39.1. Information on the head, management and permanent jobs of the religious organization, as well as on proselytizers and other employees with the mandate to hold religious rituals and ceremonies and to proselytize religion on behalf of the religious organization based on other contracts shall be openly accessible for the public.

39.2. Religious organizations shall submit the operational reports once a year to the Council in charge of religious matters within the timeline stated in Article 38.4 of this law.

39.3. Council in charge of religious matters shall approve the regulations related to producing operational and financial reports of the religious organizations.

39.4. Religious organizations shall upload their reports as stipulated in Articles 38.4 and 39.2 of this law on the organizational websites, and may inform the public in a different form.

### **Article 40. Council in charge of religious matters**

40.1. Council in charge of religious matters shall operate under the central state administrative organization in charge of internal affairs.

40.2. Council in charge of religious matters shall be chaired by the Cabinet member in charge of internal affairs and the Council components shall consist of representatives of prosecutor's office, central state administrative organizations of foreign relations and cultural affairs, authorized law enforcement and counter-terrorism institutions, tax authority, financial information agency, as well as religious organizations and religious scholars.

40.3. Cabinet member in charge of internal affairs submits the components of the Council in charge of religious matters and its working regulations, which shall be approved by the Cabinet.

40.4. Council in charge of religious matters shall have its secretariat. The Cabinet member in charge of internal affairs shall approve the structure and number of staff of the secretariat.

40.5. Council in charge of religious matters shall present its activities to the Cabinet and National Security Council on an annual basis.

40.6. Council in charge of religious matters shall issue resolutions, recommendations and tasks within the mandates and powers provided by law.

40.7. Operational cost of Council in charge of religious matters shall be funded by



state budget.

#### **Article 41. Full mandates of the Council in charge of religious matters**

41.1. Council in charge of religious matters shall implement the following mandates:

41.1.1. to regulate inter-religious relations in order to preserve and guarantee the solidarity and culture of Mongolian people;

41.1.2. to develop proposals in order to improve legal environment to ensure and guarantee the rights to religious freedom;

41.1.3. to grant or cancel permission to register religious organizations in the state registration;

41.1.4. to receive and review religious organizations' registration, activities and financial reports, and to give recommendations and tasks on law enforcement;

41.1.5. to monitor the implementation of the law on religious rights and freedoms, to conduct research, develop suggestions and conclusions and introduce them to the Cabinet / government;

41.1.6. to update database on the registration of religious organizations, religious groups and proselytizers and religious activities and to inform the relevant issues to the general public;

41.1.7. to grant permission the rights to use name as stated in Article 9.4 of this law and to change the name and location of the religious organizations;

41.1.8. to adopt and enforce administrative norms as authorized by law;

41.1.9. other provisions stated in the law.

### **CHAPTER FIVE OTHER PROVISIONS**

#### **Article 42. Religious proselytizers who do not belong to religious organizations**

42.1. Mongolian citizens can carry out activities to proselytize religious teachings and doctrines and religious rituals and ceremonies without belonging to any religious organization.

42.2. Article 26 of the law shall equally apply to the religious proselytizers addressed in Article 42.1 of this law.

42.3. Religious proselytizers shall be covered by health and social insurances voluntarily.

#### **Article 43. Database on religious proselytizers, religious groups and religious organizations**

43.1. Council shall have the database on religious proselytizers, religious groups and

religious organizations, as well as their activities and funding.

43.2. Council in charge of religious matters shall approve the regulations to update the database stated in Article 43.1 of this law, to use its information and to provide information from the database.

**Article 44. Transitional regulation**

44.1. Within one year after this law takes effect, religious organizations shall obtain permission according to Article 11 of this law and shall be registered anew to the state registration.

44.2. Regulations stated in Articles 38 and 39 of this law shall be complied with after one year since the law takes effect.

**Article 45. Legal liabilities for offenders**

45.1. If the acts of public officials who violated this law do not constitute a crime, he or she shall be subject to legal liability according to the Law on Public Service.

45.2. Individuals and legal entities who violated this laws shall be subject to legal liability according to the Criminal Code, or Offence Code.

Signature

