

# Citizen's right to information regarding the use of natural resources and legal reform<sup>1</sup>

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## Introduction

According to the 2019 report of the Ministry of Mining and Heavy Industry, the mining industry accounts for 72 percent of agricultural production, 25 percent of the country's GDP, and approximately 30 percent of the total revenue of the state budget.<sup>2</sup> In brief, it can be stated that private and state sector enterprises producing mining products, which account for 90 percent of total exports, are the main drivers of the country's economy.

It is commendable that the mineral resources sector has developed in our country, attracting foreign investments, expanding the use and extraction of minerals, and contributing greatly to the state budget, but on the other hand, in recent years, one issue that has come to the fore is responsible mining.

Issues that are intended to be solved by responsible mining generally include problems such as negative impacts on the environment and human health, and degraded ecosystem, which are the problems that arise during mineral mining means the entire range of activities that include separating and extracting minerals from land surface and subsoil, ore stockpile, waste or tailings, increasing and concentrating the concentration of its usable contents, producing products, marketing those products, and other activities related therewith<sup>3</sup>.

Then, adding article 6.2 by the amendment to the Constitution of Mongolia adopted on 14 November 2019 created a solution to the above problem. Article 6.2 reads that "A citizen shall have the right to know about the impact on the environment from the exploitation of land subsoil wealth as part of the right to live in a healthy and safe environment".

However, it is still unclear whether the current legal system of our country has detailed regulations related to the above amendments and whether they have been coordinated with the amendments to the Constitution. Therefore, this work aims to address this issue as there is an urgent need for harmonizing the amendments to the Constitution with other related laws and regulations, analyzing legal regulations, and comparing how foreign countries regulated the relation.

## I. THEORETICAL FRAMEWORK

According to the Article 16.17 of the Constitution of Mongolia states "the right to seek and receive information except that which the state and its bodies are legally bound to protect as secret. In order to protect human rights, dignity and reputation of persons and to ensure State defense, national security and public order secrets of the State, organization or individuals, which are not subject to disclosure shall be determined and protected by law", a citizen of Mongolia is guaranteed to enjoy the right to seek, search, access and have information from the government and its organizations. Considering this right in a broad context, openness and transparency in government entities about its operation and whether it's working to implement the law and also

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<sup>2</sup> Ministry of Mining and heavy industry, "Mineral resources sector statistics 2019 I-X".

<sup>3</sup> Article 4.1.7 of Minerals Law of Mongolia.

ensuring the right to information<sup>4</sup> is a crucial way of monitoring the government and improving accountability.

The right to the information reflected in the Constitution of Mongolia as well as related laws and its fundamental principles are included in the International Covenant on Civil and Political Rights<sup>5</sup>, to which Mongolia is a party. Clause 1 and 2 of Article 19 of ICCPR reflect that everyone shall have the right to hold opinions and freedom of expression also 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>6</sup>

The amendment, touched on around 28.5 percent of the contents of the Constitution, or 19 articles of a total of 70 articles and 36 clauses.<sup>7</sup> There are several major amendments to Article 6, one of which is article 6 clause 6.2 states “A citizen shall have the right to know about the impact on the environment from the exploitation of land subsoil wealth as part of the right to live in a healthy and safe environment.”

Although the said regulation is included in clause 17 of article 16 of the Constitution of Mongolia under the right to seek and access information, the fact that this right has been specifically clarified in Article 6.2 of the Constitution highlights its importance when the country’s mining-based economy has a significant negative impact on the environment.<sup>8</sup> Article 6.2 of the Constitution has the following significance: 1. Article 16.17 of the Constitution was limited to obtaining information from the state, but the amendments guaranteed the right to obtain seek, receive, and impart information from private sector organizations in addition to the state entities engaged in the exploitation of the natural resource. 2. While protecting the citizen’s right to information and ensuring participation in the activities of using natural resources, the violation of the right to a clean, healthy, and sustainable environment that may arise from the exploitation of the natural resource will be prevented.

Also, the following legislators expressed their views on the importance of this amendment. Speaker of the Parliament G.Zandanshatar said during the plenary session ‘As it is pointed out that every citizen has the right to know about the impact and benefits of all deposits on the environment. when discussing major projects like the Oyu Tolgoi and Tavan Tolgoi, the public will be involved. It will be open and transparent, so there will be no theft.’<sup>9</sup> Member of the Parliament S.Byambatsogt stressed that “It is important to decide whether to exploit natural resources or not, knowing whether or not using natural resources will affect the environment, future generations, and health of the people. The new constitutional amendments have many good provisions.”<sup>10</sup>

It is noteworthy that amendments to the Constitution related to the use of natural resources, including the special consideration of the citizen’s right to information in Article 6, are in line with B.Chimed’s definition as “ In the legal system of this field, it shows that there is a definite need to create major changes and reform in the laws and relevant regulations related to the citizen’s right to information. It is a demand to establish new legal norms, make them properly understood and effectively implemented.”<sup>11</sup>

## II. INTERNATIONAL TRENDS

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<sup>4</sup> Globe international center, US Embassy, “State secrecy and Freedom of information” , 2006, 8.

<sup>5</sup> Mongolia signed on January 5, 1968 and ratified on November 18, 1974 <https://legalinfo.mn/mn/detail/1257>

<sup>6</sup> Globe international center, the Asia Foundation Mongolia, “Analysis of laws limiting the right to information”, 2019, 5.

<sup>7</sup> <https://montsame.mn/en/read/227041>

<sup>8</sup> Munkhsaikhan Odonkhuu,(LL.D), Professor at School of Law, National University of Mongolia, “Concept of amendments to the Constitution: Principles for the use of mineral resources”, 2020, 18.

<sup>9</sup> Special session of Great Khural of Mongolia 2019, Brief Minutes of the session of Standing Committee on State Structure on August 23 /Friday/, page 56-57.

<sup>10</sup> Brief Minutes of the 2019 special session of the Great Khural of Mongolia on August 28 /Wednesday/, page 25

<sup>11</sup> B.Chimid, the well-known public and social figure of Mongolia, founder of the democratic Constitution of Mongolia, Honored Teacher, Lawyer, and Professor, “Concept of the Constitution”, second edition, 2017, page 113.

“...Such a perspective holds that openness, communication, reporting, and information exchange can aid in more effective global environmental governance by correcting for information asymmetries between the powerful and those seeking to hold them to account and/or by facilitating more evidence-based, rational decision-making.”<sup>12</sup>

Moreover, “The Public's Right to Know: 9 Principles on Freedom of Information Legislation”(June, 1999) annexed to the Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has been praised at the 56th session (2000) of the United Nations Commission on Human Rights.”<sup>13</sup> 9 principles developed by the Special Rapporteur are of particular importance in this type of relationship and it included necessary provisions such as “the institutions of Government, to withhold from the people information that is rightly theirs in that the decisions of Governments, and the implementation of policies by public institutions, have a direct and often immediate impact on their lives and may not be undertaken without their informed consent”<sup>14</sup>.

The public's right to know: Principles on Freedom of Information Legislation /the following principles have broad content. So they are mentioned to a certain degree./

1. Maximum disclosure
2. Obligation to publish
3. Promotion of open government
4. The limited scope of exceptions
5. Processes to facilitate access
6. Costs
7. Open meetings
8. Disclosure takes precedence
9. Protection for whistle-blowers (individuals who release information on wrongdoings- whistle-blowers must be protected)

Also, it is emphasized at the 56<sup>th</sup> session that the above principles are general principles accepted by the international and regional laws, regulations, and practices of developing countries and civil society.

## 2.1. Case of Norway

Speaker of the Parliament G.Zandanshatar mentioned “The pressing issue of Constitutional Economics is the natural resource curse. There are examples of countries failing to grow as rapidly as those without such resources due to the natural resource curse such as Argentina and Venezuela. On the other hand, there are many examples of countries such as Norway and China that are using resources properly to develop. For instance, we studied the Constitution of Mongolia and found it was necessary to add the provision that people have the right to information to our Constitution”<sup>15</sup> during an interview with journalists about the amendments to the Constitution.

The Kingdom of Norway, like our country, has abundant natural resources, and since 1970 by reforming its natural resource policy and using natural resources in the framework of the Constitution has been able to achieve such high development based on its natural resource<sup>16</sup> and many countries with abundant natural resources are implementing and adjusting the model to their

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<sup>12</sup> Aarti Gupta, Michael Mason, “Transparency in Global Environmental Governance: Critical Perspectives, page 8.

<sup>13</sup> Analysis of the laws limiting the right to information, page 6.

<sup>14</sup> Commission on Human Rights, Fifty-sixth session. E/CN.4/2000/15. 18 January 2000.

<https://undocs.org/E/CN.4/2000/63>. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussain, submitted in accordance with Commission resolution 1999/36. Annexes. The public's right to know: Principles on Freedom of Information Legislation. June 1999.

<sup>15</sup> Speaker of the Parliament G.Zandanshatar's interview on the amendments to the Constitution on September 16, 2019 at the Great Sky Complex <https://www.youtube.com/watch?v=34JahOPNFMg&t=1949s>

<sup>16</sup> Oxford University, “Development success: Historical accounts from more advanced countries – Can Norway be a role model for natural resource abundant-countries” 2013, 44, 70.

country's characteristics. The Constitution of the Kingdom of Norway<sup>17</sup> was first approved in 1814, and chapter E (Articles 92-113) of the law included the rights enjoyed by the citizens. Article 112 of the chapter contains regulations same as the amendments included in Article 6.2 of the Constitution of our country.

Article 112 of the Constitution of Norway:

*“Every person has a right to an environment that is conducive to health and to natural surroundings whose productivity and diversity are preserved. Natural resources should be made use of on the basis of comprehensive long-term considerations whereby this right will be safeguarded for future generations as well.*

*In order to safeguard their right in accordance with the foregoing paragraph, citizens are entitled to be informed of the state of the natural environment and of the effects of any encroachments on nature that are planned or commenced.”<sup>18</sup>*

Based on the “The public’s right to know: Principles on Freedom of Information Legislation” developed by the UN Special Rapporteur, to ensure the citizen’s right to receive information about any activity that affects the environment while enjoying the right to live in a healthy and safe environment as stated in the Constitution of the Kingdom of Norway, Ministry of the Environment of Norway approved the Environmental Information act<sup>19</sup> on May 3, 2003.

The purpose of this Act is to ensure public access to environmental information and thus make it easier for individuals to contribute to the protection of the environment, to protect themselves against injury to health and environmental damage, and to influence public and private decision-makers in environmental matters. The Act is also intended to promote public participation in decision-making processes of significance relating to the environment.

Thus, for Norway, the relation concerning the citizen’s right to information about any impact related to the use of a natural resource, which is included in the Constitution, was regulated thoroughly by a particular organic law and it was a step towards ensuring the practical implementation of the basic principles of the Constitution. This successful experience of the country is an excellent example for countries with rich natural resource

### **III. NATIONAL REGULATION AND LAW**

The following examples indicate that during the extraction and mining of minerals, the scope of activity of entities implementing the mining projects and the positive and negative impacts are not limited to the licensed area.

In the Status Report (2004) on human rights and freedoms concerning the monitoring mining activities and mine rehabilitation, serious facts about “Due to the fact that most of the territory of the 3rd bag of Zaamar soum of Tuv aimag is included in the licensed area of 20 companies with the license for mineral exploration and mining, 81 families with 19,300 livestock have only strip of land to water the livestock from the Tuul river, limited pasture for the livestock, and they are unable to live in the area they are settled”<sup>20</sup> were mentioned.

In the course of the long-term work of the State Enterprise "Erdenet Industry", located in the Bayan-Ondur soum of the Orkhon aimag, a large amount of chemical waste is generated, which then turns into dust and small particles that are carried around. The problem of negative impact on the environment and human health has become one of the priority problems of the Orkhon aimag in recent years. Since the wind in this region usually blows from the west, the impact of white dust on the inhabitants of Ulaantolgoi and Jargalant is the most serious, and compared to that the smog

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<sup>17</sup> [https://www.constituteproject.org/constitution/Norway\\_2016?lang=en](https://www.constituteproject.org/constitution/Norway_2016?lang=en).

<sup>18</sup> Ibid

<sup>19</sup> <https://www.regjeringen.no/en/dokumenter/environmental-information-act/id173247/>.

<sup>20</sup> National Human Rights Commission of Mongolia, Status Report on Human Rights and Freedoms, 2004, 55.

of Ulaanbaatar is almost negligible. Local residents stated that white dust caused real damage to the soil and water of Jargalant due to the presence of chemicals.

Local residents have repeatedly made complaints and applied to the Erdenet Industry State Enterprise and local authorities regarding the composition and content of this white dust, but they have responded that they cannot provide this information as it is an organization's internal secret.

The above situation regarding the "Erdenet Industry" is not out of ordinary to the Orkhon region, companies operating in the field of nature management have the right to establish their own secrecy in accordance with Article 4.2 of the Organizational Secrets Law. Under this right, the organization's activities, products, services, methods, and technologies used by the organization are kept confidential.

Article 6 of the Organizational Secrets Act prohibits the classification of the above types of information, but this example shows that the provisions of this Act are not implemented in practice.

Article 16.2 of the Constitution of Mongolia states that “the right to a healthy and safe environment, and to be protected against environmental pollution and ecological imbalance”. The founder of the Constitution, B. Chimid: 24 once said: “this right is essential for citizens, and governments and their organizations create opportunities through their activities to exercise”, but citizens have no control over the implementation of this right. We reserve the right to ask the government to take appropriate action on relevant matters.”

Therefore, the provision of Article 6.2 of The Constitution of Mongolia, “A citizen shall have the right to know about the impact on the environment from the exploitation of land subsoil wealth as part of the right to live in a healthy and safe environment.” It is closely related to regulations. This right can only be fulfilled if these rules are fully implemented.

The mining activities mentioned in the previous section have significant negative impacts on human health and the environment.

As of October 22, 2021, a total of 803 laws are published in the unified legal information system of Mongolia Legalinfo.mn. Within these laws, information regarding any activity related to the use of natural resources is supposed to be transparent and open to the public. All, please note that the Organic Law regulating the relationship, or the provisions contained in Article 6.2 of the Constitution, have not yet been passed.

However, for information on how to exercise your right to information concerning right to a healthy and safe environment, and is likely to be violated in connection with the use of natural resources. It provides for the following laws and regulations issued pursuant to this topic, which includes:

#### 1. Information Transparency and Right to Information Law

The law recognizes the basic relationship between the publicity of state activities and the securing of the right of citizens and legal persons to seek and receive information, as well as the rights provided for in Article 16.17 of the Constitution.

The Constitution stipulates a certain degree of relationship between the above laws on freedom of information, which include “Within the framework of this law, any citizen or legal entity has the opportunity to request information from the State and its organizations about the negative impact of mining activities on human health and the environment.” However, this law covered state organizations, legal entities participating in state property, and organizations such as public radio and television, which are included in the list specified in Article 3 of the law ( does not apply to private industrial organizations).

In addition, Article 5 of this law contains five basic principles regarding transparency of information and the right to access information, but these principles are not the very general principles contained in constitutions and other laws. Principles, containing only two of the specific principles of the Freedom of Information Act. It should be noted that it is not clear who is included in this regulation as the relevant organization.

## 2. Environmental protection Law

Article 4.1.1 of the Environmental Protection Law legalized the right "to receive true and reliable information about the environment from relevant organizations". This provision is enacted to obtain information related to the environment, but which organizations are involved in the process of fulfilling their environmental responsibilities within the framework of citizens' rights to live in a healthy and safe environment. It is not yet clear what would be considered an organization that is subject to this provision.

## 3. Law on environmental impact assessment

According to article 4 of the law, in any activity, such as the establishment of new or existing factories, services, mining, construction projects, their renewal or expansion, the project implementer is responsible for the activity, volume, and environmental impact and human health. Which of the 4 types of assessments is mandatory, and then other relationships associated with it are regulated.

Clause 14.1.2 of article 14 of the Law on Environmental Impact Assessment states that "the implementation of the environmental management plan is carried out by the local residents, local administrations and project-affected parties will inform and report to the relevant central state administration within the specified period.

In addition, by order of the Minister of Environment and Green Development No. A-03 dated January 6, 2014 The "Regulation on Ensuring Public Participation" was approved. Article 1 of this regulation includes the principle of public participation, and in Article 1.2.1 "disseminates information, making it transparent and accessible", and Article 1.3 states: "Information about any project, policy, program or development plan that may pose a threat to the environment or human health will be open to the public, and conditions will be created for citizens and the public to receive information about policies, programs, plans. and projects." It is ruled to regulate the issue of openness of information and its provision during the environmental impact assessment.

## 4. Mineral Law

Article 42 of the law regulates relations between an organization holding a special license for subsoil use and a local administrative agency, and Article 42.1 states that "the license shall be responsible for environmental protection, subsoil utilization, infrastructure development related to the establishment of enterprises, and matters related to the local government. contract with the local administration; creation of employment", and Article 42.2 "license holders may organize public debates with local administrative authorities on matters stipulated in Article 42.1 of this Act".

Although private sector entities are not subject to the Law on Transparency of Information and the Right to Information, but when concluding an agreement provided for in Article 42.1 of the Mineral Law, a local administrative organization may, in accordance with the terms of the agreement, protect human health and the environment through the activities of the contractor project. It is quite possible to include information and standards regarding the negative impact on the environment, the harmfulness of toxic and radioactive substances used in activities and other possible negative impacts, as well as the organization of regular reporting to local residents and relevant administrative authorities.

Judging from the above, the relevant part of the law clearly states the possibility of obtaining up-to-date information on the environmental and human health effects during the mining and extraction of natural resources. But this is not satisfactory to our mining-based economy and this situation creates the following complications. Includes:

- Developed by the United Nations Special Rapporteur, fully reflecting the principles of the Freedom of Information and Legislation, and promoting transparency and access to

news and information about situations in which the use of natural resources may adversely affect the environment and human health. There are many violations of rights related to this issue in today's legislation.

- The Information Transparency and Right to Information Act cannot regulate all of the above relationships and its scope is limited to government agencies.
- Relevant provisions of laws and regulations related to these relationships have not been fully implemented in actual situations, and research work related to their implementation has not been carried out.
- Since the scope of organizational secrets stated by the Organizational Secrets Act has not been revised in accordance with the amendments to the Constitution, there are cases in which the provisions of these laws conflict with each other.

## **4. CONCLUSIONS AND SUGGESTIONS**

### **4.1 Conclusion**

Thus, the constitutional amendment that specifically regulated the right to information concerning the impact on the environment has become a significant amendments to the Constitution of Mongolia, which has an economy mainly based on mining. In accordance with the amendments, it is urgent to adopt new organic legislation to implement the right to information, to amend existing laws accordingly and to carry out legal reforms.

When conducting the legal reforms regarding to the right to information about environmental impacts, it should be based on the 5 set of arrangements that developed by the founder of the Constitution B.Chimid, 1/reform the law, 2/ strengthen enforcement of the law, and develop systems and procedures for enforcing the law. 3 /revision of professional legal education, 4/ updating the organization and methodology of the legal research 5/ raise legal awareness in society, Also, it is necessary to adhere to international trends, namely the experience of Norway and 9 Principles on Freedom of Information Legislation developed by the UN Special Rapporteur.

### **4.2. Suggestions**

Based on three main parts of the research and above conclusion, the researcher makes the following proposals for legislative reform within the framework of the Constitutional Amendment on the Right to Information. Includes:

1. Learning from Norway's experience with the proper use of natural resources, our country should develop and approve special legislation on environmental information, based on the principles of the Freedom of Information Act in accordance with national standards.
2. Review and update corporate and organization privacy laws. At the same time, to harmonize with the Article 6.2 of The Constitution, additional provisions should be introduced prohibiting the classification as confidential of news, information, research and analytical material relating to the use of natural resources.
3. Amending Article 42 of the Mineral Act to be imperative to regulate the right of citizens to receive information in an agreement made by an entity with a local administrative agency,
4. Update government-issued rules and regulations on transparency of information related to the use and access of natural resources, organizing the necessary training in proper stages, research and academic activities, and monitor their implementation regularly. Believes that the above mentioned suggestions has a significance on the implementation of reforms.

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