

DeFacto **REVIEW**

- "TOST, TOSON BUMBA" DECLARED A SPECIALLY PROTECTED AREA
- REVOLUTION OF ELECTRONIC PAYMENT
- EDUCATION IS A RIGHT, NOT A PRIVILEGE

VII PAGE



DeFacto **ARTICLE**

*Jargalsaikhan Dambadarjaa,
Mongolian political and
economic observer, columnist*

CONSTITUTIONAL
AMENDMENTS ARE
NOT A TRANSACTION

II PAGE



DeFacto **INTERVIEW**

*ANNA COREN
Correspondent for CNN International*

“ I KNOW THAT
EVERYBODY IS LOOKING
AT MONGOLIA
THINKING THERE'S
HUGE OPPORTUNITIES,
BUT THERE ARE ALSO
CONCERNS ”

IV PAGE

WEEKLY

The DeFacto Gazette

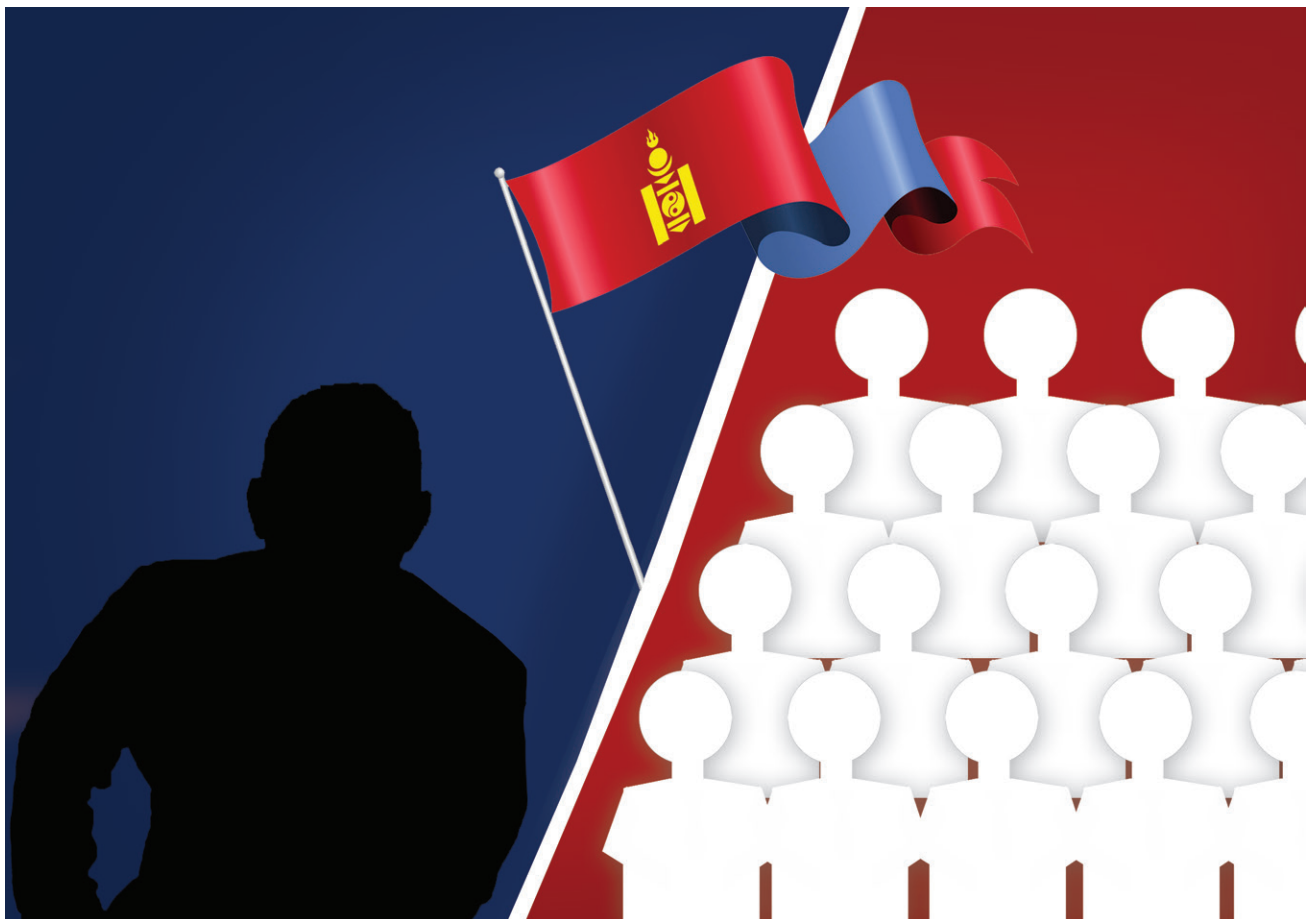
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JARGALSAIKHAN Dambadarjaa

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CONSTITUTIONAL AMENDMENTS ARE **NOT A TRANSACTION**

A constitution is a social contract. The Constitution of Mongolia was ratified on 13 January 1992, following which immediately began the talks of making revisions. These talks went on for eight years before resulting in a round of constitutional amendments. Today, 19 years from then, we're about to make another round of changes to our constitution.

The constitution is a system of fundamental laws and principles that are dedicated to ensuring social stability, and therefore countries don't make changes to their constitution very often. An example would be the well over 200-year-old United States Constitution, which incorporated thoughts from the Renaissance in Europe. This constitution sets out key principles of liberal democracy, such as people electing their government through free and fair elections and the state guaranteeing the natural rights of people. Hence, the United State Constitution ensures stability relatively better. In short, the constitution defines what form the state will take and what activities the state can or cannot conduct. The question is whether such definitions can be made with the proposed amendments to the Constitution of Mongolia.

PROPOSALS FOR CONSTITUTIONAL AMENDMENTS

1. The Mongolian People's Party (MPP) started talking about making changes to the constitution, immediately after winning the majority of parliament seats in 2016. As soon as having been elected to serve in the parliament, MP Zandanshatar, who is the incumbent Speaker of Parliament, began his attempts to implement Stanford professor Fishkin's theory of 'Deliberative Democracy' in Mongolia. Deliberative Democracy is based on people's participation in the decision-making process and is a hybrid of direct democracy and representative democracy. It didn't take long for MP Zandanshatar to start organizing public discussions on constitutional amendments across the country. However, it is questionable whether these discussions have actually informed or empowered people. Although these public discussions collected a lot of feedback from people, it also faced strong opposition from scholars. Ultimately, MP Zandanshatar withdrew his proposal, which included a political system with five administrative branches similar to Taiwan's. The conclusions from these discussions were then combined with feedback from constitutional scholars to create the draft constitutional amendments that were proposed by the parliamentary working group led by MP Lundeejantsan. It was then decided that these proposed amendments would be discussed at an irregular parliamentary session.
2. However, President Battulga brought out another set of proposed constitutional amendments out of nowhere. It isn't clear how, when, and by whom these draft amendments were developed. When asked these questions, the Chief of Staff to the President silenced the reporter by scolding him along the lines of "stop being disrespectful."
3. The Mongolian People's Revolutionary Party (MPRP), which started sharing a voice with smaller political parties that don't have a seat in the parliament, has also prepared a draft document. But what they're proposing is the enactment of a new constitution named 'New and Supreme Constitution', with the intent to completely replace the 1992 Constitution.

GAME THEORY

Today, politicians are busy trying to combine two drafts of constitutional amendments, one proposed by the MPP, and the other by the president. Without beating around the bush, the constitutional amendments have become a transaction of political power. If the parties of this transaction reach an agreement on each clause, the constitutional amendments will be ratified. If not, there won't be any changes to the constitution. MPs think their proposal looks more beneficial for them, while the president believes the same about his proposal. This standoff leaves the people worse off. In short, the whole situation is similar to a Game Theory context where every player heedlessly enters a scenario unfavorable to everyone.



- Most importantly, the current scenario will not allow us to step away from the half-presidential system and strengthen our parliamentary system, an issue that has been raised and debated by scholars for many years. Nor will it allow us to ensure the independency of the judicial branch. If we're going to approach constitutional amendments in this fashion, it is better to stop here and not bother doing it.

WHAT SHOULD WE PAY OUR ATTENTION TO?

When drafting constitutional amendments, we need to pay attention to these key issues:

ONE. We need to actively involve not only lawyers but also other scholars, including economists, sociologists, anthropologists, and political science scholars, in the constitutional debates because these discussions concern all spheres of our country.

For example, the constitution defines ownership and property relations. Economists should have a key role in defining property and ownership subjects, on which I elaborated in my article *"Who really owns natural resources"*. In general, we lack constitutional analysis and studies developed by non-legal scholars. Lawyers have one weakness, as they tend to pay too much attention to details and lose sight of the bigger picture .

TWO. Trying to solve all at once, may end up doing more damage than good. Therefore, we need to determine the most pressing issues, prioritize properly, and then start focusing on the right issues. This is called the Pareto principle (80/20 rule). When you solve 20 per cent of all issues, the remaining 80 per cent will naturally be solved. Without focus on the right priorities, not only will you be unable to resolve a problem, but also make the other issues within the 80 per cent lead the way.

With this rationale in mind, it can be said that the key constitutional amendments need to get us out of the *"Stalemate in "Mongolianized" governance"*. We are in a deadlock because our political system is currently neither parliamentary nor presidential – it has become a Mongolianized system.

The Mongolianized governance deadlock exists because the president is causing an imbalance in political power. During N.Enkhbayar's time, he showed that a president could serve as the prime minister simultaneously, while Ts.Elbgedorj's reign showed how the president can control the judiciary, also to serve vested interests. When mass firing and reappointing judges, President Elbgedorj missed 13 judges.

President Battulga is now expanding the reach of his power using the National Security Council as a medium. A clear example is the recent changes to laws that allow the leadership of the Independent Authority Against Corruption (IAAC), Prosecutor's Office, and Supreme Court to be replaced based on recommendations from the National Security Council. The president, as a subject and as an institution, has been disturbing the equilibrium between power and oversight.

THREE. Mining factors. When the 1992 Constitution was first discussed, Mongolia wasn't economically depending on mining. Today, whether we want it or not, Mongolia's future is directly and de facto dependent on how we manage our mining industry.

Therefore, this round of constitutional amendments should positively contribute to creating responsible mining in Mongolia. Otherwise, there is a risk of political and economic deterioration. For example, the current draft of amendments suggests that soum and district governors are to be elected from the people, while a soum governor would have the authority to suspend or stop a mining project.

Do we call populated areas 'towns', 'settlements' or 'administrative units'? If we go with 'administrative units', it will be connected to government service and public budget. If we say 'residents structure', it will require a completely different attitude. If we 'towns' or 'settlements', they will have to have their own right to collect taxes and issue bonds to be able to address their issues.

Stemming from the fact that this issue is neither resolved in the current constitution nor the proposed amendments, we will need to decide whether the governor is appointed or elected. But regardless of being appointed or elected, we must clearly determine which rights and powers the governor obtains in relation to publicly owned resources. If this is meant to be a social contract, we should have these questions answered before ratifying any amendments.

Most importantly, this round of constitutional amendments will give a clear answer to whether Mongolia has a presidential system, a parliamentary system, or a mixed system.

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ANNA COREN
Correspondent for
CNN International

“ I KNOW THAT EVERYBODY IS
LOOKING AT MONGOLIA THINKING
THERE’S HUGE OPPORTUNITIES,
BUT THERE ARE ALSO CONCERNS ”

*Based in Hong Kong, Anna Coren is a correspondent for
CNN International and host of the interview program Talk Asia.*

Defacto: This morning I saw your *interview on CNN* with Prime Minister Batbold. But before we go into Mongolia, I'd first like to know how you became a journalist.

AC: I did a bachelor in communications in New South Wales. I'm from Australia, and I was born in Sydney. I went to university outside of Sydney at a journalism college. After that, I went and worked as a journalist in the country. I got some experience, and then I moved back to Sydney where I worked for the biggest news station there, Channel 9. I spent about five years there, and then to Channel 7. I had an opportunity to work in Los Angeles as their US correspondent and got to travel around. And then I joined CNN three years ago.

Defacto: Working for an international news outlet, you've reported from several dangerous places, I would say. For example, you reported from Japan just after the tsunami. What were your thoughts on that?

AC: I was anchoring that day when the earthquake—and subsequently the tsunami—hit. To be in the studio and watch those pictures of the wave come powering through, that was quite extraordinary. I then came off air, and we got on a plane and flew to Japan. We were on the ground 24 hours later, up in Sendai. And to be up there and to witness the devastation, it was extraordinary.



Defacto: I imagine it was a difficult place to access.

AC: It was very hard to get to. We had to take the long route up to Sendai, and then from Sendai we had to drive up to Ishinomaki, which was one of the worst-hit places.

Defacto: You were in another dangerous situation in the Philippines, where you reported the Manila bus hostage situation.



AC: That was a very bizarre situation. We knew that this former police officer had taken this busload of tourist's hostage. I'm based in Hong Kong with CNN, and we again got on a plane and flew to the Philippines, into Manila, and it was still ongoing. We drove out to the site to do a live shot, and the next thing—gunshots rang out. And that's when it all just went crazy. The police officers just came running in from everywhere, smashing up the bus, with lots of shots firing. So we had to take shelter.

Defacto: Are you insured?

AC: Haha. I think CNN insures me. I hope so!

Defacto: You have made many interviews with famous people. Which of those has stood out to you the most?

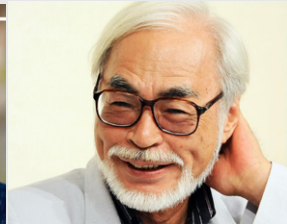
AC: I have met some quite extraordinary people; I have to say. But, goodness, I don't think I can pick one...

Defacto: How about Greg Norman?

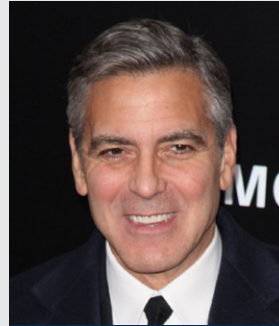
AC: OK, Greg Norman, the Australian golfing legend; he was fantastic. I was also just in Japan recently, and had the opportunity to interview Hayao Miyazaki, who is a great Japanese animator, an intellectual who is against nuclear power. So that was interesting. I also recently interviewed Sigourney Weaver, the American actress.



Greg Norman,
Australian professional golfer



Hayao Miyazaki,
Japanese animator



George Clooney,
American actor



Sigourney Weaver,
American actress

Defacto: When you interview these famous people, is there a particular character trait that stands out? For example, you also interviewed George Clooney...

AC: Yes, he's was talking about Darfur. I think those sorts of celebrities, who are earning so much money and are so popular, to be a voice, a spokesperson, for really worthy issues—I think that is commendable.

Defacto: We in Mongolia all watch CNN, and thanks to you we are aware of what's going on around the world. But CNN has a campaign urging people to "go beyond borders". What do they mean by that?

AC: I guess it explains what we do, which is not just to tell the news, but we take you a little bit further than other news networks. I think we

have a pretty amazing group of journalists who investigate certain issues.

Defacto: These people are really risking their life by reporting from difficult places. They are indeed going beyond borders to show what's going on.

AC: You have to go beneath the surface, don't you? I mean just like you do. You can't just take things at face value; you have to ask the hard issues; you have to make sure what people are telling you is true.

Defacto: CNN also has the CNN Heroes program about regular people doing extraordinary things.

AC: You know, the celebrities, I think they're fantastic, and if they're lending their voice or have done fascinating things, it's wonderful to highlight that. But often it's the ordinary people doing extraordinary things who are the most inspirational because they're not in the limelight, they're not getting the attention that the others are getting. They are just going about their ordinary business and changing people's lives for the better.

Defacto: CNN is a private network, yes? For my audience, who owns CNN?

AC: CNN is run by Turner [Broadcasting System], based in the United States.

Defacto: So it's a private company that broadcasts news around the world, 24 hours a day.

AC: That's right.

Defacto: How many offices do you have to make that possible?

AC: There are three main hubs. Atlanta is where the US operation is. There's also London and Hong Kong, which is where I broadcast out of. When there is breaking news, CNN is all across it. That's one of our strengths.

Defacto: What's it like working in Hong Kong.

AC: Hong Kong is brilliant. It's a very dynamic place. I think you really feel like you're a global citizen there because you feel like you are part of the world community. It's a financial hub. And the access to the rest of Asia is extraordinary.

Defacto: So what has brought you to Mongolia?

AC: Our series is called "Eye On". We go to different countries around the world for the series. I've been to South Korea, Indonesia, Macedonia. These

are countries where, unless there's breaking news happening there, we don't often get to cover. And with Mongolia, there is an amazing business story going on at the moment [2011]. But it's not the kind of place that international journalists often get to, so this was just a rare opportunity.

Defacto: You interviewed several people here regarding Mongolia's mineral wealth and its impact on society. What's your take on the current situation?

AC: Before I came to Mongolia, I spoke to a lot of people who are doing business here and they spoke about the extraordinary opportunities, the vast minerals in the ground, and how this is going to transform Mongolia. When I got here, there were certainly signs of that transformation taking pace.

But I think that whilst you have this amazing opportunity, there are enormous challenges ahead. A third of your population lives below the poverty line. And you get just on the outskirts of Ulaanbaatar and you see the slums. The infrastructure, the public works programs, the roads, the traffic. Jakarta is known to have shocking traffic, but Ulaanbaatar, you take the cake. It's quite extraordinary. So these are all things that Mongolia needs to overcome in order to see the greatness that is there.

Defacto: While here you brought up the Transparency International corruption index and Mongolia's place on it.

AC: Mongolia is in the bottom 35%, as far as the perception of corruption. And that is not good. That is something Mongolia must change.

Mongolia needs to be transparent so that foreign investors want to pour their money in. I know that everybody is looking at Mongolia thinking there's huge opportunities, but there are also concerns. It's a matter of reassuring the international community that, yes, you can safely invest in Mongolia.

*This interview originally aired in September 2011.
It has been edited here for space and clarity.*

*You can watch the full 30-minute interview at
www.jargaldefacto.com*



DeFacto **REVIEW**

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“TOST, TOSON BUMBA” DECLARED A SPECIALLY PROTECTED AREA

The Prime Minister decided to rescind the special license of “South Gobi Coal Trans” forthwith last week. This company is not to be confused with South Gobi Resources Ltd, another company that operates in the region. The company received its license from Ivanhoe mines which has been selling its licenses which numbered at around 100 since 2000. “South Gobi Coal Trans” used to be owned by former Finance Minister, Chojilsuren but the area in which they operated turned out to be a naturally protected area.

They received their production license on the basis of a permission of the local precinct council but allegations emerged from the South Gobi Prosecutor’s office that the permission was obtained in a fraudulent manner. Moreover, the area was declared a specially protected area in 2014 but the territory of the mine was removed from special protection status when the company was owned by the then Finance Minister, constituting a conflict of interests.

Mr. Chojilsuren claims that he bought the license in 2010 for 3.5 million USD and invested another 50 billion MNT into the mine. The government required the ceasing of operations but the mine has not complied as of yet, with the CEO stating that the company is currently 130 billion MNT in debt.

The argument can be made that the decision to rescind the license should have been made by a judge but there are provisions in Mongolian mining legislation regarding the confiscation of mining licenses in the event of damage to the environment. The former Finance Minister claims to have sold the license in 2017 and the new owner will most likely appeal the decision to the judiciary, meaning the process will continue and we will have a better idea of the infractions and their perpetrators.

This is only one example of the conflict of interests that mars our country and the Prime Minister also eluded to a case of 370,000 tons of coal disappearing from the Tavan Tolgoi mine with customs and border police providing conflicting information. The politicization of mining policy demonstrated by this case creates numerous conflicts of interests and breeds corruption.

The fact that decision makers can declare an area a specially protected one only to retract it at a later date creates an environment of uncertainty that disincentives foreign investment into the country and disrupts ecologically fragile areas. It will take a judicial process to determine whether any punitive measures will be taken against the Minister of Finance but there is a clear conflict of interests in that the decision to remove the lands from specially protected status was made while he was a member of cabinet. Moreover, if the permission from the precinct council was truly obtained in a fraudulent manner, how did it manage to go through the official process without raising suspicion.

REVOLUTION OF ELECTRONIC PAYMENT

Mongol Bank has been working on renewing Mongolia’s Electronic Payment system with financing from the Asian Development Bank since 2016. They are now in a position to introduce the product of their efforts and anytime there is a shift in the speed and total amount of capital in the country, it is highly important. In many countries, the assets of commercial banks are comparable to the GDP level which is ideal. Many countries have an underbanked system when only a portion of the GDP is in circulation in the economy.

The faster the turnover in of funds in the economy the better. If for example, we presume that money within the banking system pass through eight entities on a daily basis, this would be better than money held in cash which is indicative of a grey economy. However, there may be

concerned as to the fact that Mongol Bank, rather than commercial banks themselves is creating the renewed infrastructure. Secondly, all 15 Mongolian commercial banks have their own independent payment system creating overwhelming avoidable costs. This adds to the operating costs of banks forcing them to charge extortionate interest rates of 20-25% on loans. It is difficult for companies to succeed when paying 25% interest on their loan per annum.

There are over 4 million phones, 2.8 million of which are smartphones for a population of 3.2 million. The renewed system makes it easier to programs such as fintech. Moreover, under the renewed system, interbank transactions of up to 3 million MNT may be transferred almost instantaneously. Currently, for



smaller transactions a processing fee of 160 MNT will be paid to the Central Bank and a 300 MNT processing fee will be paid for transactions of over 3 million MNT. Under the new system these tariffs should be cheaper but there is a chance it may increase due to the investment Mongol Bank has made into the development of the infrastructure. Another added value of the new system is the ability to use one's digital signature through e-mail and other methods in making transactions.

Most IT start-ups in Mongolia utilize fintech and they now have the opportunity to use the program across the

country for their purchases. The new interbank transfer system will also make the operation of startups such as online trading companies, supply companies and food delivery companies much easier. In China for example, online and telephone banking has evolved to such an extent that beggars on some streets display their WeChat number where people can send money. Mongolia will come to such a stage in the near future. Mongolian operators also promise to incorporate 5G into their operations within 2 years and by that time there should be no issue transferring money from any account in any bank to an account and bank of their choosing.

EDUCATION IS A RIGHT, NOT A PRIVILEGE

Mongolia is acting under the principles of a developed country in pursuing universal kindergarten enrollment. If students are provided with proper nutrition with necessary calories regardless of family income or social status, their brains develop fully and healthy children are the premier asset of any country. However, despite a quarter of the Education and Healthcare budget being devoted to kindergartens, 46,000 students were left without one last year.

Beginning this year, companies are being granted licenses to operate their own kindergarten and there is no shortage of qualified educators to operate them. However, the state has to ensure that those individuals are qualified to operate and teach in kindergartens.

Mongolia has a public and private education systems with only 7% of children and 50% of college and university students attending private institutions. Therefore, the private sector is an essential part of the education system but they should be responsible but everyone should have access to high-quality education. However, private schools cost an average of 10,000 USD which is high on any metric in any country. This in essence makes high quality education a privilege of those with the means to afford those tuition fees.

Public schools are underfunded leading them to not be able to pay their teachers and operating in bad conditions whereby some classes contain about 45 students compared to less than 20 students at private institutions. The situation is analogical in kindergartens. If we take the example Finland, they constantly lead education rankings while almost not possessing no private schools. Teachers are held to high esteem in Finland and the government is aware that the best investment is into the development of a child.

Currently, 30% of Mongolians live under the poverty level and their children have an increased need for quality pre-school education. The current system of allocating kindergarten spots through lottery is not ideal but the only fair system for appropriation in a situation where the demand outweighs the supply. Creating more kindergarten spots is problematic in that it is more than an issue of infrastructure as there is a need for human resources, food logistics, hygiene and other issues. There are challenges in facility and quality as well as the lack of educators, particularly in areas without a population center in the vicinity. Therefore, there is a need for the simultaneous development of the whole country which is difficult in a country as large as Mongolia, putting us in a dilemma and requiring innovative solutions, adequate appropriation of resources and good governance. Private sector development of kindergartens would be in the best interests of companies as offering kindergarten services to the children of their employees would in turn lead to more productivity.

This review has been edited here for space and clarity. You can watch the full 30-minute review on the Defacto website [\[HERE\]](#).

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