



POLICY BRIEFING: Afghanistan and the extractive industries

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A treasure or a poison?

- Afghanistan's minerals alone are estimated to be worth around \$1 trillion, and the extractive industries are almost unique as a potential source of revenue, infrastructure, and development. Without them, it is much harder to see Afghanistan becoming self-sufficient and its economy growing. With aid diminishing and the conflict continuing to rage, the sector is critical to the future of the country.
- But the reality is that extractives are much more likely to harm Afghanistan than help it. They are already a major driver of corruption and conflict, fund armed groups and insurgents, and provide little benefit either for mining communities or state budgets. The possibility of a long resource conflict is very real: in Helmand for example the UN reports marble is already the second largest source of Taliban funding, and elsewhere the Islamic State has reportedly made mines a strategic priority. For donors, extractives governance should be a matter of basic responsibility towards their own taxpayers, and an urgent protection for the investment of blood and money since 2001. For the government and people of Afghanistan, the stakes are even higher. Without better oversight and transparency, mining will never fulfill its economic potential – it will instead undermine both the Afghan economy and the stability of the whole country.
- At the London Conference Afghanistan and its partners committed again to “putting in place the strongest possible available measures, based on international best practice, to counter the threat of conflict and corruption around the extractive industries.” Yet while there have been some worthy individual reforms, Afghanistan has not put in place many basic safeguards which are increasingly routine parts of international best practice. The current Mining Law especially is missing a number of core protections – but there is an exceptional short-term opportunity now as the government is in the process of considering amendments.

Practical responses

- **Make contract publication a condition for validity** Contract publication is vital to transparency and accountability in the mining sector. A 2012 presidential decree already mandates contract publication, but implementation has not been entirely consistent. A much stronger mechanism would be to amend the Mining Law to stipulate that natural resource contracts become valid only after they are made public. This would be an almost foolproof safeguard, one that could be applied across government.
- **Require publication of project-level production and payment data** Again this is a key tool, making illegal mining, tax avoidance and theft of revenues much more visible. The law should be amended to require the Ministry of Mines and extractive companies to publish payment and production figures – including the amount and quality of material that is mined, and all payments between companies and the government, broken down to project level to allow it to be traced to specific mines. The Afghan government already committed at several previous conferences to publish much of this data through

the Extractive Industries Transparency Initiative (EITI). Putting this into law would greatly strengthen Afghanistan's chances of fulfilling one of its key international commitments.

- **Publish beneficial ownership** Much of the corruption in Afghan mining – as elsewhere in the world – involves politically connected figures using illegitimate influence to secure control of mining contracts, often through companies or third parties. Current Mining Law has only weak protections in this regard. It should be amended to require companies applying for or owning licenses to publish their beneficial owners (that is, the real individuals who exercise significant control or gain significant benefit from a concession, by whatever means), to set out clear penalties for hidden ownership, and to define excluded individuals, including a wider named group of Politically Exposed Persons (PEPs). This measure is strongly encouraged under the EITI, and many countries are implementing it.
- **Require a transparent and fair bidding process** The government could commit amending the law to require transparent, open and fair bidding and contracting processes – including for example publication of the substance of losing bids, public criteria for eligibility, and legal penalties for preferential treatment. Some of these requirements are contained in the regulations, but not all – and a clear basis in the law itself would give them a stronger foundation. The requirements should incorporate the principles of Open Contracting, and these standards should be applied across government procurement, but especially to natural resource contracts.
- **Create a single, transparent account for all natural resource payments** Confusion and complexity over payments undermines efforts to prevent corruption and tax avoidance. The law should establish a single, transparent and published account for all natural resource payments to and from companies or individuals – including license payments, royalties, and bonuses.
- **Use model contracts** Use of model contracts helps entrench best practice as matter of routine. The government should commit to use model contracts, incorporating international best practice on measures against corruption and conflict, as the initial basis for contract negotiations. To ensure they are as effective as possible, they should be openly developed, in consultation with civil society, business and other stakeholders. This would also reduce the risk that contracts were challenged by these groups later, and increase the public legitimacy of natural resource deals.
- **Enable community monitoring and dispute resolution** Community monitoring has had good results when applied to aid projects: it strengthens oversight and reduces conflicts while making minimal demands on government capacity. IWA has already run a pilot community monitoring program for extractives: the Afghan government should now take the lead to roll the practice out across the sector.

A key part of this is to ensure communities have an incentive to support legal mining and to fight corruption. To do this, the law should provide local communities with a small, set percentage of the legal revenue the government receives from a mine. This amount should be spent on projects that directly benefit the communities living around the mining site: one way to ensure this happens and to minimize administration would be to add the funds to local Community Development Council budgets.

This provision should be in addition to Community Development Agreements and other benefits, and company obligations on service delivery and local recruitment should be clarified and strengthened. The

law should also require a dispute resolution process that is effective, timely, impartial, and accessible to all, and strengthen requirements to consult communities before and during mining projects. The current dispute resolution mechanism is unlikely to be effectively useable by communities.

- **Require supply chain due diligence** In conflict-affected areas with minimal government presence, supply chain due transparency can help restrict illegal mining. The government and donors should commit to requiring that companies carry out responsible risk assessment and due diligence on their supply chains to ensure they do not fuel corruption or support armed groups.
- **Address security in mining areas** Mining areas are particularly prone to conflict and abuses by security forces. The government should commit to requiring that security forces at mine sites operate according to a higher standard of accountability and oversight (for example, requiring certification by an impartial outside body). At a minimum this should incorporate the Voluntary Principles on Business and Human Rights, and requirements for consultation with local communities. Mining Police units should be reviewed and reformed to prevent the coming under control of political actors.
- **Integrate extractives governance benchmarks into the SMAF** The Self-reliance Through Mutual Accountability (SMAF) process is the primary forum for setting out the mutual obligations of the Afghan government and its international partners. Practical measures for extractives governance should be among key benchmarks incorporated into the process. Given existing commitments to the general principle of reform is already set out in previous agreements, this should include more specific and actionable measures, such as those set out above.

For further discussion, please contact:

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