**Afghanistan’s new mining law risks falling short in the fight against corruption**

**[September 05, 2018 - for immediate release]** The Afghan government’s revision of the Minerals Law has significant and worrying gaps in protections needed to reduce the major threat of corruption and abuses in the sector, and to ensure the country’s huge mineral wealth benefits its people, Afghan and international civil society organisations (CSOs) have warned.

“The new Minerals Law is supposed to provide a foundation to escape the widespread corruption and conflict which have made Afghanistan’s huge mineral wealth a source of harm, not development,” said Ikram Afzali, Executive Director of Integrity Watch Afghanistan.

“But with the end of the revision process, some anti-corruption measures have actually got weaker. Important government commitments are missing, and the rights of local communities are not being adequately protected. There is a real danger the law will end up with fundamental flaws – and given the stakes involved, that is something Afghanistan just can’t afford.”

The CSOs welcomed some parts of the draft Law, notably requirements that contracts must be published before becoming valid, that the real, ‘beneficial’ owners of mines must be made publicly registered, and the government must publish mining production and payment data. But the serious concerns they raised included:

* It is especially critical that the Law builds up the institutional basis for Afghan mining. The draft gives great power over contracts to the High Economic Council, which has no status in law and whose membership could in theory be changed at will. The law minimizes the role of the Ministry of Mines, which normally would be the main institution for mining governance, in favour of Presidentially-appointed bodies.
* There is no requirement for the publication of the Central Bank sub-accounts used for mining revenues – although this exceptionally strong transparency measure was set out in the government’s own anti-corruption strategy.
* Welcome provisions for publication of the real, beneficial owners of mines are undermined by serious loopholes, including one which would allow officials and politicians to control up to 5% of a contract, and another which could allow them to benefit from a contract so long as they do not own it. Controls in the current law on second-degree relatives have been removed, so an uncle or brother-in-law of an official could hold a contract.
* Royalty rates are set in the law: they should indeed be fixed, but in the regulations, so as to allow some possibility to adjust them for changing market conditions and different minerals.
* There is no credible mechanism for resolving disputes between communities and mining companies – a proposed ombudsman would not be independent or have any powers. In general, the rights of local communities in the law are relatively weak.
* There is no special provision for artisanal mining – a major issue for the sector. Instead artisanal miners have to obtain small-scale licenses, which is likely to be beyond their abilities.
* 5% of revenues are supposed to go to the provinces where mining takes place, but there is no guarantee that any of those funds would reach as far as local communities in mining areas. Funds could go to both, but these communities should be the first priority.
* The government has removed a requirement under the existing law for companies to comply with the Extractive Industries Transparency Initiative. The law also does not fully reflect the government’s commitments to the Inter-Governmental Forum Mining Policy Framework.

The weaknesses in the law increase the risk that it will quickly face pressure for changes if the current draft was adopted – undermining hopes of ending the years of uncertainty which have been seen as a significant obstacle to Afghan and international investment. CSOs pointed out that the current law was passed just four years ago and has still not been fully implemented, and could have been amended rather than rewritten. Yasin Gholami, coordinator of civil society’s Environmental and Natural Resources Monitoring Group (ENRMG), warned: “The government needs to address the gaps in the law, or it risks being just another round in the endless cycle of revisions.”

The CSOs urged the government to look again at the law and follow through on its welcome commitments to transparency. “President Ghani has clearly acknowledged the deadly threat from corruption and conflict around Afghan mining,” said Stephen Carter, Afghanistan Campaign Leader at Global Witness, an international CSO. “But despite some areas of real progress, in its current form this law misses vital opportunities to address those dangers.”

Dr. Orzala Nemat, Director of the Afghanistan Research and Evaluation Unit (AREU), also said: “Based on AREU’s extensive research, we have found that a critical step toward better and more transparent procedures in the mining sector is to ensure transparency across all phases of any contracts.”

The CSOs also warned against a rush to pass contracts before new protections are in place. Mujib Azizi, another member of the ENRMN, said: “We support the development of mining, but the government should not award any contracts until the new law has been improved and passed. And it should look again at its draft – because the goal is not to tick some box to say we have passed a new law, it is to deal with the clear danger of the resource curse in Afghanistan.”

Afghanistan’s international partners should also be concerned to fix a sector which is both so directly linked to security, and one of the few with the prospect to drive Afghanistan’s independent from outside aid. Global Witness’ Stephen Carter said: “The partners should also understand how badly Afghanistan’s stability and future prospects are being undermined both by the massive loss of revenue from the sector, and by the way it drives conflict and funds armed groups. This law is the first line of defence against that threat. We have to get it right.”/ENDS.

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**Notes to editors:**

* The new Minerals Law was put to its final round of consultation in August, and the consultation has since been closed with no indications of further changes in reacton to CSO inputs on the points set out above. CSOs have provided similar inputs on multiple previous versions of the law.
* The Afghan government has made major commitments to full transparency in mining governance, including through its membership of the Extractive Industries Transparency Initiative (<https://eiti.org/afghanistan>) and the Intergovernmental Forum (<http://igfmining.org/wp-content/uploads/2017/02/MPF-English-Oct-2013.pdf>).
* The Afghan government’s 2017 Extractive Sector Roadmap also stated that “The first principle is transparency. The lack of transparency often invites actors to develop contracts to benefit individuals rather than to benefit the entire citizenry.” The 2017 Anti-Corruption Strategy made various strong commitments including contract publication as a condition of validity, beneficial ownership publication, the creation of a single transparent account for mining revenues, and a community benefit from mining (<http://mof.gov.af/Content/files/AFG_AntiCorruptionStrategy_Eng_.pdf>). A full list of commitments can be requested through the contacts above.
* The Afghan government’s lost revenue from mining is roughly estimated at around $300m a year. See <https://www.globalwitness.org/en/campaigns/afghanistan/extractives-policy-briefing-avoiding-resource-curse-afghanistan/> for more details
* For a Dari version of this Press Release [click here](https://iwaweb.org/dr/%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%AC%D8%AF%DB%8C%D8%AF-%D9%85%D8%B9%D8%A7%D8%AF%D9%86-%D8%A7%D9%81%D8%BA%D8%A7%D9%86%D8%B3%D8%AA%D8%A7%D9%86-%D8%AF%D8%B1-%D9%85%D8%A8%D8%A7%D8%B1%D8%B2%D9%87-%D8%B9/)