

April 25, 2017

Dear colleagues within the Afghan EITI MSG and Secretariat,

As requested, we are writing to respectfully submit comments in relation to the draft EITI reconciliation report.

We are pleased that the MSG is working together to move the EITI process forward. Overall, however, we have serious concerns about weaknesses with the current draft of the EITI report, which we fear will be undermining its credibility if they are not addressed.

Below we have set out the most important areas of concern. However, we have also made more detailed comments in the attached PDF, which we also ask to be taken given full consideration.

Key areas of concern:

1. Previous concerns not addressed

None of the issues previously raised by CSOs back in March have been addressed in the report. For reference, those comments are included below.

2. No explanation for gaps and inconsistencies in data

The reconciliation report notes where data is lacking. The seriousness of these gaps, and the lack of progress in addressing them, is alarming. But of equal concern for the report is that Hart does not appear to have asked the government to explain the lack of data nor reported their response. Indeed it is unclear whether Hart asked the Afghan government for an explanation of missing data and received no response from them, or if they have not asked the question in the first place. We respectfully request that the IA ask the government to provide explanations for continued weaknesses and inconsistencies in the data provided, as set out in our detailed comments.

3. No mention of Artisanal and Small Scale Mining (ASM)

There is no mention of ASM in the report at all, despite the previous report highlighting the need for it to do so.

4. Lack of discussion of sub-national contracts, revenue flows, and mining management

The report is not clear about licenses, contracts and payments at provincial levels. A lack of subnational reporting on contracts and revenue flows is noted, but there's no discussion of media and other reports indicate that sub-national contracts (and thus revenue flows) exist. Nor is there any response requested from the Afghan government to those media reports. (See for example one of the contracts discussed in the Global Witness Lapis report.) The report does not make clear if contracts issued at provincial level are legal. In one section it claims that licenses are given at provincial level, while in another section states that there has been no payment at provincial level.

11. Outdated and missing data – especially for SOEs

Since SOEs make more than half of the revenues, it is important to have complete data on them. Data for 1393 and 1394 are missing, elsewhere in the report, a lot of

data is very out of date, and it does not appear that Hart sought to update it. For instance, there are discussion of contracts from 2013 and 2015, but no indication that they tried to update that data. The section on “Exploration” doesn’t actually cover exploration licenses, but simply talks about a USAID project on capacity building for exploration contracts. In another place, there’s lots of discussion of USGS production numbers from 2013 and before, but no discussion of MOMP and MOF numbers for 2014 and 2015. Using the USGS numbers is fine for context, but the reconciliation report is supposed to be about reconciling figures from the Afghan government, not the USGS, so it’s not clear why that data is so prominent at the expense of the Afghan data. Finally, in table 3.2 – if the MoF only had 43 'mining points', does that mean that only 42 of the hundreds of contracts on the MoMP website produced revenue to MoF? either way, an explanation of the discrepancy would be useful.

5. Amu Darya, Sanduqli Block and Mazar-e-Sharif

What is the status of the above contracts and their contractors? Turkish Petroleum suspended operation in mid-2016. But they were active earlier during the reporting period, in 2014 and 2015 – why have they not reported on this data?

6. No discussion of emerald mining or the Afghan Emerald Company

The lack of data on emeralds was raised as a concern in the previous report, yet there is no mention of the sector at all in this report, nor has the government been asked to provide an explanation.

7. Lack of discussion of companies highlighted by CSOs

CSOs requested that the government be asked to provide an explanation for the companies with significant contracts but no production, or with production but no revenue, but this has not been included in the draft report. These companies include:

- Afghan Active Mining Company
- Afghan Krystal Natural Resources
- Ganj Hozor Company
- Hewad Exploitation Company
- Hewan Brothers Mining Co.
- Metal mining
- Natural Stone Processing Co.
- Stana Baba Mining Co.
- UK Metal Mining Co
- Ghazanfar (Ghazanfar is noted as a partner on two projects, but then is not listed as a company which is supposed to be supplying revenue figures)
- Afghan Emerald Company

8. Methodology, annexes and editing issues

The overall draft report needs significant proofreading and editing:

- a. The MOMP is often referred to as the “Ministry of Mines and Industries” and the Afghan government keeps being referred to as the “Transitional Government” (a term 13 years out of date).
- b. Lots of charts are missing titles and other identifying data.

- c. Methodologies often don't line up. Numbers don't match between charts. Different exchange rate methodologies are used in different charts. Charts are missing data in one place but then the data is stated on another chart later.
- d. The document is lacking many footnotes and specifics. For example, a highly questionable number of the amount of minerals is used for Afghanistan (\$3 trillion) rather than the more reliable (but still vastly overestimated) \$1 trillion. It's possible they meant minerals, oil, and natural gas together, but that's not what they wrote. And either way, it's missing a footnote. Lots of other parts of the document suffer from vague language as well ("estimates state" for instance; estimates by whom?) We have noted many of these in the document itself.
- e. The report is missing annexes to document HART Group's activities in preparing the report – to list the provinces they traveled to, the training sessions they held for companies, and the official they interviewed.

10. Lack of discussion of unresolved differences from reconciliation process

For 1393, the unreconciled figure is AFN 333 million and for 1394, it is AFN 68 million. There is very limited discussion of why the figures varied at the first place, and then what was reconciled. Was the gap due to wrong data, errors in accounting, use of different categories, timeline differences of entities, or some other issue?

12. Recommendations

There are no new recommendations – the bulk of recommendations from the previous report are repeated.

We reiterate our thanks to the AEITI secretariat and MSG members, and hope these comments will be helpful to ensure the credibility of the EITI process in Afghanistan.

Sincerely,

L.Y.S.A	FETWO
Frogh e Mili Jawanan	L.C.S.O
Mis-e-Aynak Council	Aynak Council
Afghanistan Research and Evaluation Unit	Abdul Hai Gardezi Council
Logar Civil Society	Ghazni Zarkashan Shura
HMC	AMAL Foundation
Hajigak People's Shura	Quba
Pajhwok Afghan News	Hold
Afghanistan Civil Society Forum	TEO
Rangeen Kaman Network	NMA
Kilid Group	WADAN
Afghan Anti-Corruption Network	Afghan NGOs Coordination Bureau
PEWO	AABRAR
Hajigak Council	CEN
Global Witness	Integrity Watch Afghanistan

Previous comments:

From Asadullah on 4March2017:

Dear MSG members,

Hope my email find you with the best of your health,

CSOs have consistently asked in their inputs to the MSG that the EITI reports should include consideration of the wider problems in the extractive sector, so far as this was compatible with the EITI process. We are very aware of the urgency of moving forward with the Reconciliation process, but we expect a comprehensive report at the end. We still have concerns about the report and expect the following important points are taken into consideration to ensure the report is effective. These points do not in our view represent a substantial change to the terms of reference, but are useful clarification which MSG would be happy to see in the report.

1. The Scoping Report shows large unexplained gaps in the data. We stress the need for the report to include a full discussion of these data gaps. We respectfully request government to explain in detail the reasons behind the data gaps, especially in both production and payment data. We also ask that the Government specifically address reports that large numbers of contracts exist at a provincial or national level outside those published on the MoMP website. Government should be responsive to the people as it is real concern. In addition, Article 7.3 of the EITI Standard requires the MSG to investigate the causes of gaps in the data. The last EITI report also included recommendations on data quality, set out in section 8.1, and the report should cover progress in implementing them.
2. The Scoping Report (Page, 12, Section 5.2.3 – MoMP Revenue) mentioned three companies with production but no payments. Two of these cases are still unresolved, and we ask that the report also include an explanation of this gap. At a minimum, the report should include an explanation from the government (including any communication they have had with the companies) and revised data if available.
3. The Scoping Report in the same paragraph mentioned companies with precious mineral contacts (gold, chromite, and fluorite) but no production or revenue. Precious and semi-precious minerals are exposed to illegal extraction, misuses within the contract and without it. We therefore ask that the report include a specific explanation on these contracts. At a minimum, the government should provide an individualized explanation of why each of the respective companies are not producing on these contracts, including responses to the government by the companies, and updated information on their status. The companies are:
 - o Afghan Active Mining Company
 - o Afghan Krystal Natural Resources
 - o Ganj Hozor Company
 - o Hewad Exploitation Company
 - o Hewan Brothers Mining Co.
 - o Metal mining
 - o Natural Stone Processing Co.
 - o Stana Baba Mining Co.
 - o UK Metal Mining Co

4. Media and other reports have raised concerns that another contract, the Pamir Badakhshan International Mining contract for chromite, underpaid taxes to the government during the reporting period. We note with concern that this contract is still not included in the MoMP list. The civil society delegation as a whole does not take a view on whether these allegations are correct or not, but asks that, as part of the report, the government provides an explanation for the lack of production, payment and contract data for the contract.
5. In line with recommendation 8.4.1 of the 4th reconciliation report, we ask that the report include a section on artisanal mining, especially of precious and semi-precious stones (emeralds, rubies, tourmaline, etc.). We ask the government for data on any production or payments as these seem to be missing. In particular, we would like the report to contain a section on emeralds, building on the information already set out in the 4th report. This should explain whether there was any production or payments and ask the government to provide an explanation. This should also include an explanation of the status of the Afghan Emerald Company during the reporting period.

From Ashaq Hussein on 5March2017:

- The MSG did not include sub national flows (revenues) that reached USD 29 million, Provide any justification. (*4thReport, page 11, section 2.5.5*).
- ASM (Artisanal and Small scale mining) was not included by MSG in its 4th report. Only taxes of Lapis lazuli of Badakhshan reached USD 640,000. On the basis of which requirements of EITI MSG and ASM, revenue would be included? (*4th Report, page 12, 2.5.6*)
- The Afghan Emerald Company is responsible for sorting, pricing, and taxing of lapis and other precious stones. The aforementioned company collects taxes based on a 15% royalty but has not been identified as a contributor to government (non-tax or tax revenues). This company did not appear in the list with MOMP. The status of AMC needs clarification (*4th Report, page 47, section 3.10.3*)
- According to MOMP Cadastre Department, five companies have exploration license and these companies are extracting large amount and the extraction volume of 1392 is not available, why these companies extracting without exploitation license? (*4th Report, page 86, section 7.1.1*).
- According to 4th report of AEITI, from all 300 contracts only approximately 100 contracts are active or extended but the remaining 200 are either expired or cancelled., if canceled or expired years ago, why MOMP did not go for re-tendering process? In addition, the status of about 80 contracts is still unknown. There have not been any explanations regarding these contracts (*5th Report, Appendix 1, contract list*).
- Some contracts' royalties vary in much high rates, such as marble AFN 400 per ton to AFN 615, what are the MOMP's criteria for royalty rates? Furthermore, rates per quantity are different for the same commodity such marble rates per ton and per cubic meter, that may cause discrepancies in converting ton to cubic meter. (*5th Report, Appendix 1, contract list*)

- The chart regarding Tax available on page 41, published on 8th February 2017, although custom duties, fixed tax on imports and business receipt tax have been mentioned, however, there are other taxes collected by custom department such as 2% on custom value and AFN 400 per container. Therefore, such taxes should be mentioned in the report.
- All the payments to government of Afghanistan in the form of tax such as royalty, surface fee, and etcetera have not been mentioned in terms of percentage, although few payments' charges have been mentioned. (*4th Report, page 55, table 5.2*)
- In few places, gross domestic product (*GDP*) has been mentioned however, the sources have not been mentioned such as world development indicator (*WDI*) or International Financial Statistics (*IFS*)
- Locations of exploitation and production of some companies have not been clarified. (*5th Report, Appendix 2*)
- Some templates had been written in Arabic and English is there should Pashto or Dari instead of Arabic. (*5th Report, page 32, template 1,4,5,6*)
- The report say the details of all licenses, but there are only company name, duration and commodity, but all remaining columns are empty. (*5th Report, page 1*)

From Javed on 20Feb2017:

1. It is important to know what companies are at what stage of operation. For example there is information on some companies exploiting at the exploration stage and this is illegal.
2. Why is Shamsheer Zameer Ltd. Missing?
3. Afghan gas must be assessed seriously. What are its daily productions?
4. Page 13 the issue of 5% requires proper regulation to this effect because this money must be shared with the communities directly affected
5. The production data of each company must be attested by the concerned authority
6. What is the mechanism for calculation of the commodity prices and who calculates the prices?
7. There are bound to be outstanding dues? The inception report does not discuss it?