

AYNAK

A CONCESSION FOR CHANGE



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A CONCESSION FOR “CHANGE”

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Case Study

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ABOUT INTEGRITY WATCH AFGHANISTAN

Integrity Watch Afghanistan (IWA) was created by Lorenzo Delesgues and Yama Torabi in October 2005 and established itself as an independent civil society organization in 2006. Its aim is to evolve into a point of reference and departure for understanding, analyzing and taking action on transparency, accountability and anti-corruption issues.

IWA's mission

The mission of Integrity Watch Afghanistan is to put corruption in the spotlight by “increasing transparency, integrity and accountability in Afghanistan through the provision of policy-oriented research, development of training tools and facilitation of policy dialogue”.

IWA works across Afghanistan and in the following five pillars: Community Based Monitoring, Public Service Monitoring, Extractive Industries Monitoring, Community Trial Monitoring and Budget Tracking.

About the Extractive Industries Program

IWA will monitor extractive industries to assess whether companies comply with international standards for extraction and commercial production of minerals. IWA's monitoring aims to ensure that potential adverse impacts of mining on the environment and in the local affected communities are avoided while allowing greater Afghan society to benefit fairly from the huge amount of natural resources within the country. IWA is organizing different discussion forums with the government of Afghanistan, companies and civil society organizations to generate more interest in the sector and contribute to proactive collaboration. The program also seeks to make timely interventions to identify problems and point out deficiencies in order to foster transparency and integrity in the sector through deliberative processes. These processes are believed to strengthen natural resource management and to avoid conflict over resources. IWA is part of the EITI Multi-Stakeholders' Group (MSG).

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ACRONYMS

APC	Afghan Power Corporation
AGS	Afghan Geological Survey
AICC	Afghan International Chamber of Commerce
Aynak	Site of copper mine awarded for exploitation
BGS	British Geological Survey
SIDA	Swedish International Development Agency
DFID	Department for International Development
NGO	Non-Government Organization
CSOs	Civil Society Organizations
DAFA	DélégationArchéologiqueFrançaise in Afghanistan
DRC	Democratic Republic of Congo
ESIA	Environment and Social Impact Assessment
EITI	Extractive Industries Transparency Initiative
EPFI	Equator Principles Financial Institutions
<i>Firoza</i>	Blue color semi-precious stone found in Iran
GDP	Gross Domestic Product
GIZ	Gesellschaft fuer Internationale Zusammenarbeit, the German Technical Organization
Ajigak	Iron ore site in Bamiyan province
INGO	International Non-Government Organization
IMC	Inter-Ministerial Committee
IWA	Integrity Watch Afghanistan

<i>Kaley</i>	Village
<i>Kuchi</i>	Nomadic tribe of Afghanistan
MCC-JCL	China Metallurgical Group Corporation and Jiangxi Copper Co. Ltd.
MoF	Afghan Ministry of Finance
MoMP	Afghan Ministry of Mine and Petroleum
MSG	Multi-Stakeholder Group
<i>Mullah</i>	Religious figure who leads prayers in mosques
<i>Narkh</i>	Dispute settling code among Ahmadzai tribe
NEPA	Afghan National Environment Protection Agency
<i>Qawala</i>	Property deed
<i>QuamiMeshran</i>	Tribal elders
<i>Quami</i>	Tribal representatives
<i>Numaindangan</i>	
<i>Sharhee Qawala</i>	Property deed registered with the state
<i>Mirasi</i>	Property inherited
Sharia court	Court ruled by Sharia jurisprudence
SMEs	Small & Medium Enterprises
Surface Rights Fee	Amount of fee for use of land
Tazkira	Identity card
<i>Urofi Qawala</i>	Property deed vouched for by two people who witnessed the transactions
USAID	United States Agency for International Development
USGS	United States Geological Survey
<i>Walee</i>	Governor of Province
<i>Woloswal</i>	District Administrator

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EXECUTIVE SUMMARY

Afghanistan signed its first big mining contract for copper mine exploitation at Aynak with a Chinese joint venture, China Metallurgical Group Corporation and Jiangxi Copper called MCC-JCL-JCL Aynak Minerals on May 25, 2008. The company committed to investing US\$ 2.9 billion over five years.¹

Aynak is blessed with two treasures: copper, and historical heritage of unprecedented riches. The site has numerous Buddha statues, stupas², coins and other items. The hydrocarbon law, which was drafted with the help of Norwegian Agency for Development Cooperation (NORAD) and accepted by the Afghan government unambiguously, requires protection of any archaeological site in the country. However, there has been pressure by MCC-JCL to have the government remove the archeological findings at Aynak as soon as possible and this has strained the archaeologists working on the site.

The report discusses the opportunities-challenges matrix which outlines opportunities and challenges the country and its people will face as a result of the Aynak mining project to. Reference to current governance of the natural resources and the need for better governance structure is a recurring theme throughout the report.

The opportunities list consists of economic growth, employment and revenue generation, and the need for essential infrastructure improvements such as roads, electricity, railways, and canals, to mention just a few.

The second part of the discussion talks about the challenges that will arise as a result of beginning to invest in these previously unexploited resources. Afghanistan suffers from a paucity of skilled labor for the mining sector. The employment opportunities that come along with investment in the sector may turn into challenges if the government does not develop and implement a training program to build the technical skills required for success. The research found that community perception has turned negative for the Aynak project, land compensation being a major cause in the shift in perception. Local people's expectations in the absence of an information sharing mechanism have shot out of control and their exorbitant claim over land without corresponding documentation has led to a breach of trust between them and government. Legal mechanisms for land acquisitions are nonexistent which has complicated relations among the state, the company and the communities living there.

The report delves into the environment to see the impact of production on local communities. The company completed its environment and social impact study very late. It seems incomplete because the researchers did not have access to all villages in proximity to Aynak that would be affected by mining. There are serious apprehensions about the environmental impact of copper extraction and processing in

¹Ministry of Mines, *Comparative Table of bidding companies for mines extracting (Aynak)*, MoM, online, (<http://mom.gov.af/en/page/1392>, accessed on August, 17, 2012).

² Stupa is a dome on the top of Buddhist temple or place of worship

the region. The project may severely affect the water supply in the region as well as downstream populations. Local communities in some villages have already complained about the negative effects on the water. The disposal of mining wastes and the location of the tailing dam (mine dump) are major concerns for environmentalists and civil society activists.

The location of the tailing dam as a source of pollution is a subject for discussion along with how to handle the gases produced during the smelting and refining process. The paper briefly looks into the historical heritage found at Aynak. Another issue to be addressed is the pressure on the government post 2014 to generate resources from minerals projects like Aynak in order to fund its operations, yet according to the Afghan Hydrocarbon law Aynak is defined as a restricted site.

Finally, opportunities and challenges are viewed through the prism of governance. It examines whether Afghanistan has the kind of legal framework along with the institutions, reporting culture and overall environment conducive for the balanced growth of economy and investors.

IWA's research and engagement with the local communities around Aynak since 2008 has found indications of increasing disillusionment with the project, its impact on the local communities living around the mine and governance deficits. The findings also show that the company lacks awareness of the social realities in its operating environment. Local people have lost land due to the project and they have not been compensated. Insecurity in the region has increased. There are many local youth who are jobless. The environmental impact of the project is a cause for concern within civil society. Archaeological findings on the mining site have complicated the project's further implementation. If these issues are not properly addressed in time, there is a risk of increased conflict associated with the Aynak project.

Communities affected by project are disillusioned by their non-consensual displacement, which has adversely affected their economic situation, social relations, security and trust in government and the mining company. The local communities have lost their land without any compensation paid in return. Government officials perceived the response of the local communities to the loss of their land as acts against the state and the state prematurely leveraged not only state power but also that of international friends to bully the vulnerable communities. Evidence from the interviews with the local people will reflect how the state agent threatened people affected by the project.

There are recommendations to various actors and institutions involved in the development of the mining sector based on the findings of this research. The section deals with recommendations on the land issue, contract information, economic opportunities and the environment in various ministries, Wolusi Jirga, donors and CSOS.

INTRODUCTION

Whether or not the Afghan government is in a position to benefit from the Aynak Copper Project once excavation begins as expected is the question that guides this study.

This research hypothesizes that because of corruption and issues of weak governance imbalanced legal framework, weak state institutions and poor oversight, the government of Afghanistan is not achieving what it set out to accomplish in the leasing of the Aynak mine and improving the lives of Afghan citizens and people living in the Aynak area.

The Aynak concession is one of the first and biggest leases given to any private company in the extractive industries in Afghanistan. There was literally no information in the public domain about the region. The impact of the project was gradually captured during the course of research for this report. This document provides a set of recommendations to those state institutions involved in the governance of natural resources and mandated with the development of the sector.

This paper aims to examine all aspects of the impact of leasing the Aynak copper mine to an international investor, acknowledging the fact that the Afghan government rightly needs revenue as international funding diminishes. Sustainable revenue generation of from internal sources is one of the prerequisites for the government to be able to tackle budgetary gaps in Afghanistan that are expected after 2014. Citizens have the right to expect basic services, and those living in rural parts of Afghanistan suffer from a lack of infrastructure, access to health care, security, education, drinking water, and for them accessing urban and peri-urban centers expansive and difficult

Afghanistan leased the Aynak copper mine at a time when state institutions were weak, the legal framework was not able to respond to the needs of the country and corruption was booming. This report also highlights fragilities within the governance of the sector and presents options decision makers can use to revamp the procedures and institutions.

Background

Afghanistan is said to rest on a vast range of minerals according to the 2007 report of the United States Geological Survey on this topic.³ Sources within the Afghan Geological Survey say that the country has 1,400 sites that hold out potential for mining. New gas deposits in the north and chromite sites across ten southern provinces have been identified.⁴ Additionally, there is a wide range of high value metals, rare earth minerals and hydrocarbons.⁵

Major concerns with the extraction of natural resources include governance, collection and distribution of the revenues, including monetization issues such as costs of production and pricing, grievances and mechanisms for addressing them, employment and environmental issues. In many countries, particularly in those where governance is weak, mineral wealth has become a 'resource curse'.⁶

Afghanistan ranks 172 among 187 countries in human development.⁷ Its total arable land is just 12% of the country's total territory of 647,500 square km, and the decades of turmoil and vast spread of landmines have forced people to cultivate just half of the arable area.⁸ The 2011 Afghanistan Human Development Report states, "Access to water or lack of access to water facilities blocks the ability of Afghans to live full, secure and productive lives. Today Afghans face a water crisis. Three out of four Afghans—16.8 million men, women and children lack access to safe drinking water."⁹

Though the state is slowly acquiring capacity sufficient eventually to align with its mandate, the speed at which the state has been tendering mines outpaces the capacity building in the country. The government has agreed to meet international standards with regard to sustainable development of mineral resources, environmental standards, the "Equator Principles"¹⁰, and the Extractive Industries Transparency Initiative (EITI). .

The Aynak Copper Mine is believed to be one of the key locations on the copper belt in Afghanistan, and according to the Ministry of Mines and Petroleum (MoMP) it has proven reserves of 11.3 million tons of pure copper.¹¹ The government invited bids for the Aynak Copper Mine in 2007. There was major interest in the tender, amid allegations of misconduct during the evaluation process. One newspaper

³ United State Geological Survey 2007, *Preliminary Non-Fuel Mineral Resource Assessment of Afghanistan*, 1214, U.S. Geological Survey, Reston, Virginia.

⁴ Author's interview with senior geologist, who sought anonymity, May, 10, 2011, Kabul, Afghanistan.

⁵ Afghan Geological Survey (<http://www.bgs.ac.uk/AfghanMinerals/geology.htm>)

⁶ Resource curse is a situation where natural resources which are sub-soil capital instead of helping the economy grow, results into economic contraction and conflict

⁷ United Nation Development Program, 2011, *Human Development Report 2011*, online at www.undp.org (accessed on Nov, 22, 2012).

⁸ *Ibid.*

⁹ Islamic Republic of Afghanistan Ministry of Rural Rehabilitation and Development 2010 "Rural water, Sanitation and Hygiene (wash)".

¹⁰ The [Equator Principles](#) (EPs) are a credit risk management framework for determining, assessing and managing environmental and social risks in project finance transactions.

¹¹ Afghanistan's embassy Washington, 2009, News and Views, 'Aynak Copper mine predicted to create 8000 direct jobs once land mines are cleared' (accessed on August, 25, 2011).

alleged that the Minister at the time, took a bribe, but offered no proof. The Government of Afghanistan and a Chinese joint venture between the Metallurgical Group Corporation and the Jiangxi Copper Company Limited subsequently signed the contract for the Aynak Copper Concession on May 25, 2008.

The Aynak Copper Contract, which was awarded a duration of 30 years, with provisions for renewal until the copper reserve is economically exhausted. The draft version of the contract dated 6th April 2008 enumerates the following commitments, rights and obligations of each party¹².

“Within two months following the signature of the contract, the company shall deposit US\$161.6 million US dollars to the Afghan government as security for performing its obligations on time and in conformity with its commitments in the contract.”¹³

The Company's contractual obligations include:

1. The company must submit a Bankable Feasibility Study (BFS) within three months of pre-exploitation activities.
2. The company must submit a Mine Development Plan one month after the BFS.
3. The Government of Afghanistan shall receive US\$808 million in 10%, 20% and 70% installments before production starts.
4. MCC-JCL shall complete its Environment and Social Impact Assessment Report (ESIAR) before commercial production, which is scheduled to start 60 months after signing the contract (Aynak Copper Concession). All unskilled labor should be Afghan nationals within three years and all skilled labor should be Afghan nationals within five years. 85% of clerical, supervisory and management professionals and 90% of technical staff should be Afghan nationals within eight years.
5. The contract will be revoked subject to Ministerial review if MCC-JCL does not start commercial production in 60 months or produce 50% of proposed annual copper production during the first year. This revocation provision is valid if the Afghan government honors its contractual obligations towards MCC-JCL.
6. The parties shall review the contract five years after signing it, to make sure the prices do not have great variance.”¹⁴

The company took upon itself to develop a power generating plant of 400 megawatts and invest in education, hospitals, mining school vocational training centers, roads, and mosques with the aim to improve the life of local people.

¹²The final version of the Aynak Copper Contract is not available to the public)

¹³ See Annex 1.

¹⁴*Ibid.*

METHODOLOGY

This study was conducted based on a combination of techniques and approaches, and includes primary research as well as secondary sources of information. The main findings of the research are based on in-depth interviews and focus group discussions with local communities, meetings with government officials and donors, and empirical analysis of MCC-JCL's activities in Aynak.

Research Sample

A non-random purposeful sampling method was used to select potential respondents. The study is qualitative and therefore mapping key informants was imperative to collect information. Key informants for interviews were identified in the government, individuals close to the China Metallurgical Group Corporation and Jiangxi Copper Co. Ltd (MCC-JCL), influential figures and notables in local communities, senior staff in non-governmental organizations (NGOs), influential multilateral organizations and other actors engaged in enhancing the institutional capacity of the state in the mining sector.

Community members from the five affected communities (Adam Kaley, Koz Chinaria, Bar Chinaria, Wali Baba Kaley and SeesoTangia) aged between 25 and 60 years were interviewed regularly over a period of two years starting in early 2010. Both males and females were interviewed. Those interviewed were opinion makers who commanded community respect and were recognized as local leaders by local government bodies. IWA also captured women's voices during visits to the affected communities. In total over 80 interviews and 15 focus group discussions were carried out with those directly affected by the project.

Interviews were also conducted with officials from state institutions such as the Ministry of Mines and Petroleum (MoMP), National Environment Protection Agency (NEPA), Ministry of Finance (MoF) and Ministry of Economy. These queries yielded an in-depth understanding of the governance of natural minerals based on the government's existing plans and capacities, the presence of corruption and security challenges.

Some Afghan experts and intellectuals based in Kabul were interviewed to seek their views regarding tribal codes, customs and traditions of land dispute processes and entitlement. These views were then synthesized to produce an overview of customary law on land rights and titles that have traditional legitimacy.

IWA also had regular interactions with academics, political analysts and foreign and local advisors in MoMP and MoF to assess their views on the Aynak Copper Contract and ongoing progress. Some of these inputs were used as the basis of the recommendations.¹⁵

¹⁵ See Annex 3

Research Site

The field research was conducted in Kabul and in the Mohammad Agha district of Logar Province. Interviews with stakeholders were conducted in their natural environment.

Interviews

The scope of the research required methods aimed at exploring local people's views about the minerals in their areas, the opinions of government officials, stakeholders such as the World Bank and other donors. Semi-structured interviews allowed for the exploration of interviewees' informed and free opinions on the situation and mine development as well as issues that were of concern and importance to the interviewee that had not been anticipated by the researcher. Given the fact that there is a lack of area-specific research work on the demography and geography around the Aynak copper mine, the semi-structured interview method gave the researcher flexibility to adapt interviews to the level of knowledge of interviewees. This yielded greater amounts of information from the communities that could not have been collected otherwise.

The researcher continued to meet community members and officials to capture changes and incorporate them into the paper. IWA also met government officials in Mohammad Agha and Kabul to seek their views. Moreover, through multiple visits to Logar (more than twenty-four visits), IWA's team built working relationships with the representatives of the communities. Follow-up was maintained with communities, who regularly updated IWA about developments in the region through telephone conversations and personal visits. IWA's inclusive approach helped to win the confidence of local community members to the extent that they even shared copies of property deeds.

Analysis of Documents and Secondary Sources of Data

The researcher also conducted an extensive analysis of the new Afghan laws that were specifically designed to create an investor-friendly environment and to enable "sustainable" use of resources. Furthermore, an extensive review of the published literature on the mines and minerals of Afghanistan and the laws and regulations affecting the mining sector was conducted.¹⁶

¹⁶The most relevant reports were: World Bank reports on the minerals of Afghanistan; Revenue Watch Institute and Global Witness reports were studied as well.

Limitations

The field research was carried out under difficult circumstances due to threats against the physical security of the researcher. On multiple occasions, local community elders with whom the researcher was in contact informed the researcher of potential threats and suggested that he should not enter the area. The researcher was prevented from entering the area for four months because 18 members of an armed group were threatening to take him hostage as his research was seen as a threat to the interest of some people. The researcher was also blocked from entering the mining area after many attempts to obtain an entry permit.

IWA's attempts to engage with MCC-JCL were not fruitful and it denied IWA an official version of progress report of the Aynak Project. The request was denied on several occasions IWA has maintained the anonymity of other sources in 14 instances because they specifically requested not to be named.

Due to a lack of cooperation from the concerned departments in the Afghan government and MCC-JCL, there are a number of questions this research was unable to answer that will warrant future investigation.

1. The terms of the arrangements concerning the use of coal and payment of royalty, surface water and water aquifers, lime and excess electricity that the MCC-JCL will produce.
2. Information about the nature of the commitment towards social investment, which would have allowed better analysis of the investing company's plans; for example, is the social investment front-loaded at one time or is the company committed to continuously invest part of the profit for the benefits of Afghan citizens over time?
3. Information on the railway, including expectations and assumptions as to its usage would be critical, for all stake-holders. Other questions: how is land for the railway to be acquired? Who will pay for the materials for the railway and for providing security?
4. When will exploitation start? Is the result of exploration conducted recently any different from previous work in this regard, specifically that which was conducted from 1970/80?

THE OPPORTUNITY-CHALLENGE MATRIX OF AYNAK

Aynak copper mine may bring many opportunities for the citizens of Afghanistan, the state and the concessionaire. However, there may also be negative impacts of operation both on the environment and the communities living close to the site. The opportunities and challenges of implementing a mining project of this scale bring the issue of governance of natural resources into the forefront of discourse and discussion. The paper looks at the project through the lens of opportunities and challenges to understand the impact of the concession on the citizens and the state.

1. Opportunity Streams

Mining projects often bring along many opportunities such as revenues, infrastructure, employment and resources for social development. Host governments in their quest for economic development and growth are often tempted by the prospects of revenues and infrastructure projects associated with mining. These may be energizers to local and national economies. At the same time, however, mining may have far-reaching negative effects on local residents and the environment, jeopardizing severely life, livelihoods, and nature, the biosphere on which so many depend.

The draft version of the Aynak contract to which IWA had access mentions that the company will extract copper ore and build a smelter and refinery to produce pure copper in Afghanistan. Aynak copper is estimated to have 2.5% of pure copper, which requires three billion tons of soil and rock to be removed to extract the copper ore from the site. The extraction of copper ore from the ground requires the use of explosives and heavy machines for transportation while separation of the impurities requires a chemical treatment that will produce pure copper.¹⁷

Most large-scale mining projects require investments amounting up to billions of dollars and have lifetimes of two to three decades according to industry experts.¹⁸ Mining can generate revenues for a country, create employment opportunities, incentivize investment in infrastructure and be a catalyst for industrialization. These economic spinoffs are globally recognized. Such projects can also provide resources and means for expanding public services such as education and health care, among other positive developments.

¹⁷ Author's Interview with Jim Skinner, a mining expert at Afghan Geological Survey. Feb. 25, 2010 at AGS.

¹⁸ *Ibid.*

1.1 Economic Opportunities

Several countries such as Norway, Chile, Australia, Canada and Finland have turned their natural resources into sustainable wealth, based on their choices of appropriate economic instruments. They have not merely received rent from the extractive sector but also developed other sectors of their economies, to diversify them and to create sustainable revenue streams.

In its report for the Least Developed Countries, *'Challenges of LDC Resource-Based Development'* the United Nations Conference on Trade and Development (UNCTAD) underlines some diversification opportunities derived from extractives projects, such as building the required infrastructure, upstream and downstream industries and investment in related research and development.¹⁹ Paul Collier also argues in favor of diversification and investment of revenues from the mining sector, in order that such projects can generate sustainable revenue streams from other sectors of the economy for the country beyond the life cycle of mines.²⁰

The UNCTAD report on Investment Policy Framework for Sustainable Development, *'Investment Policy Framework for Sustainable Development'* provides a framework of "New Generation" investment policies in light of the crises facing developing countries, which have as their focus inclusive growth and sustainable development.²¹ These are at the heart of efforts to attract and benefit from investment. Recent discussions on natural resources and extraction bring environmental, social and poverty alleviation concerns into the mining discourse. The "New Generation" framework underlines that investment is a primary driver of economic growth and development. It also emphasizes the need for sustainable development through responsible investment where the same importance is placed on social and environmental goals as on economic growth and the need to promote responsible investment.²²

In order to understand the most likely economic impacts of mining, IWA exchanged views with World Bank and the Aynak Authority²³'s experts. They described the changes that generally follow the establishment of a mine and said that the area around the mine would witness brisk urbanization, mine-associated industrialization and in-migration of opportunity seekers.

There are several opportunities present in the Aynak project that the government and private sector could easily tap into. The mining company will require goods and services such as fuel, mechanical services, spare parts, transportation services, food items, un- or semi-skilled workers such as cleaners

¹⁹ Jourdan P., 2008, 'Challenges of LDC Resource-Based Development', Background Paper Number 4, United Nations Conference on Trade and Development,

(http://unctad.org/Sections/ldc_dir/docs/ldcr2009_jourdan_en.pdf accessed on March 24th, 2012).

²⁰ Professor Paul Collier of Oxford University during a lecture in Budapest on the 17th of March 2013.

²¹ United Nations Conference on Trade and Development, 2012 'Investment Policy Framework for Sustainable Development', 'Investment Policy Framework for Sustainable Development' accessed on August 14th 2013 (http://unctad.org/en/PublicationsLibrary/webdiaepcb2012d6_en.pdf)

²² United Nations Conference on Trade and Development, 'Investment Policy Framework for Sustainable Development' (accessed on April 1st, 2013 http://unctad.org/en/PublicationsLibrary/diaepcb2012d5_en.pdf).

²³ Aynak Authority is a special body created within the MoMP to oversee the Aynak Copper Project.

and drivers, etc., for its smooth operation. The private sector could identify the needs of the company and work on providing those goods and services.

There will be huge demand for transportation and other mechanical services, which potentially could employ large numbers of Afghans if there is proper training and identification of the opportunities. For example, as mentioned, the project involves removal of 3 billion tons of earth to take the copper ore out; this represents a great opportunity for local businesses and laborers to get employment in. Though investment in mining is capital intensive and may not employ many people, it is nonetheless important to see Afghan nationals working in the emerging sector, especially as it has the potential to have a spillover effect into other sectors of economy

Additionally, the government could seek to multiply benefits for the local economy by encouraging the company to procure their needs locally and provide job opportunities for citizens of the host country.

1.2 Employment opportunities:

In the draft version of the contract, the company has proposed to create jobs for the local population.²⁴

The employment opportunities offered by the project seem promising for local citizens, particularly as an alternative, productive opportunity for local youth as opposed to joining the insurgency. . According to the World Bank Report on Afghanistan's Economic Update, in the year 2014 "political and security uncertainties during the transition period will continue to take a toll on business confidence and investment."²⁵ A slowdown in the economy along with a decrease in donor assistance may render more youth unemployed, which could consequentially encourage them to join the insurgent payroll to weather the crisis.

As its operations gear up, Aynak could have a very significant economic impact on the country as a whole. The project will employ 3500-4000 people directly and there will be around 30000-32000 indirect employment opportunities. The company is anticipated to build schools, townships, clinics, road, training centers and other infrastructure. These will lead to urbanization. Aziz Areeb the head of Aynak Authority said, we have marked plots for people of 7 villages which are Pachia and Tobagia among the 5 villages.²⁶

²⁴ See Table below.

²⁵ World Bank , 2013, Afghanistan's Economic Update, April 2013, report number 77083, (copy received from the World Bank office in Kabul).

²⁶ Interview with Aziz Areeb the director of Aynak Authority, dated June 16th 2013

Table 1.2.1 Employment categories for Afghan National²⁷

Type of labor	By 3 years from beginning the project?	By 5 years	By 8 years
Unskilled labor	50%	100%	100%
Skilled labor	50 %	100%	100%
Clerical and Supervisory	50 %	75%	85%
Technical	50 %	75%	90%
Management; Professional	50%	75%	95%

The Afghan Polytechnic University could help in building the local capacity and preparing citizens to take high skilled jobs in future. Currently, around 88 % of the employees of MCC-JCL are Afghan nationals.²⁸ According to Aynak Authority²⁹ head Aziz Areeb, the Ministry of Mines has contacted the Afghan Polytechnic to expand their faculties into mining economics, as well as in environmental and social impact assessment.

Neither the Ministry of Mines nor any other ministry has initiated any training program to enhance the skills of Afghans to fill the potential job opportunities in the project. The current focus in Afghanistan is tilted towards reconstruction of infrastructure and security and therefore bulk of the budget is committed there, which leave little for capacity building. Donors such as USAID, The World Bank GIZ and DFID are helping with the capacity of the government but the government as of now does not have any plan to invest in local capacity building because in the presence of donors' funding the government seems to have grown lethargic and economic planning has taken back seat. But training its own citizens must be a priority for the Afghan government because there millions of people unemployed and every year hundreds of thousands will add to it. Though there Kabul Poly technique has created new faculties to produce mining engineers but the focus remains on supplying labour force to one category of the job opportunities in the mining sector.

The lackluster approach of the government to train Afghans for jobs in the sector has unnecessarily created a challenge- it is a lost or missed opportunity if and when mining companies then choose to import such services, taking money out of the economy when with some government investment in training such firms could and should spend within it.

²⁷Table based on a draft version of the Aynak Contract dated May, 28, 2008.

²⁸Op-cit interview with Aziz Areeb.

²⁹Aynak Authority is special office created within the MoMP to over the implementation of Aynak Copper project.

1.3 Revenue Streams

According to Integrity Watch Afghanistan first report on the Aynak copper mine, “mining activities could generate gross revenue equal to 1.7 times that of the 2006 Afghan State budget, and bring to the State an income equivalent to 47% of the 2006 Afghan State budget. The spill-over effect in the local economy can be very important, as 70% of the mining operations’ cost will potentially be spent on the local market, approximately 2,400 jobs could be created and 6,000 jobs indirectly generated, while it could bring livelihoods for tens of thousands of people”.³⁰ The project may lead to indirect revenues in the form of salary, purchases from local markets, and growth of local industry, all of which will add to GDP growth. The table below shows the revenue from the Aynak mine for a decade after its first day of production.

Table 1.3.1: The projected revenues from Aynak copper mine³¹

Year	2016	2019	2022	2024	2026
Revenues (in millions, USD)	300	300	300	300	450

However, the figures provided are misleading because of the volatility in the price of copper, as is the purchasing power of money in future given such as inflationary and currency risks, among others. They are also questionable because they do not take into account the Net Present Value calculation. There is also the risk of no production, another factor that may constrain the budget. For example, the Ministry of Finance has based some of its recent, current revenue expectations from Aynak, but as of this writing the company has yet to produce and thus is providing no revenues to the government. This may have already placed a substantial strain on the budget, even in the current year, with a consequent on those projects, areas and communities dependent indirectly on such receipts.

Secondly, effective revenue collection at stipulated levels requires administrative capacity, efficient inspection and audit of the records to make sure that the state receives the correct amount of revenues. Otherwise a figure projected based on estimated production and royalty rate, in the absence of efficient and timely audit will leave room for manipulation and revenue losses.

The government of Afghanistan is not an efficient revenue collector. There are huge gaps in what is due to the state from operating business entities and what it collects. Anonymous sources in the Revenue Department of the Ministry of Finance report that the government falls short by US\$ 20 million every year in its revenue collection from businesses. Integrity Watch Afghanistan also found that three big mining companies operating in gold, coal and salt have underreported production and profit in order to

³⁰Huntzinger E., IWA 2008, ‘The Aynak Copper mine: assessment of threats and opportunities for development.

³¹Wahidullah S., Minister of Mines, Outlook for the mining Industry in Afghanistan, Mining Investor’s forum for Afghanistan, Brussels, Oct., 26, 2011.

avoid taxes and royalty.³² IWA observation of the sector points to a greater revenue loss than sources from within the revenue department admits because there are over 230 contracts given out to private companies. IWA visited a site in Mosee district of Kabul where some individuals were extracting sand from a river bed and it found that the person's gross annual revenue was US\$ 400,000. Artisanal mining is used as a tag to cover large scale mining to avoid payments to government. The MoMP disclosed list of individuals illegally³³ extracting minerals across the country is reflective of the widespread corruption and lack of government capacity to control mining and collect revenues due from it.

Opportunity for further discussion on how to optimize rent from the natural resources sector needs to focus on the fiscal regulatory regime and its focus on the royalty and tax regime, such as an excess profit tax that caps corporate cost recovery in order to retain a greater share of revenue domestically. The current fiscal regime is very investor friendly, where a mine operator is allowed 100% cost recovery, a 20% profit tax is imposed and there is no provision for an excess profit tax. Integrity Watch thinks little understanding of the impact of such policies by the government, as well as low capacity in and lax enforcement of them, in part also due to corruption, revenue collection from the sector is very poor.

The inability of the government to collect revenues from the sector is a major challenge. It will leave space for capital flight through illegal channels and could fuel the growth of an untaxed, or under-regulated in "black" economy, with harmful consequences for the government budget, and on the people of Afghanistan in terms of the delivery of goods and services.

1.4 Opportunities for Infrastructure

The level of transport infrastructure in Afghanistan is low and exploiting mineral wealth requires road or rail networks for export. MCC-JCL has agreed to build a 400 MW electric power plant and provide 200 MW of electricity to Afghanistan (for non-copper related uses by the government of Afghanistan) by 2013. MCC-JCL also included the construction of a railway, which gave them an edge in the evaluation process over other bidders. A railway would potentially be very important for economic activities in Afghanistan, including but not limited to the transportation of mining products for export. The railway could open more opportunities for business in the country and be a key link South Asia to Central Asia, which could bring windfall benefits to the country and region.

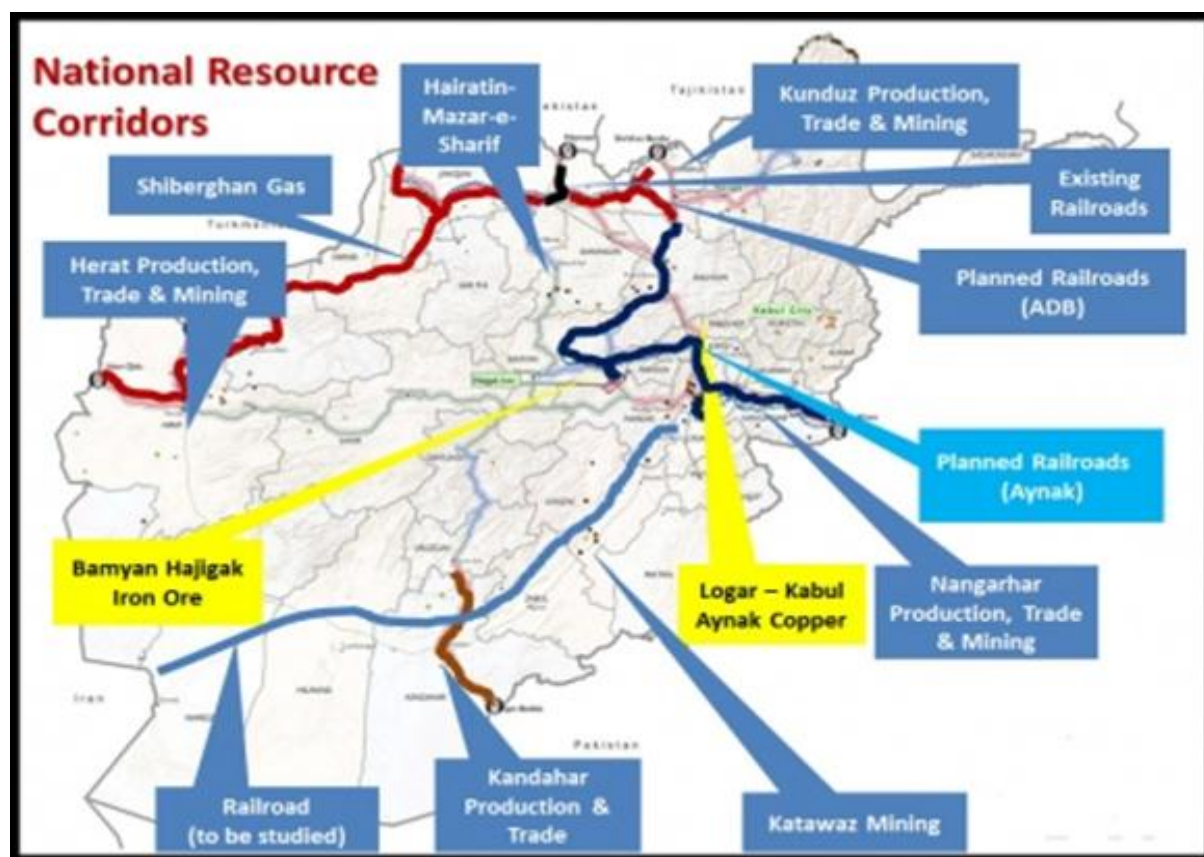
As per the terms of the contract, MCC-JCL would have to develop a railway line from the north to the east to connect the country to its neighbors, but there is no information on how land will be appropriated for the railway line, the use of materials and electricity, also who will operate the railway and under what terms. These should all be included in the auxiliary contracts to the main Ayank Copper Contract but nothing has been shared. Besides, insiders who had access to the contract, shared on condition of anonymity that the signed contract included the "if feasibility clause" with regard to the

³² Author's interview with senior official of the MoMP who sought anonymity dated June 13th 2013.

³³ MoMP, 2013, List of mine illegally extracted, (accessed on August 25th, 2013. <http://mom.gov.af/Content/files/ElegalMiningList%281%29.pdf>).

railway commitment by the company. This leaves room for company to show that it is not feasible to build railway. Another critical question is whether the railway be allowed for third party use, and at what rate. IWA tried to seek meeting with MCC to find answers for its questions but it failed.

The ‘If feasible’ phrase for railway in the mining contract created doubts and suspicions about the MCC-JCL’s intentions with regards to a railway, which is important because investment in the railway was one of the main factors resulting in the award of the contract to MCC-JCL. However, on April 17th 2013, Minister Shahrani said that MCC-JCL has applied to the MoMP for re-negotiation of the Aynak Copper contract and railway.³⁴ The work on the ground by the company is reflective of poor commitment and weak governance and poor oversight mechanisms.



Natural Resource Corridor, Ministry of Mines website, Sept, 10, 2011.

Opportunities may come with the railway. To benefit from them, and maximize the multiplier effect requires a legal framework with solid provisions for oversight, transparency, amendment, accountability and civil society participation. Opportunities may be otherwise become a policy challenge, be

³⁴ Minister of Mines and Petroleum, Mr. Wahidullah Shahrani, during the Multi-stakeholders meeting (AEITI), April 17th 2013, at Ministry of Finance.

squandered or abused, and be translated into major challenges for the development of the economy and political stability nation-wide.

2. Challenges

Natural resources are sub-soil capital. They are a blessing in their original form because they attract investors to invest and thus create space for economic activities. The negative impact of mining is not in the “nature” or function of natural resources; rather, such ill consequences are a function of political or personal calculation, inappropriate state policies and inadequate public institutional oversight or deficiencies in implementation. Corruption plays a key role in each of these problem areas. All too often, countries have failed to turn their natural resources into national wealth and overall development as the result of policies and practices that lead to concentration of the gains from minerals projects in the hands of the few at the expense of the citizenry who should see great gains from this worthwhile exploitation of national wealth. Thus it is critical to study and realize that there are multiple challenges to turn resources into opportunities and sustainable revenue streams for a country.

Investment in the mining sector is a complex process for investors, the host government, civil society and local communities. There are predictable and unpredictable risks, including that of the environment contamination and, far from expanding livelihood opportunities in the surrounding communities, such projects damage them. Achieving success for local populations, where citizens’ choices are expanded, requires good governance of natural resources and of the revenue flows from the sector. According to the International Council of Mining and Metals, indirect contributions and expansion of economic opportunities are far from guaranteed in developing countries. The ‘resource curse’ can easily arise when the extraction of natural resources does not stimulate economic growth and expand opportunities;³⁵ rather, at its worst, the “curse” can lead to highly inequitable distribution of profits and state capture by a politico-criminal elite.

Again, according to Collier, good rules, strong institutions and a critical mass of informed citizens are necessary requirements for socially responsible development of the mining sector.³⁶ Larger benefits may accrue to Afghanistan if the government listens to the concerns of people, and civil society active in the sector is consulted before decisions are made. However, the new mineral law drafted in 2012 is still in limbo and it will face resistance from the legislators.³⁷ There was almost 5 months of discussion in the cabinet before the draft mineral law was ready to be sent to the Wolesi Jirga because the senior political leadership is concerned about the development of the mining sector and illegal extraction. They

³⁵ Holly Wise and SokolShtylla, 2007, *The Role of the Extractive Sector in Expanding Economic Opportunity* John F. Kennedy School of Government, Harvard University(http://www.hks.harvard.edu/m-rcbg/CSRI/publications/report_18_EO%20Extractives%20Final.pdf accessed on Oct, 13, 2011).

³⁶ Paul Collier, during his lecture at Central European University, dated March 17th, 2013.

³⁷ The MoMP tried to redraft the mineral law based on the pressure from several companies that wanted to invest in the sector according to sources close to the Minister.

deliberated on the law to make sure that the sector is well regulated to avoid conflict driven by natural resources.

In Transparency International's Corruption Perceptions Index (2012 or 2013?), Afghan state institutions have earned themselves the rank as being the weakest and most corrupt worldwide.³⁸ According to the IWA National Corruption Survey 2012, in the past year Afghan citizens paid US\$1.25 billion in bribes to access state services.³⁹ Concerns about the quality of government performance will only be heightened with the presence of so many mineral bearing sites. There is reason to believe that mining companies pay inspectors from Ministries of Mines and petroleum and the Ministry of Finance to underreport production and show reduced profit.⁴⁰ Tax and royalty evasion seems prevalent according to this interview and our analysis. Other challenges to the development of a mining sector conducive to Afghanistan are unique largely reflecting decades of conflict, poor economy and human development and financial capital. Some of the challenges are discussed in detail below.

2.1 Skilled Labor Force availability

The skills people living around Aynak possess are largely traditional. These skills have very limited application to jobs related to mining, which complicates and limits their economic choices and ability to take advantage of opportunities arising from the Aynak copper mine.

IWA raised the issue of training for Afghans with an official at the Ministry of Public Works but the official responded, "We do not have any training program for people in Aynak. It is MoMP's job to train people."⁴¹ The same question about program by the Ministry of Public was asked again in 2013 and the ministry still does not have program to train Afghans for jobs in mining sector.⁴² There is a risk that the MCC-JCL will use this as an argument to bring in Chinese workers to serve as the bulk of the total workforce. This concern appears to be justified, as the official further admitted, "MoMP has asked us several times to permit workers from China to come, as Afghanistan cannot provide the kind of skills required."⁴³ At the initial stage of production, the company has to bring in technical staff from outside, but the unskilled and semi-skilled labor force can be recruited from the local population. Officials from the Ministry of Public Works said, "We told them that Afghans should be trained, but MoMP says it will take five years to prepare Afghans for such jobs."⁴⁴ This information comes from the current Minister of Mines, who has said on many occasions that it would take a long time to train locals in skills specific to

³⁸ Afghanistan ranked at the bottom of the CPI (third on the list with a score of 8 out of 100). Transparency International, 2012, *Corruption Perception Index*, on www.transparency.org (Accessed on Nov, 22, 2012).

³⁹ Integrity Watch Afghanistan, 2012, National Corruption Survey 2012, (<http://ncs.iwaweb.org/downloads.html> accessed May 14th, 2013).

⁴⁰ Interview with former employ of the MoMP who sought anonymity, Feb, 16th, 2012.

⁴¹ Author's interview with the Deputy Minister for Public Work, dated August, 29, 2010 in the Ministry, Kabul.

⁴² Author's interview with a senior official of the Ministry of Public Work who did not want to be disclosed dated August 15th 2013.

⁴³ *Ibid.*

⁴⁴ Author's interview with SayedKazimFakhri, head of foreign workers permit, August 29, 2010 in the Ministry of Public Work, Kabul.

mining. There seems to be a lack of will on the part of government to train its own citizens. Mining jobs at the managerial level may require longer training for Afghans. These kinds of positions may require a full-time mining school to train people and establishing a school and training may take long. However, Aziz Areeb during his interview with the author said that the MoMP has been in touch with the Kabul Polytechnic University to help them expand their faculty and begin training Afghans in mining.⁴⁵ MCC-JCL and the Afghan government are very slow on preparing Afghans for the jobs in the Aynak project. This would require putting in place vocational training centers both for men and women to be able to seek gainful employment, which was highlighted in the first report prepared by Integrity Watch Afghanistan on the Aynak Copper Project in 2008. According to Aziz Areeb, he has sent a letter to MCC-JCL about training of Afghan citizens, but he has not heard from them on the issue. Afghans can provide cheaper labor and sustained bases and employment of Afghans into the project will increase their stake and thus lower security threats to the project and indirectly lower the cost the company may otherwise have to pay for its own security. The company must be convinced to train Afghans in skills that are required for the project and pay for such programs as part of its social development obligations.

The second issue related to employment is the pay scales, which will put strains on negotiation on financial issues. Local community members who are employed with MCC-JCL said, “We are 120 people employed by the MCC-JCL for semi-skilled jobs such as gardening, sweeping, driving, cooking and as construction workers, but they pay each of us just US\$150 per month, which is low.”⁴⁶ Though US\$150 dollars per month could be considered to be a good salary by local market prices for unskilled laborer, the local people expressed that they feel it is inadequate. Another critical aspect of Afghans working with MCC-JCL is the insecurity in employment. The MCC-JCL sent 90% of its local Afghan workforce home without any pay when the Chinese workers left the site in reaction to attacks on the mining site. Though the employees had written contracts, they were terminated without any compensation.⁴⁷

⁴⁵ *Op-cit* interview with Aziz Areeb the head of Aynak Authority.

⁴⁶ Author’s interview with an Afghan employee of MCC-JCL, Jan, 16, 2010 in a village close to Aynak.

⁴⁷ Authors interview with 4 Afghan employees(who did not their names to be mentioned) of the MCC-JCL, Feb, 20th, 2012 in Awparan

2.2 Community perceptions and expectations

It is increasingly recognized that communities living around mines play an important role in the development of the mines. They are recognized as stakeholders in the successes and failures of mining projects.

Oxfam Australia has also been working in the mining field. It has found that private investment in the mining sector is an important driver of economic growth and poverty reduction, provided appropriate regulation and controls are in place. At the same time, however, without adherence to human rights standards mining can cause loss of land and livelihood, degradation of land and waterways and increased violence and conflict.⁴⁸

The International Finance Corporation (IFC)⁴⁹ has come up with a framework that highlights the importance of social and environmental sustainability in the mining sector. One of the features of the framework with regard to the environment states that the “responsibilities for disclosure of Social and Environmental Impact Assessments results and other information throughout the project life cycle rest primarily with the client.”⁵⁰ In the same report, IFC writes that mining operations affecting the communities’ health, safety and security are important issues for a mining operator. Health and safety refers to on the job safety and health measures for the protection of the labor force of a mine operator or communities living in close proximity to mines against hazardous chemicals used in the mining process. The legal framework for the mining sector must have clearly defined provisions concerning the environment, use of water and protection measures.

Community expectations in Aynak have partially been shaped by the promises made by Ibrahim Adel, the former Minister of Mines, and senior government officers who previously visited Aynak. One of the affected residents narrated, “When Adel visited for the first time he promised a lot of things, such as school, university, clinics, mosque, road, rail link and electricity. We were so elated to hear this and we hosted the Chinese.”⁵¹ Another community member commented, “We were promised that our people would be recruited first, small projects would be given to locals and the mining company would undertake many developmental projects, but none has materialized and they have brought in people from outside to work.”⁵²

The government has just started contracting out the projects for a resettlement township for those displaced by mining activities, which includes two schools, roads, a water supply system and a mosque that are under construction.⁵³ Significant and worrying concerns surround this effort already.

⁴⁸ Oxfam Australia, 2010, *Community-company grievance resolution: A guide for Australian mining Industry*, (Online accessed Sept., 10, 2012).

⁴⁹ IFC is an institution of the World Bank

⁵⁰ International Financial Corporation, *IFC’s Policy and Performance Standards on Social and Environmental Sustainability and Policy on Disclosure of Information online* (Accessed on March 25th 2013).

⁵¹ Author’s interview with Arif an affected resident of Adam Kaley, Jan, 1, 2010, Kabul.

⁵² Interview with Haji Mirwias Aynakwal Ahmadzai, Chief of the IssaKhail sub-clan, Feb, 23, 2010, Davo village, close to Aynak.

⁵³ Author’s observation during a field trip to Logaron Dec, 14, 2011.

Unconfirmed reports indicate that the township construction has been contracted to someone close to senior government officers in Logar.⁵⁴ Furthermore, the location of the planned township is at the base of a mountain, where there is a high risk of floods during the rainy season. People now feel disillusioned, stating, “We fear some big fish are spoiling the contract, and the government should create a strong committee to oversee the implementation.”⁵⁵

Adequate compensation for land is yet another broken promise according to one resident who said, “Former Minister Adel also said that we would be compensated for our loss of land but till now we are not paid.”⁵⁶ Though many residents remember Ibrahim Adel and his promises, there are no records but reference is given to the day the minister visited Aynak region and talked to the elders there. The stories of these promises have since then gained folkloric status, and everyone among the communities can recount them with graphic details: the promises of schools, clinics, roads, houses, employments and better life. These broken promises have seeded a narrative for future conflict.

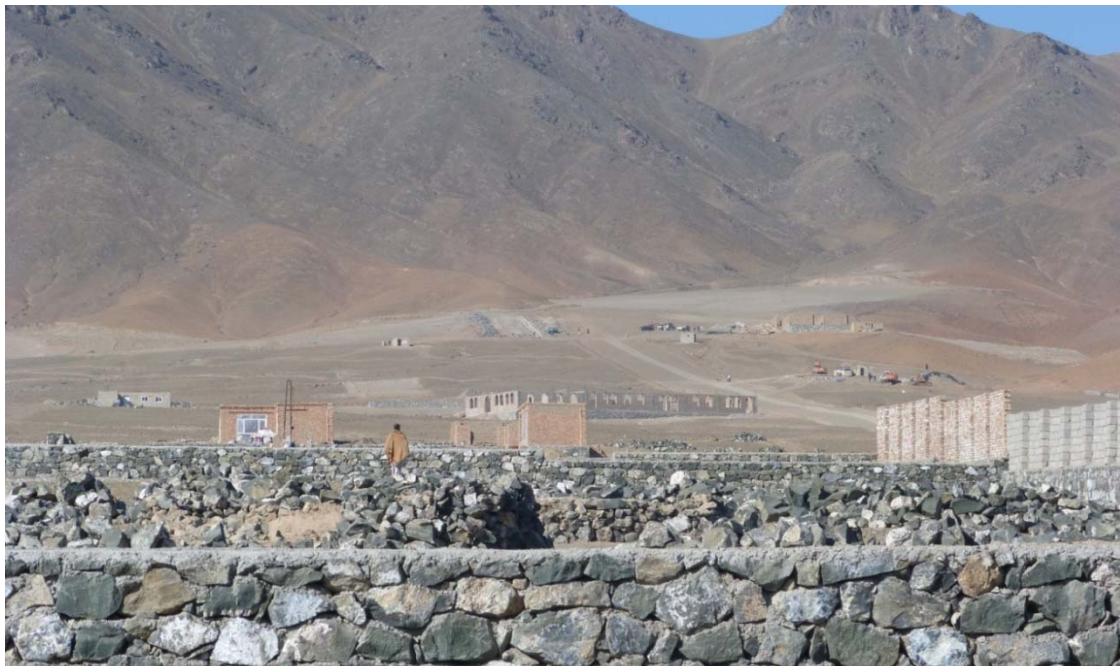


Photo of Aswa Baba town, which is under construction for the affected people of Aynak dated December 14, 2011

The head of the elected Provincial Council for Logar province, Abdullah Ahmadzai, who was killed in an ambush shortly after granting an interview to the author, stated:

“The proposal for the Aynak Copper Mine was invited based on the initiative of the people of Logar. We formed a committee and went to the president with fourteen points to invite investment for extraction

⁵⁴ Interview with a resident of Aynak who sought anonymity, dated December 14th 2011.

⁵⁵ Interview with Abdullah Ahmadzai, member of the Provincial Council who was member of the committee for extraction of mine in Aynak, January, 20, 2010, Kabul.

⁵⁶ Interview with Bang Gul and Ahmad Shah who belonged to Adam Kaley which now falls in the areas demarcated for mining activities Jan, 18, 2010 at Davo village, close to Aynak.

of the ore. The committee was there to impress upon the President to invite investment to the mine. The points the committee talked about included issues related to the environment, social well-being, economy, security, health, development, education, employment and infrastructure, to name a few.⁵⁷

However, from our interviews it seems that the affected people are still not aware of the complexities of the extractive industry; they do not grasp the enormity of the project and the changes it will unleash. The local population carries a tale from their predecessors who were mostly worried about the loss of land. They also hoped that they would receive compensation when the government took their land or would give them land in return in Logar province.

The communities believe that the contract itself led to their displacement. Families and communities in Aynak who have lost their properties suspect foul play by some individual in Kabul and Logar and it has led to their division. The women interviewed said that they were promised that their lives would improve and they will get more facilities but their lot has worsened: “Ever since we came here we do not have access to water, no mosque and cemetery. Today we pay for the drinking water we get.”⁵⁸ The community also says that local government officials are trying to divide them in order to prolong the issue of land compensation: “it is bad to divide us and shirk from the real issue of land compensation.”⁵⁹ The government has been attempting to reinforce these differences according to Mirwais a local person directly affected by the issue, who explained, “sometimes Atiqullah Ludin, the (former) governor of Logar, calls me for talks privately and when I ask for our rights, he ignores me and then calls my cousin and appoints him as the representative of the people of Aynak.”⁶⁰ Abdullah Ahmadzai, the former head of the local Provincial Council, voiced concerns and shared that “the government and the *Wolesi Jirga* have lost all credibility and have incurred massive trust deficit among the people because neither are responding to people’s legitimate demands.”⁶¹ Members of civil society operating in the area also highlighted their concerns. They have tried to flag for attention before the problems became too serious. One interviewee, Yalda Sadat, a civil society worker in Logar, said that the displaced people are vulnerable in their new set up.⁶²

Local people also feel that free riders will snatch their rights and the benefits they deserve to receive from the project. Some strongmen have been outsourcing small projects to their own companies and cronies from Kabul.⁶³ Two other community members voiced similar concerns, stating that they had executed a small project for MCC-JCL, but had to pay a cut from the profit to a prominent Jihadi leader.⁶⁴

⁵⁷ Interview with Abdullah Ahmadzai, member of the Provincial Council who was member of the committee for extraction of mine in Aynak, Jan, 20, 2010, Kabul

⁵⁸ Interview with another female from Wali Baba kaley who did not want her name to be disclose April 24th 2013

⁵⁹ Interview with Haji Mirwais Aynakwal Ahmadzai, Chief of the Issa Khail sub-clan, Feb., 23, 2010, Davo village, close to Aynak.

⁶⁰ Author’s Interview with Mirwais Ahmadzaione of the affected people of Aynak, Feb., 23, 2010 in Kabul.

⁶¹ Author’s interview with Abdullah Ahmadzai, the head of provincial council in Logar, Sep, 15, 2010 at IWA.

⁶² Interview with Yalda Sadat working with Logar civil society association, dated April 24th 2013.

⁶³ Author’s interview with senior member of government, who sought anonymity, March, 14, 2010.

⁶⁴ Interview with member local community, who shied away from naming himself April, 13, 2011.

The Afghan Power Corporation (APC) is the recruitment center used to recruit people for MCC-JCL. It is based in Kabul, and local people say “they are not even employing us for those jobs which we can do.”⁶⁵ The communities feel alienated and allege “The head of APC gathers a select group of elders and offers them gifts to influence their opinions.”⁶⁶ Some local people, who wanted to maintain anonymity, said that present members of the local government in Logar have registered numerous construction and logistic companies and execute major contracts for MCC-JCL. According to a man employed by MCC-JCL, one such company completed the gravel road from the Kabul-Logar highway to the mining site by for US\$2 million. This company was also contracted to pave some ground in the area demarcated for mining for another US\$600,000.⁶⁷

Some of the projects that are implemented under the social development program have not been well designed. For example, the gravel road through Davo village, which houses most of the people of Adam Kaley and Seeso Tangia, was built by a private company. The road was built on a watercourse, and when it rained on August 7, 2011, the water level crossed over the short walls along the road and washed away 30 houses and five shops.⁶⁸ IWA has discussed with MoMP the issue of monitoring social development projects to avoid such dangerous mistakes, but MoMP did not respond to its request.

A more prudent approach to community engagement would have followed a pattern to build a symbiotic relationship with people.

⁶⁵ Interview with Haji MirwiasAynakwalAhmadzai, Chief of the IssaKhail sub-clan, Feb, 23,2010, Davo village close to Aynak.

⁶⁶ *Ibid.*

⁶⁷ Author’s interview with a man employed with MCC-JCL in the project who request anonymity, June, 16, 2010.

⁶⁸ Author’s telephone interview with Haji Mirwias, local elder, in Village Davo, August, 17, 2011

Table 2.3.1 Community Consultation

Action that should have been taken	What happened on ground
Community consultation on project by government	No consultation happened
Social and Environmental assessment	Yet to happen
Establishment of grievance mechanism	The mechanism is still on paper and not established on ground
Land title assessment in area	Happened late (end of 2011) and affected people did not agree with the results
Fair compensation for land	Still a dispute because local people think the compensation is not fair ⁶⁹
Mechanism for regular consultation	Non-existent

Despite the difficulties facing the project and communities due to land issues, there is room for engaging with communities to work on a middle way out of the situation. The communities want the project to happen and provide them employment. However, they also want compensation for their land losses. IWA has been interacting with the members of communities and they have expressed the desire to move out of the region in return for fair compensation. However, none of the parties to the land dispute have defined what is “fair” compensation for the loss of land and property. Civil society organizations active in Aynak who have been highlighting the cause of the affected people could potentially play a major role by virtue of their close contact with the local community elders.

⁶⁹ The communities around Aynak feel that the land assessment team sent by the government did not do proper assessment and therefore the compensation rate is not acceptable to them

2.3 Private land Acquisition and Compensation

The population in and around Aynak belongs to the Ahmadzai tribe, who are Pashtun. According to author and political analyst Habibullah Rafi, the tribes have clear, customary accepted guidelines for land-related disputes called *Narkh*.⁷⁰ Land entitlement in Afghanistan is recognized in several ways. First, land entitlement is formally awarded through government recognized and registered property deeds, locally known as *Sharhee Qawala*. The second customary form of land entitlement is *Urofi Qawala*, the third kind of entitlement is based on inheritance (*Miraseetitle*) and fourth kind is *Malyati*.⁷¹ *Urofi Qawala* is an entitlement that needs to be confirmed by at least two people who witnessed the transaction and can vouch for its authenticity in case of a dispute. *Malyati* title is a traditional tax payment document interpreted by locals as title. The population in Aynak is largely from the Ahmadzai tribe among Pashtuns.

The Ahmadzai tribe used to lead a *Kuchi*, or nomadic, lifestyle. Kuchi are the nomadic indigenous people of Afghanistan. The community's main assets and source of livelihood were livestock such as sheep, goats, camels and cows. The Kuchi citizens of Afghanistan have traditionally traveled to north and central Afghanistan during the summer and returned to the south during the winter. "The Kuchi have been allowed to graze their animals on state-owned land to sustain them," adds Habibullah.⁷² "In case of reservation or confiscation of land by the government for the larger public good, the Kuchi were/are entitled to ask for pasture land elsewhere, but they are in no way entitled to sell the land."⁷³

Some communities in Aynak claim that they inherited the land from their ancestors, and the nomadic Kuchi claim pastoral land entitlement to the surrounding area. The area demarcated for mining activities is just over 28 square km according to a draft copy of the Aynak copper contract. Mirwais, one of the Aynak community representatives, stated: "We are 170 families and the main village that now falls in the area reserved for mining operations is named after my great grandfather, Adam."⁷⁴ This account is repeated by many people, who all say "The land at Aynak belongs to the great grandchildren of Adam".⁷⁵ However, the current claimants have not lived in Aynak since the early 1980s due to conflict, and only returned to region in 2005. They returned to find many of their houses and properties either damaged or destroyed. One of the strongest claims the community has to the land title is the existence of their ancestral cemetery on the mining land. The presence of cemeteries is often the strongest claim

⁷⁰ Author's interview with Habibullah Rafi of the Academy of Sciences of Afghanistan, May, 1, 2010, at academy of sciences, Kabul.

⁷¹ SharheeQawala and UrofiQawala: SharheeQawala is government registered property entitlement and UrofiQawala is the property deed or land entitlement which is vouched for by two adult men. This was recognized as well and is still in practice but is it not always reliable.

⁷² *Op-cit* interview with Habibullah Rafi.

⁷³ Author's interview with Habibullah Rafi of the Academy of Sciences of Afghanistan, May, 1, 2010, Kabul.

⁷⁴ Interview with Haji MirwiasAynakwalAhmadzai, Chief of the IssaKhail sub-clan, Feb., 23, 2010, Davo village, close to Aynak.

⁷⁵ Author's interview with the Alam Khan, Head of Shura, Jan, 20, 2010, at Zayedabad, Logar.

to land entitlement aside from *Taskira*⁷⁶ or the citizens' identity card. Habibullah Rafi supports this by stating, "Cemetery and pastureland can be proof of land entitlement in tribal regions, based on the fact that the tribal code and communities preceded the arrival of Islam in the region. For example, when Darul Aman Palace was planned it led to relocation of people living there and the government of the time compensated them despite possessing no documents. They had lived there for centuries."⁷⁷

The Aynak copper mine is located on private land, which was acquired in the name of the public interest. Article 68 of the mineral laws says that the state can nationalize (compulsorily acquire with payment of compensation) private land needed for the conduct of Mineral Activities, in accordance with the law."⁷⁸ Under the contract, Afghan laws and the "Equator Principles", the affected communities are to be consulted with, resettled and adequately compensated.⁷⁹

Article 15 of ILO Convention 169 states:

The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programs for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.⁸⁰

As mentioned before, five villages are located within the area that was contracted for exploitation. More villages will be acquired as the project enters production cycle.

The land acquisition for the copper mining project effectively deprived local citizens of their means to earn and sustain their livelihoods. Members of communities complained that the state does not listen to their concerns and instead asks for documents relating to land they have inherited for centuries. One of the parliamentarians voiced the demands of the communities to ask for justice to the government until he was given a road construction contract in Logar to silence him and the trick achieved the desired result. The voices of local communities remain in wilderness.

⁷⁶Tazkira is national identity card used in Afghanistan

⁷⁷ Author's interview with Mr. Waziri, former diplomat and senior researcher at Regional Study Centre of Afghanistan, Jan., 26, 2010, Kabul.

⁷⁸Article 68 of the Mineral Law of Afghanistan, 2006.

⁷⁹Equator Principles.

⁸⁰C169 Indigenous and Tribal Peoples Convention, 1989 (online accessed on March 25th, 2013).

The government has set up a joint commission of eight government institutions⁸¹ to look into land claims and titles under Afghan laws and the World Bank's guidelines on involuntary displacement and resettlement.⁸² The researchers from IWA on many occasions wrote to staff members of MoMP and the Land Authority of Afghanistan asking them to share information about progress made with the land issue in Aynak, but these requests were either not channeled properly by the concerned departments or the department head simply ignored them.

Until now, the government has compensated two villages and an entire village for its residential property by making a payment of 14.7million Afs, equal to US\$ 294,000. This payment was accompanied by a promise to provide residential plots in a township, which is currently under construction, and also future compensation for their agricultural land.⁸³ The people of Seeso Tangia, a village in the mining area, were compensated for loss of land. Sources from the communities said that the district officials took a cut from the compensation amount before the communities got any money. The remaining three villages have not been paid compensation yet. Sources in MoF say that MCC-JCL delayed the second installment of \$160 million to the government due to the land issue. However, in early 2011, MCC-JCL paid US\$53 million as a portion of its second installment to the government.⁸⁴

Information about the progress at Aynak is strictly guarded by the MoMP and local people react to rumors generated by government officials as well as by persons with vested interests. Some local people are concerned and issue threats, saying, "It depends on how the government and MCC-JCL behave with us. If they respect our rights, we will cooperate and if they trample our rights, we will do what we can."⁸⁵ Other community members added, "We are appealing to the government for now but we will wait for the winter to get over and we will challenge the MCC-JCL's presence on our land."⁸⁶ Of late, the government has increased its pressure on community elders to make them agree to the government's terms for land compensation. Some elders from Pachia, Wali Baba Kaley, Seeso Tangia and Adam Kaley have been calling IWA about their concerns and the pressure the government is exerting on local elders to accept the land compensation offered.

Despite receiving payments of installments from MCC-JCL, the government continues to evade the issue when approached by community members for land compensation. One community member explained, "When I went to Minister Adel to ask for land compensation, he told me to go to the Governor of the province, Mr. Ludin, and ask for compensation."⁸⁷

Community elders from a village close to the mine admit, "There have been attacks from some areas in Aynak on the site where MCC-JCL is working."⁸⁸ These armed and organized attacks are mostly

⁸¹ IWA made repeated efforts to find the name of the 8 institutions involved but it was not shared.

⁸² <http://web.worldbank.org> (online, Accessed Nov, 10, 2010).

⁸³ Author's interview with Mullah Mirajan, representative of WaliKaley, April, 12, 2011.

⁸⁴ According to sources within the MoF who did not want to disclose his name, March, 23rd, 2011.

⁸⁵ *Ibid.*

⁸⁶ Author's interview with local community members who sought anonymity, on Jan, 18,2010 at IWA office, Kabul.

⁸⁷ *Ibid.*

⁸⁸ Author's interview with a resident of Awparan who did not want to be named, Jan., 16,2013, Awparan a village close to Aynak

expressions of disappointment with the continuing delays in compensation for the land rather than about anything else. Other community members have also stated that they will fight for their rights. For example, Akbar Khan one of the affected people has been pursuing all channels such as the Attorney General's office, Afghanistan Independent Human Rights Commission and MoMP to get compensation for the land he has lost to the project.

It is imperative to mention that engaging communities for consultation and compensation for the loss of land will not delay the implementation of the mining project because people are no longer living in the villages.

The issue of a progress report on Aynak and sharing with public is of prime importance to engage people and build their confidence in the government and its decision making.

2.4 MCC-JCL and its relationship with local communities

The role of local communities is very important to the success of the mining project. Communities living on the mining site or around it may become vulnerable once mining operations start. Leading mining companies such as BHP Billiton, Rio Tinto and Newmont Mining recognize that robust and healthy relationships with impacted communities are essential for a successful mining venture. Industry and corporate policy is increasingly geared toward the notion of sustainable development, which includes respect for human rights, environmental protection and lasting positive legacies for local communities.⁸⁹ The idea that mining companies have responsibilities to respect human rights in the course of their activities is now widely accepted.⁹⁰

Community consultations and a grievance mechanism to register and address their issues in a timely manner are of critical importance for the success of the mining project. The communities affected by Aynak Copper Project are important.

The Aynak Copper Contract is five years old, but the company has still not set up any center or focal point to interact with the affected people to understand their concerns and reservations. MCC-JCL also has not responded to any civil society concerns. The author noticed during the research that MCC-JCL engages with a small number of people who claim to be representing the affected people through Local Afghan Company which was consultancy based in Kabul.⁹¹ At times state officials concoct a grievance registration record to show visitors that they have a functioning office to address people's concerns. The presence of such an office is often contradicted by the affected people.

⁸⁹ See for example, the policy frameworks of companies such as BHP Billiton, Rio Tinto, Newmont Mining and smaller companies such as Lihir Gold Limited.

⁹⁰ See for example Commitments to human rights in the International Council on Mining and Metals" (ICMM) Sustainable Development Framework (Principle 3).

⁹¹ It was shared by a number of local elders that the MCC used the consultancy to engage with a select group of people and the company belongs to the brother of senior police officer

IWA has consistently advocated for greater dialogue between MCC-JCL, the government and communities through the EITI forum or any other forum for meeting with stakeholders in the mining sector.

The MoMP documents say that it has a grievance mechanism for registering the concerns of local people. “At Aynak the villagers can approach the office of district governor or Land Authority (for grievances related to land ownership). Furthermore, two officials of the Aynak Authority belonging to the area, with whom villagers are familiar, regularly visit and talk to the villagers if they have any problems due to the project. The villagers can also visit them since these officials work in the area. They try to resolve the problems at their level, and if it requires high level intervention they take it up with MoMP or the office of the Logar Provincial Governor.”⁹² However, villagers in Aynak say they have not seen any such mechanism. During his visit the author asked several of them about this, and they said that there is no place where they can register their grievances, and that when they talk to government officials they are threatened rather than listened to.⁹³

The project’s chances for success may increase if MCC-JCL and the government raise the stake of local communities in the project through training and employment and provision of educational and commercial opportunities. One of the major threats to the project is from insurgents; however, the local communities can help to reduce such risks. A village elder whose son was employed by MCC-JCL at Aynak admitted to having told the insurgents not to attack the site from his village because the project was the source of his livelihood.⁹⁴ But recently, after local people lost their jobs at Aynak, there have been attacks on the MCC-JCL compound according to local accounts.

Understanding local culture and needs is an important element to base grievance mechanisms on but it seems that the Afghans deployed to record local complaints are not doing a good job.

According to interviews with 6 community elders, Aynak Authority staff have on many occasions dealt with them unprofessionally and issued threats to local people rather than registering their concerns. The communities have been complaining about such treatment by some officials of the MoMP since long before Aynak Authority was created. This means that more training is required for government officials to enable them to collect information on the ground that can inform state policy and keep peoples’ interests at the center of the decision-making process.

If MCC-JCL would engage with civil society, it could thereby be alerted to the local concerns that were unearthed during IWA’s research. Many of these concerns, if left unaddressed, will have detrimental outcomes for the copper mine project. These concerns also warrant further study of the communities, their culture, conflict resolution mechanisms, sources of livelihood, and traditions. For instance, it is important for MCC-JCL to understand that the communities living around Aynak are tribal, with their

⁹² Ministry of Mines Grievance Mechanism documents which was shared at a conference organized by USIP, March, 14, 2012.

⁹³ Author’s interview with an elder of Aynak, who sought anonymity due to security reasons, dated March, 28, 2012.

⁹⁴ Author’s interview with a village elder, who refused to disclose his name due to fear, Sept, 23, 2012, Awparan.

own codes for conflict resolution including for settlement of land disputes. Cost-effective, accessible, and widely accepted grievance resolution mechanisms, to address concerns and the interests of stakeholders are essential to ensure there are no armed conflicts in the area. There have been very regular attacks on the site and the most recent was in the second week of May where two police from the Afghan Public Protection Force were killed and two more wounded in a direct fight with the insurgents.

2.5 Environmental Impacts

Mining inevitably has an impact on the environment, and this is certainly one of the major worries of the population in countries with major mining activities. Extraction of copper produces poisonous chemicals that can threaten the flora and fauna and the health of the people of the region. Mining of copper in Aynak will generate sulfide gas and sulfuric acid, which will pose serious threats to people's health and agricultural activities in the surrounding areas. These pollutants could also contaminate the water, air and soil.

"Mining activities require lots of water and produce a number of wastes, large and small, such as rock, acid, tailings in the ore extraction stage and some more in the final processes of concentration, smelting and refining".⁹⁵ Moreover, the extraction process in Aynak is estimated to require around 584,000 cubic meters of water per day, while the region is already facing water shortages, according to a study conducted by a foreign organization that asked not to be named.⁹⁶

MCC-JCL carried out a study of underground water usage on the outskirts of Davo and Pul-i-Kandhari villages in Mohammad Agha District. The author observed and photographed 12 bores in these settlements, both close to Aynak. According to residents, the bores drilled were each up to 30 meters deep. The residents also complained of a fall in the water table in some areas by 2-4 meters, while in other areas the local wells dried up completely.⁹⁷ The reason for the water table going down even with no water extraction occurring is due to that fact that local people draw water from up to 15-18 meters of depth, and when a deeper drill is made the water is pulled towards that point, thus lowering the water level in surrounding areas. The local resident further added that the MoMP department in Pul-i-Alam did not entertain his complaint when he told them that the water table in the area had fallen by 2-3 meters after MCC-JCL drilled.⁹⁸

The potential for pollution can have far-reaching consequences for people living along the course of the water that flows out of the Logar River. "Any contamination of the water in the Logar will affect people living downstream seriously, especially residents of Kabul".⁹⁹ Therefore, credible technical assessments

⁹⁵ Author's interview with Jim Skinner mining expert with GAFAG, Feb, 25, 2010.

⁹⁶ Author's reading of water assessment document prepared by a foreign organization but the sources sought anonymity, dated Nov, 12, 2011.

⁹⁷ Author's interview with Haji Gul Rahman, dated Dec, 14, 2011.

⁹⁸ Interview with Mohammad Rasool, resident of Pul-e-Kandhari, Mohammad Agha, 14, Dec, 2011.

⁹⁹ Ibid.

are required of the water situation in Aynak and the potential repercussions of copper extraction on it once MCC-JCL's project enters production phase.

The second largest issue besides the gases produced during the processing of copper is mine tailings—large piles of powdered rock left over after copper ore has been extracted from the original mineral rocks.¹⁰⁰ This powdered rock is deposited in a place called a tailing dam. The tailing dam will be there long after the mine has been closed and will remain an environmental threat. The tailings could breach the dam and contaminated water may spill over and flood nearby villages, or suspended particles carried away by wind may cause acid rain. There is also a chance of underground leakage from the tailing dam into water aquifers. The environmental issues require continued monitoring and management according to James Skinner, a senior mining engineer embedded within Afghanistan Geological Survey to train members of MoMP on safety and environmental issues. A senior geologist at MoMP says “The porous nature of the soil in Aynak makes it easy for pollutants to percolate into the underground water.”¹⁰¹ There have also been cases in other countries where tailing dams have been breached and resulted in the deaths of hundreds of people. Breaches could occur through the walls of the dam or underground.¹⁰²

Tailings are an unavoidable byproduct of the mining operation; however, the adverse effects could be mitigated through proper planning and design and site selection for the tailing dam. This requires specialized skills for rigorous analysis on issues such as:

- The location, especially to determine that the site is not prone to natural disaster); this also includes the distance from extraction and residential sites.
- The level of precipitation (rain and snow) over the dam.
- The dam should not be built on ore body which might potentially be subject to exploitation later.
- A comprehensive hydrological study, including soil analysis, percolation study and drainage.
- A geological study of the underlying rock for faults and path of water flow in case a failure occurs.¹⁰³

The site MCC-JCL originally selected for the tailing dam is shaped similar to a bowl. Since it is sloped towards one end, in the case of heavy rain there is a high possibility of a breach. It is also close to the Logar River, which would expose the river to contamination. MCC-JCL subsequently changed its plan at the request of MoMP and relocated the site to the Tobagia Desert. But, according to an MoMP geologist, the new site also has copper deposits, and this has generated further debate and speculation

¹⁰⁰ http://superfund.pharmacy.arizona.edu/Mine_Tailings.php accessed on April, 13, 2010.

¹⁰¹ Author's Interview with Engineer Sadiq, senior geologist in MoM, August, 28, 2010 at IWA.

¹⁰² Tailing Info, 2002, Merriespruit Tailings Dam Failure, Virginia, South Africa, online publication <http://www.tailings.info/mufulira.htm> accessed Sep, 19, 2010.

¹⁰³ Author's interview with Jim Skinner Senior Mining Expert, dated Feb, 25, 2010 at AGS.

about an alternative site for the tailing dam.¹⁰⁴ International best practice calls for treating environmental safety as a primary factor in finalizing the plan and design for the tailing dam.

The third kind of pollution occurs during the concentration, smelting and refining processes. For example, some of the gases produced in these processes are known to generate acid rain that could have serious adverse effects on lives far beyond the mines.¹⁰⁵ The copper extraction process requires a large quantity of sulfuric acid to separate other elements from the copper ore. The process emits sulfur dioxide gas, which could threaten life in the surrounding area. MCC-JCL needs to develop comprehensive plans to mitigate this effect. Under the Environment Law of Afghanistan, it is mandatory for a mining company to receive approval from NEPA before commencing operations. Members of NEPA emphasize that “Holders of permits and authorization and related documents authorizing mineral exploration and exploitation that may affect the environment, shall not initiate activities prior to receiving written authorization from National Environment Protection Agency.”¹⁰⁶ However, according to NEPA staff, “They have also not got any license from us that we issue after studying their operation process and screening report.”¹⁰⁷ The company cannot start exploitation unless it receives an operating permit from NEPA. However, only one out of over 100 mining companies that are operating in the country has received such an operating permit from NEPA. Sources in NEPA said that the person (from NEPA) who commented on the Environment and Social Impact Assessment of the company was heavily bribed.¹⁰⁸ This suggests that MoMP may be bypassing the Environment Law of the country and allowing mining companies to operate without an operating permit from NEPA.

The legal framework for the mining sector is bereft of clear provisions where NEPA would be allowed to function independently to implement the Environment Law of Afghanistan.

MCC-JCL is signatory to and has agreed to abide by the ‘Equator Principles’. “For projects with significant adverse impacts on affected communities, the process will ensure their free, prior and informed consultation and facilitate their informed participation as a means to establish, to the satisfaction of The ‘Equator Principles’ Financial Institutions EPFI, whether a project has adequately incorporated affected communities’ concerns.”¹⁰⁹ However, MCC-JCL has so far carried out activities in contradiction to those principles.

MCC-JCL submitted a screening report three years after the concession was awarded. However, the company is not on schedule to carry out some of the other critical studies such as feasibility study and Environment and Social Impact Assessment Report (ESIAR). Five years on, MCC-JCL has not submitted any ESIAR. Any delay by mining companies in carrying out its contractual and legal obligations is a serious problem for the evolving state of Afghanistan, if the government wants to apply the new laws and gain public acceptance for its laws. In other words, the state in Afghanistan needs to apply its laws

¹⁰⁴ Author’s interview with a senior geologist AGS, MoM, who sought anonymity, dated April, 5, 2010 at AGS.

¹⁰⁵ *Acid rain and its effect on our environment* <http://www.environmentabout.com>. (Accessed Feb, 14, 2012).

¹⁰⁶ Article 81, Environment Law of Afghanistan.

¹⁰⁷ Author’s interview with the Mr. Fazli of the Sustainable Development Department of NEPA at NEPA, Dec, 13, 2010.

¹⁰⁸ Author’s interview with support team at NEPA which refused to be named, dated April, 7, 2012.

¹⁰⁹ Principle 5 of the Equator principles, July, 2006.

and disseminate them to the affected populations, and the delay in abiding by laws exposes the disrespectful behavior of the company towards the Afghan laws. On condition of anonymity, sources in NEPA talked about the issues in the ESIAR, which resulted in a non-issuance of a license from NEPA to MCC-JCL for its operation.

Chapter Three of The Environment Law of Afghanistan¹¹⁰ deals with the activities of companies affecting the environment. The law states that any entity that wants to implement a project will have to first conduct an Environmental and Social Impact Assessment to determine its adverse effects on these aspects. They must then submit a mitigating plan for these adverse effects in accordance with the law. Part one of Article 22 of the Environment Law states,

In regard to a proposed project, plan, policy or activity that is likely to have highly significant adverse effects on the environment, affected persons must be allowed the opportunity to participate at each of the phases referred to in sub-article 1 by the National Environmental Protection Agency and relevant institutions. The National Environmental Protection Agency shall not reach a decision on any application for a permit until such time that the proponent has demonstrated to the satisfaction of the National Environmental Protection Agency that the proponent has distributed copies of the document to affected persons, informed the public that the document is being made available for public review by advertising the document and displaying a copy of it for inspection, and convened and recorded the proceedings of a public hearing.¹¹¹

The affected people can express their views about the project, and NEPA cannot issue a mining permit unless all environmental concerns are addressed. However, there has been no consultation on the environmental issues associated with the Aynak copper mine in the past three years.

NEPA has a massive task before it with regard to monitoring the environment in relation to the Aynak project. However, so far they have been acting in a more reactive rather than proactive manner. An official in the Department of Sustainable Development at NEPA stated: “We do not do prior studies of the environment around any mine. When we get the ESIAR of a company that is licensed to operate, we categorize it and then deploy our people to monitor the environment.”¹¹²

NEPA needs to ensure that the Environment Law is implemented more stringently to ensure that pollution as result of mining is kept under check. Environmental protection should be an important part of the model for mine development. However, the decisions being made with regard to the use of water, coal and other minerals reflect that the model in place has compromised the environment and could compromise the archeological heritage.

¹¹⁰Environment Law of Islamic Republic of Afghanistan 2005

¹¹¹Ibid.

¹¹²Ibid.

2.6 Archeological Heritage

There is an important archeological site in the area demarcated for mining in Aynak. The archeological value it bears will outlast the life cycle of the Aynak mine. The relics found could be a perpetual tourist attraction and would provide a new symbol of the historical foundation of the region and people.

Nader Rassouli, Director of Afghanistan's National Institute of Archaeology in Kabul, who was quoted by Andrew Lawler in *Science Magazine*: "Mes Aynak [the site of the Aynak copper mine] is a hill topped by a 4500-square-meter monastery. Rassouli, who is also, an archeologist, is quoted further in the report as saying, "Although the site was spotted by archaeologists in the 1960s, it was never excavated. In recent years, looters have damaged much of the monastery complex in search of antiquities", he says, before going on, "The site is huge, and we have amazing remains." Lawler also quotes Philippe Marquis of Delegation Archéologique Française in Afghanistan (DAFA), "The monastery flourished from as early as the 2nd century B.C.E. until at least the 6th century C.E., although it may have continued as a settlement until as late as the 9th century C.E.,". A joint Afghan-French team began salvage work last summer, halting in November due to the severe winter at the 2400-meter altitude. Among the finds are three-dozen clay statues, including a reclining Buddha 5 meters long, as well as dozens of wooden and stone Buddha statues. Rassouli estimates that the site covers 100-400 hectares, including two areas yet to be excavated.¹¹³

The Hydrocarbon and Minerals Laws of Afghanistan unambiguously require the protection of any archaeological sites. According to the Law, "No person shall conduct Petroleum and Gas Operations on the following areas unless authorized by the Ministry of Mines and Industries: Any land containing archeological remains or national monuments specified by law..."¹¹⁴ However, there has been pressure from MCC-JCL, which saw the Buddhist archeological site as an impediment to its commercial interest in Aynak, to expedite excavation of the site. The government has committed to protecting the site, creating a museum for the relics in Logar and shifting some of them to the Afghanistan National Museum in Kabul.¹¹⁵ It remains to be seen how MoMP will coordinate their efforts and fully cooperate with the Ministry of Information and Culture on the preservation of the relics. However, recent information from sources that requested anonymity indicated that small removable statues will be preserved and the rest will be demolished. This is in direct contradiction to Afghan law. This is fundamental in application and enforcement of the law, putting commercial interests over legal and historical ones.

¹¹³ Lawler A., 2010, 'Copper Mine Threatens Ancient Monastery in *Afghanistan*', *Science Magazine*, July, 30, 2010.

¹¹⁴ Article 11 of the Mineral Law of Afghanistan.

¹¹⁵ Ministry of Mines press release, 'Government acts to conserve Aynak antiquities', www.mom.gov.af, Dated Sep, 15, 2010.

3. Governance of the Project

Governance of natural resources begins with a legal framework to provide discursive guidance for the development of the sector. Inclusive development of the sector has increasingly gained currency among development experts. Revenue management from the sector is another important element of the governance and development of the sector.

The quality of governance depends in large part on the level of participation by people in the decision-making process and in the implementation of the decisions.¹¹⁶ There are both formal and informal ways to give people a sense of ownership and stake in stability and order in their society. According to a report from UNESCAP,

Good governance means that processes and institutions produce results that meet the needs of society while making the best use of resources at their disposal. The concept of efficiency in the context of good governance also covers the sustainable use of natural resources and the protection of the environment.¹¹⁷

Afghanistan's needs are certainly different from those other countries. While exploring the government's approach to the Aynak Copper Mine it is important to understand if the model will serve the people and the state in Afghanistan in a conducive and sustainable way.

Civil society organizations (CSOs) play a critical role in encouraging citizens' participation in governance. Civil society can be a third force that observes whether the elected government measures up to its constitutional obligations towards its citizens, and advocate course corrections with the government through deliberation and pressure where there are deviations. However, in the case of Afghanistan, there are few civil society organizations interested and capable of engaging in the mining sector.

Extractive industries are also highly vulnerable to corruption. Political, military, bureaucratic and armed non-state actors all seek to benefit from extraction. For example, the conflicts in the Democratic Republic of Congo (DRC) partially stem from corruption in the extractive sector.¹¹⁸ Findings from the International Institute for Environment and Development address both the supply and demand sides of corruption in the sector. On the demand side, authorities may ask for a bribe from companies in return for awarding mining concessions. On the supply side, the sector has certain characteristics that make it especially susceptible to corruption including: the requirement for large capital expenditures; the high level of government regulation; lack of choice of location; its image of sudden wealth and easy money;

¹¹⁶ OECD, 2001, 'Engaging citizens in Policy-making: information, consultation and public participation. 2001, (accessed on May 14th 2013. <http://www.oecd.org/governance/public-innovation/2384040.pdf>).

¹¹⁷ United Nations Economic and Social Commission for Asia and Pacific, 2010, what is good governance, United Nations ESCAP, online publication, <http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp> (accessed on Jan, 12, 2010).

¹¹⁸ Burbley C., 2011, Natural Resources Conflict in Democratic Republic of Congo: A Question of Governance.

the local people's previous experiences with companies from the sector; and the particular sense of entitlement that the local people have with respect to mineral wealth generated.¹¹⁹

Corruption is perceived to be pervasive in Afghanistan, which scores 1.5 out of 10 and it stands among the worst of 183 countries ranked in Transparency International's Corruption Perceptions Index.¹²⁰ Corruption is one of the biggest obstacles to transforming extractive industries into a source of wealth and sustainable development for Afghanistan. Organizational research by Integrity Watch Afghanistan has many findings of illegal extraction across the sector and where powerful people are involved. For example, there are many cases where members of parliament have been awarded contracts, even though the Mineral Law 2009 of Afghanistan clearly prohibits members of parliament from getting contracts. The gold mines in Qara Zaghan, salt mines in Takhar, and chromite mines in Kohi Safi are some examples where members of parliament have directly or indirectly benefited from such contracts.

The Aynak Copper Concession was signed in 2008 at a time when governance of natural resources was generally lacking across the country. There was no regulatory framework in the state. The country also did not have a mining policy. The state institutions lacked capacity and equipment. The fiscal regime was missing. The mining sector now has specific governance structure and institutions that were absent in Afghanistan then. Collier asserts that the basic elements of natural resource governance are the legal framework and strong institutions. In Afghanistan, they were weak at the time. The structures and institutions are in the making but their areas of operation are blurred. The MoMP has created a special authority to monitor the progress of the copper project at Aynak. The MoMP has regulation and policies for the mining sector, and the capacity of the MoMP has increased. Afghanistan is an EITI candidate. Afghanistan has an environment law, tax manual, investment law and institutions that are mandated to enforce these laws. The Ministry of Mines has a Social Development and Impact Department with social specialists to understand the impact and mitigate negative outfalls of a project. Besides NEPA, MoMP has an internal department with inspectors to oversee compliance of the mining companies with their commitment in the contract.

Despite these changes, Afghanistan received an average score of 33 out of 100 in the Resource Governance Index published by Revenue Watch Institute.¹²¹ The Index looks into the legal framework, practices and institutions, quality and control mechanisms and the general environment that may affect the development of the mining sector. With this score, Afghanistan fails. It highlights several areas for serious reform until Afghanistan is on track to successful resource governance.

The implementation of Aynak has been difficult and now it faces an uncertain future. Some of the institutions critical for implementation of a large mining project were created long after the contract for Aynak was signed and unfortunately they are still learning to manage large-scale mining projects. The

¹¹⁹ Marshall E., International Institute for Environment and Development, *A survey of Corruption Issues in the Mining & Mineral Sector*, accessed online Nov, 17, 2011.

¹²⁰ Transparency International, 2012, *Corruption Perception Index*, on www.transparency.org (Accessed on Nov, 22, 2012).

¹²¹ Revenue Watch Institute, 2013, 'Resource Governance Index', (access on June 18th 2013 <http://www.revenuwatch.org/rgi>).

delay in the implementation and land compensation are indicators reflecting a lack of governance and institutions with proper knowledge to deal with the stalemate. Furthermore, a lack of accurate information about mines in Afghanistan makes it difficult to embed a model contract in the law so the only alternative is a 'concession'¹²² to mining companies.

There are numerous claims by members of communities in Aynak that state institutions have been intimidating the displaced people. A member of the Shura in Sayedabad shared that state security institutions were used against them when they asked for land compensation.¹²³ MoMP officials have reportedly threatened the displaced residents of Aynak with 'armed intervention' by NATO and Chinese soldiers if they tried to stop the Aynak Project.¹²⁴ One of the residents of Seeso Tangia complained that he was warned by police not to return to his property or else he would be charged with terrorist activities and sent to jail.¹²⁵ The general community feeling is reflected in community members' expressions, "We have been divided by the local government. We are the real owner of the land and the government in order to see the project started on time is trying to ignore our rights."¹²⁶ People who have been paid for their loss of land have benefited to some extent and show a greater degree of acceptance, while those who have not been compensated for their losses due to the project feel cheated, disillusioned and blame it on the MCC-JCL. The leaders in Kabul may have good intentions for the common people but employees of the state on the ground abuse their authority. It is a 'principal-agent disconnect' that undermines the functionality of the state. Facts on the ground indicate that the government is taking sides rather than being a mediator between the company and Afghan citizens. The state needs to represent the interests of its citizens in this case and deal with the company lawfully so that people who have lived in Aynak for generations are not negatively affected.

¹²² A concession is a negotiated agreement between a state and a private mining company that may be beyond the folds of law but endorsed by legislative.

¹²³ Author's interview with Haji Alam Khan, Secretary of Shura in ZayedabadLogar, Jan, 20, 2010, Zayedabad.

¹²⁴ Author's note during one of the focus group discussion with local elders in Davo, 10 Nov, 2010.

¹²⁵ *Op-cit* interview with Bang Gul.

¹²⁶ Interview with Haji MirwiasAynakwalAhmadzai, Chief of the IssaKhail sub-clan, Feb.23, 2010, Davo village, close to Aynak.

CONCLUSION

The interests of Afghan citizens seem to have been neglected so far. Citizens in Aynak have lost their properties and they complain about the treatment they have received. They have lost assets and sources of income yet their concerns are ignored, thus threatening their livelihoods.

Mining is not only about revenues for the state and companies; but it can also be the catalyst for broader and more inclusive economic development. Therefore, a development model for our country would need civil society actors, local communities, government and donors to work together to design a legal framework and institutions that would respond to the needs of the citizen and allow for sustainable development of the sector.

Revenue from Aynak or any other mine is very important for the survival, stability and development of Afghanistan. However, the revenue from the sector needs to be allocated in a manner that will ensure investments in infrastructures, human resources, education and health sector to diversify the economy.

Though the MoMP has moved from its earlier solo focus on revenues to a more inclusive approach where social and environmental concerns have found voices, this shift is not sufficient. The Ministry has a Social Development Department which has sought to resolve the land compensation issue. The Ministry of Mines has a mining policy that supports social development and fair treatment of local communities. The Ministry of Mines has also set up Aynak Authority to oversee the implementation of the project. More work is required to set structures for implementing mining contracts in responsible ways. The Afghan government must develop a vision for the development of its mining sector through an inclusive discussion of several state institutions, private sector and civil society organizations.

Accountability of the decision maker and transparency short listing, evaluation of each bid and in negotiating a mining contract are key to avoiding the trap of the 'resource curse' and conflict. It is worth reiterating that the Afghan government must develop the mining sector through a vision founded on the needs of all members of its society in the medium and long term. Government legitimacy increases if it is accountable to its people. Citizen-led participation in discourses, debates and dialogue on development of the sector may make the state a champion in the stability and peace in Afghanistan.

RECOMMENDATIONS

Land issue

1. The Government of Afghanistan needs to compensate the communities around the mine for their losses through fair and proper consultations according to Afghan law, ILO [Convention 169](#), [UN guidelines for Business and Human Rights](#) and World Bank Guidelines on resettlement of affected peoples.
2. The government must create a single land title which is necessary for avoiding disputes in future land acquisition or use of land for development projects as well as for investment purpose.
3. The government has to establish an institution to attend to the grievances of the people affected by mines and to support such a fair, accessible, and transparent mechanism.

Contract disclosure and transparency

1. The government has to disclose the Aynak contract so that citizens know what has been signed on their behalf. The government needs to resolve with MCC-JCL the question of delays in the implementation of the Aynak project, and should do so openly and in consultation with all Afghan stakeholders. Any delays in contract implementation in future must be justified to the satisfaction of government and civil society; otherwise, cash penalties should be imposed with the intention of expediting implementation.

Economic opportunities

2. The government needs to work with MCC-JCL to invest in social development for local populations throughout the life of the mining operation to increase their stake in the success of the project.
3. With Aynak being the first large scale mining project, the government has to take this as an opportunity and train Afghans for un-, semi- and skilled jobs in the mining sector.
4. The Afghan private sector must be engaged and made aware of the business opportunities associated with large-scale mining concessions such as Aynak so that they can benefit from them. Where competitive with international suppliers, MCC-JCL should be required to give preference to Afghan suppliers.

Relation between MCC-JCL and citizens

1. MCC-JCL must have meaningful consultations with the communities, where MCC-JCL provides information about small projects, obtains the views of local people, and assists them to benefit from such projects.
2. MCC-JCL needs to engage with civil society to better understand local concerns and mitigate a situation. Studies, especially the Social Environmental which has been undertaken by the company should be shared with CSO. Further research, baseline or/and analysis could also be undertaken by CSO on the local level and the findings should be shared with the company.
3. MCC-JCL should create its own grievance mechanism, to allow members of communities affected by the project to ask questions regarding the content and implementation of the project, and file complaints and get promptly answers.

Environment

1. The National Environment Protection Agency NEPA needs to publicly share its own mechanisms for monitoring the environment at Aynak and downstream to ensure that mining operations do not pollute the air or soil or deplete water sources, including aquifers. It should follow the [IFC](#) standards for environmental protection.
2. NEPA needs to acquire skills and build capacity to inspect and advocate for environment protection measures prior to awarding any contract in the future.
3. The environment around the mine needs to be closely monitored during the pre-operation phase, during operation and post operation.
4. Water must be considered an important element of mining contracts especially in areas experiencing water shortages. The government needs to share its plans and the sources from which it expects water to be provided to mining activities, in order to avoid threatening local water reserves.
5. NEPA needs to carry out an integrated Environment and Social Impact Assessment Report (ESIAR) independent of other government agencies prior to negotiation for a contract in order to provide information to the negotiation team so that they can include provision base on realities.

Recommendations to the Ministry of Information and Culture

1. The Ministry must protect the archaeological site at Aynak, as this is an invaluable historical signpost that will long outlive the benefits from the copper mine.
2. The Ministry of Information and Culture must acquire capacity to excavate, shift and protect historical heritage.

Recommendations to the Ministry of Mine

1. MoMP needs to acquire the necessary capacity to inspect and regulate mining activities such as environmental, operational, safety and production level issues.
2. The Afghan Geological Survey needs to carry out an exploration study and have clear data about each mine before it is tendered, as this would strengthen the bargaining position of the state for a better deal and a better mechanism for generating revenue from the resources.
3. The government needs to work on the mechanism to establish a Sovereign Wealth Fund. There must be constitutional mechanisms to control the usage of the fund under all conditions. The revenues must be governed through a special multi-level mechanism with multiple layers of oversight to avoid misuse.
4. The government needs to start a discourse on how to invest the revenues from the extractive industries to generate sustainable revenue streams.

Recommendations to Wolesi and Meshrano Jirga

1. The Wolesi Jirga and Meshrano Jirga should establish a monitoring commission for oversight of strategic mining projects.
2. The Mining Committee of the Wolesi Jirga and Meshrano Jirga needs to have an oversight role in bid opening, the evaluation process, and negotiation with companies for concession, and ensuring that the license is awarded in a manner that upholds the rights and interests of the Afghan people. The two Jirgas must also receive quarterly progress reports of large mining projects, revenue collection from the sector and oversee the institutions involved in the development of the natural resource sector
3. Mishrano and Wolesi need to work with government and civil society to uphold human rights, environmental standards and law and establish reporting mechanism to see the progress.

Recommendations for the international donors

1. The donor community and embassies that fund the Ministry of Mines and Petroleum need to advocate through diplomatic channels for enhancement of the governance of natural resources by the Government of Afghanistan.
2. International donors need to support enhancing the inspection capacity and the audit capabilities of MoMP, the Ministry of Finance, the Control and Audit Office of Afghanistan, and the Central Bank, because a good contract on paper needs to be translated into effective arrangements on the ground, and inspection and audit are critical elements of the process.
3. Donors need to focus on building the capacity of the government to promote investment, implementation of contracts, a transparent and beneficial fiscal regime for Extractive Industries, to collect and manage. Donors should enable Afghan CSOs in their advocacy work with the government and donors, especially in training Afghan CSOs to engage with government and

communities on technical issues in the mining sector. For this purpose, they should encourage “twinning” arrangements between INGOs with expertise in the subject matter and Afghan CSOs who have serious commitment and substantive engagement in the issue.

Recommendation to CSO

1. The CSO needs to be part of development discourse on mining and the current Extractive Industries Development Framework which is currently carried out by the Ministry of Mines and Petroleum.
2. CSOs need to create synergy among them to be a voice for inclusive development of the mining sector.
3. CSO must work to increase awareness of communities living around mines to manage their expectations.
4. The CSOs must avoid ethicizing the discourse on mining in Afghanistan and converge energy to advocate for transformation of natural resources from a sub-soil capital into national wealth and vehicle for inclusive and sustainable development.

ANNEXES

Annex 1: List of activities the MCC-JCL must do according to the draft Aynak copper contract

Table of the Activities by MCC-JCL

No	Activity	Date
1	Date of signing the contract	May, 25, 2008
2	Deposition of first trench of money	July, 25, 2008
3	Agreement to provide security	July, 25, 2008
3	Power supply agreement	July-Sep 2008
4	Water Supply Agreement	Sep-Dec 2008
5	Phosphate, limestone and marble supply agreement	Sep-Dec 2008
3	Pre-exploitation activities	August 2008
4	Bankable feasibility study (Sub)	November 2008
5	The contract for the railway line	May, 25, 2009
5	Mine Development Plan (Sub)	Jan, 2009
6	Spent 95 % of the investment budget	Sept, 2009
7	All unskilled labor force Afghan	2016
8	All skilled labor force Afghan	2018
9	85 %clerical, supervisory and management profession	2021
10	90 % Technical staff Afghan	2021
11	Commercial production	2013

Annex 2: List of interviews conducted

List of people interviewed

#	Name	Designation	Location of interview	date
1	Haji Mirwias	Representative of People of Aynak (10 interviews)	Davo.	Feb, 23, 2010
2	FDG	Local Elders	Davo	Feb, 23, 2010
3	FDG	People from Wali Kaley	Zayedabad	May, 14, 2010
4	Haji Alam Khan	Member of Shura in Zayadabad	Zayadabad	Jan, 10, 2010
5	Bangul	A resident of Seeso Tangia (10 interviews)	Davo, M.Agha	May, 12,2010
6	Akbar Khan	Representative of people of Aynak(12 interviews)	Davo, M. Agha	May, 12, 2010
7	An employee of MCC-JCL	Sought anonymity (4 interviews)	Awparan	May, 14, 2011
8	Mirajan	Representative of Wali Kaley (11 interviews)	Davo	May, 14, 2011
9	Abdullah Wardak	Land Assessment Team in Logar	M. Agha	July, 14, 2011
10	Jim Skinner	Lead GAF team (3 interviews)	AGS	Sep, 18, 2011
11	An employee of MoMP	Senior geologist (3 interviews)	AGS	May, 10, 2011
12	Abdullah Ahmadzai	Head of Provincial Council	IWA	Jan, 20, 2010
13	Ahmad Shah	Resident of Seeso Tangia	IWA	Jan, 18 ,2010
14	Haroon Zareef	Employee of land Authority of Afghanistan	Land Authority	Jan,17 & 25, 2010
15	Habibullah Rafi	Deputy at the Academy of Sciences of Afghanistan	At his office	May, 1, 2010
16	Mr. Waziri	Former Diplomat	RSC	Jan, 26, 2010
17	Rozee Khan	Resident (two interviews)	Davo	May, 12,

				2011
18	District Governor M.Agha	DG	Mohammad Agha	May, 21, 2011
19	Attiquallah Nusrat	Operating Officer at AICC	AICC	May, 5, 2010
20	Mullah Bahdur	Representative of Awparan village (7interviews)	Awparan	June, 5, 2012
21	FDG	Residents of Awparan	Awparan	June, 5, 2010
22	Akbar Ahmadzai	Peace Dividend Trust	Office	May, 5, 2010
23	Sayed Kazim Fakhri	Head of Foreigner Permit Office	Ministry of Public work	Aug,29,2010
24	Eng. Sadiq	Former senior employee of MoMP(4 interviews)	Kabul	Aug, 28, 2010
25	Mr. Fazli	Head of SDEM Department NEPA (2 interviews)	NEPA	Dec, 13, 2010
26	Anonymous sources	Several interviews With local people, representative of people and government officials,		Over the course of study
27	FDG	Local residents	Davo	May, 12, 2010
28	FDG	Local Elders	Davo	Nov, 12, 2010
29	FGD	Local Elders	Davo	May, 21, 2011
30	Mohammad Rasool	Resident	Pul-i-Kandahri	Dec, 14, 2011
31	Abdul Rahman	Local elder	Davo	Dec, 14, 2011
32	Arif	Resident	Aynak	March, 3, 2011
33	Agha Jan	Resident	Awparan	Oct, 6, 2011

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