

Suggested Amendments to the Afghan Mining Law: March 2017

Mining should be a source of development and independence for the Afghan people, but is instead a major threat to security while providing little benefit. Urgent action is needed to reverse this pattern. A key concern is reforms to fix a number of serious weaknesses in the 2014 Mining Law which threaten to undermine the fight against corruption, conflict and loss of revenue. Civil society organisations working on the Afghan extractive sector have collaborated to develop detailed language for a limited set of the most important of these amendments.

These measures are also offered as an effective means of putting into practice the Afghan government's laudable commitment, made at the October 2016 Brussels Conference on Afghanistan, to put forward amendments to Afghan law to strengthen transparency and accountability and to help fulfil the country's commitments under the Extractive Industries Transparency Initiative (EITI), including measures such as contract publication as a condition of validity and publication of beneficial ownership.

The amendments have been developed through an in-depth process among a wide group of Afghan civil society organisations, many of them members of Mining Watch Afghanistan (MWA) and the Natural Resources Monitoring Network (NRMN), and in close consultation with Afghan and international experts including Radon Law and Columbia University. They are designed to cover a focused set of the most important reforms to the law, specifically:

- Publication of project-level payment and production figures
- Use of a single, transparent account for all extractive payments, as a condition of receipt
- A public register of beneficial ownership of extractive sector companies, and controls on owners
- A requirement for the publication of contracts as a condition of their validity
- Increase transparency in allocation of extractive contracts, including use of model contracts
- Language to enable community monitoring of, benefit from, and ownership of mining projects
- Provision for local (and not just Afghan) employment in mining projects

These recommendations have strong roots in international best practice and precedent, and in the existing commitments of the Afghan government. Publication of project-level payment data is already required for all companies falling under the EITI (article 4.7), and extending this to all companies would be relatively simple. As a technical issue, the Afghan Ministry of Mines and Petroleum should be able to regularly publish a spreadsheet setting out existing contracts, how much has been produced under each contract, of what quality, and how much revenue has been paid to the government on this production.

The Afghan government strongly committed to contract publication at a May 2016 conference in Kabul.ⁱ This is also encouraged under the EITI,ⁱⁱ and increasingly publication is becoming the norm for countries concerned about extractive governance.ⁱⁱⁱ Slovakia has led the way on contract publication as a condition of validity, with overall successful results and few negative consequences.^{iv} Meanwhile countries like Ukraine provide examples of both contract publication and transparent allocation.^v Afghanistan committed to exploring the implementation of Open Contracting at the 2016 London anti-corruption summit.^{vi} At the same event, it committed to implementing a public register of beneficial ownership. Finally, community monitoring is already being used successfully for some development projects, and there are provisions for Afghan (but not local) employment in the existing mining law.^{vii}

They build on previous work carried out by IWA, Global Witness and others for the report *A Shaky Foundation?* (which analysed the previous Mining Law in considerable detail, and raised many of the same issues)^{viii} the policy document *Building for the Long Term*,^{ix} the research report *The Plunderers of Hope*,^x and several other publications.^{xi} This document includes a summary of the reasons why a given amendment is needed, and of the gaps in relevant parts of existing Afghan law, but these other publications can be referred to for more comprehensive information and analysis.

A broad group of other Afghan and international civil society organisations submitted an earlier version of these amendments to H.E. President Ghani, H.E. CEO Dr Abdullah, and H.E. the Minister for Mines Dr. Daud Saba in December 2015. Civil society organisations urged the government to integrate the amendments into the law as part of their commitment to good governance and to ensuring that the country's natural resources benefit all Afghans. The major substantive difference in this new edition is inclusion of language making the use of a single transparent account a condition for the official receipt of funds. Further drafts may be developed as we continue our discussions with the Afghan government, extractive sector companies, civil society, and experts. We look forward to working in partnership with the Afghan government and supporting their work to reform Afghan law in this vital area.

	Issue and justification	Original version of the law	Proposed amendment
1	<p><i>A requirement for publication by the government and companies of project-level payment and production figures.</i></p> <p>Publication of the quality of material that is mined, and the detail of payments between mining companies and the government, is a vital tool for transparency – making it much easier to establish whether illegal mining or other abuses are taking place and whether full taxes are being paid (especially for larger projects, given the complex trading schemes and offshore arrangements that many international extractive companies have made use of). The Afghan government has committed to publishing some data through the Extractive Industries Transparency Initiative (EITI), but implementation has been very uneven: incorporating these requirements in law would greatly strengthen the protection they give. To be most useful, this information should go slightly further than the letter of EITI requirements, and be broken down to the level of</p>	<p>Article 100 states that: <i>The Ministry of Mines and Petroleum, the Ministry of Finance, License Holder, contractor and other relevant agencies shall, for the purpose of transparent management and effective Mining revenues, comply with the requirements and standards of the Extractive Industries Transparent Initiative.</i></p> <p>This reference in Art. 100 of the law to EITI is important and positive, but there are no penalties for non-compliance, and thresholds for EITI participation may exclude an important part of the mining sector. A much stronger protection would be to require transparency directly (while retaining the reference to EITI). This would leave no room for loopholes or ambiguity, and do much to protect mining in Afghanistan from abuses.</p>	<p>NEW Article 22: Transparency of mining data</p> <p>(1) The Ministry of Mines will publish, on a timely basis and at intervals of no more than six months, the following data:</p> <ul style="list-style-type: none"> • Details of all payments to and from government entities made in connection to mining-related activities, including attribution to a specific individual mining project; • other payments between government entities and extractive sector companies, license-holders or license applicants, in accordance with the regulations • The quantity, type and grade of any minerals produced from mining activities, including attribution to a specific individual mining project; <p>(2)The aforementioned data will be promptly published and maintained on the Ministry of Mines website in a standardised, software-readable format that is easily and publicly accessible.</p> <p>Add to Definitions:</p> <p>Project/Mining Project: the operational activities that are governed by a single mining contract, license, lease, concession or similar legal agreements and form the basis for payment liabilities with a government entity</p>

	individual projects.		
2	<p><i>A requirement to use a single, transparent account for all natural resource revenues.</i></p> <p>Lack of clarity about the extent and origin of extractive revenues and expenditures greatly increases the chance of abuses. The EITI process for example has highlighted concerns over the use of provincial offices of the Ministry of Mines to receive funds from extractive companies.</p> <p>Creating a single, transparent account for all payments to and from the government in relation to extractive activities greatly strengthens and simplifies the task of identifying abuses, reduces the chance of revenue loss, and makes it easier to track how the government is using its extractive incomes.</p> <p>But simply creating the single account, or even mandating its use in law, is not enough to ensure the mechanism would be effective. A powerful additional tool would be to make payment to this account a condition</p>	<p>The law currently requires payments to be made to the State Treasury account, but has no provision for transparency.</p> <p>Article 83 (3) has provisions purely in relation to Royalty payments: <i>Royalty shall be paid in accordance with terms and conditions of License and Authorization and the provisions of this Law into a dedicated State Treasury account to the bank. Each Royalty payment of gross revenues shall be accompanied by details of the Mineral produced, sold or transported.</i></p> <p>Article 85 states that: <i>A fee, Surface Rent, Royalty or other payments are public property and shall be submitted to the bank and made payable to the State Treasury Account. If the Holder denies or delays its payment, such payment may be recovered by authorized competent court as the debt of the Holder from its properties.</i></p>	<p>AMENDED Article 85.</p> <p>(a) All funds payable to the government in relation to extractive activities, including fees, bonus payments, surface rents and royalties, are public property and shall be payable directly into a single State Treasury bank account (the Single Account), which shall be used solely for this purpose. Relevant payments which are not made to this account shall not be considered officially received, and the obligations and debts in question shall remain outstanding. The Ministry of Mines shall be responsible for ensuring license holders and others liable to make payments in relation to extractive activities are informed of this requirement and provided with the necessary details to make payments.</p> <p>(b) If the license Holder denies or delays their payment, such payment may be recovered by an authorized competent court as the debt of the Holder from its properties. All payments from the Government in relation to extractive activities shall likewise be made from this same account.</p> <p>(c) On a monthly basis, the Government will publish details of all payments and withdrawals from or to the Single Account in a publicly accessible format on the Ministry of Mines and Ministry of Finance websites. Each transaction shall be accompanied by summary details of the nature of and reason for the payment, including where relevant its origin or destination, the mineral produced, sold or transported, its quantity, price, and grade, and other relevant information.</p>

	<p>for official receipt of relevant funds, a simple but effective way of guaranteeing that less transparent channels were not used, without creating a significant additional burden on government administrative capacity.</p>		
<p>3</p>	<p><i>A requirement for the publication of the “beneficial ownership” of mining companies, and clearer prohibitions against MPs, security officers and other figures being involved in mining.</i></p> <p>Hidden ownership arrangements are a common element in corrupt and abusive deals around the world. The Afghan government made a strong commitment to the creation of a public register of the beneficial owners of companies applying for or holding public procurement contracts (including mining contracts) at the 2016 London Anti-Corruption Summit, and publication of beneficial ownership will be a requirement for validation under EITI from 2020.</p> <p>To fulfil these commitments, the Law</p>	<p>A draft amendment being worked on by Ministry of Mines states: (6) Ministry of Mines and Petroleum shall, within 10 days of a contract conclusion or grant of a license, publish [any] mining contract and license together with their ancillary contracts while naming their shareholders and direct beneficiaries.</p> <p>This would be a step forward, but does not cover indirect beneficiaries of companies, and does not have any penalties for non-publication. In practice, a contract could be left unpublished for years without any public awareness.</p> <p>Article 16 (2) of the current law has some positive provisions on ownership, listing certain political and executive positions whose holders are excluded from holding a license. However, the groups specified fail to cover many important politically connected actors, do not properly</p>	<p>NEW Article 26: Beneficial Ownership</p> <p>(1) All companies applying or bidding for a license are required to provide accurate information on their beneficial ownership as part of their application or bid documents. Throughout the duration of a license, license holders will inform the Ministry of Mines of any changes to this information, within one month of the change occurring. Companies holding licenses at the time this provision enters into force are required to provide the required beneficial ownership information within six (6) months.</p> <p>(2) The Ministry of Mines will promptly publish and maintain a register of all beneficial ownership information in a publicly accessible form on its website, and elsewhere as needed to ensure accessibility.</p> <p>(3) Failure by a company to provide beneficial ownership information in good faith and in conformity with the regulations to this law shall invalidate a license application, and be grounds for revocation where a license has been granted.</p> <p>(4) Information on all individuals who are defined as Politically Exposed Persons (PEPs) according to the regulations of this law, and who have any level of economic interest in, benefit from, or control over an entity applying for or holding a minerals license, shall be subject to publication in accordance with Article 26 (1),</p>

<p>should be amended to create clear legal guidelines for any company applying for natural resource licenses (or other government contracts) to first provide details of its real, beneficial owners – defined according to international best practice to cover any person who exerts significant control or derives significant benefit from the company. This information should be made publicly available before a bid is considered.</p> <p>Information on individuals with direct political connections is naturally particularly important. Any owner who is a Politically Exposed Person either in Afghanistan or elsewhere should also be publicly highlighted, even if the owner is otherwise eligible to apply for a license. Any failure to accurately disclose this information should be a ground for the automatic revocation of the license (so as to remove discretion).</p> <p>The current Mining Law excludes some senior officials from direct or indirect benefit from a mining license, but those not on the list notably include</p>	<p>address indirect ownership through front companies, and have no mechanism to require companies to actively reveal their real, beneficial owners.</p> <p>Article 16 (2) (5) adds to the excluded list: <i>5. Companies in which the listed figures in Article (151) of the Constitution of Afghanistan, have obtained direct or indirect benefits;</i></p> <p>There are two problems here. First, Article 151 of the Constitution lists a significantly narrower group of persons than Article 16 (2) of the Mining Law – it notably leaves out members of the armed forces and members of parliament, for example. This leaves MPs and Generals to legally enjoy the benefits of mining licenses so long as they did not own them – a major loophole.</p> <p>Art. 42(1)(2)) of the Law requires information on major shareholders to be submitted to the government, but without any requirement to make this information public. Information on indirect beneficiaries is not required.</p> <p>The law should require publication of information not just of shareholders but of the ultimate “natural person” owner, since mining companies often use</p>	<p>irrespective of whether they would otherwise qualify as beneficial owners.</p> <p>Amend Article 16 (2) (5)</p> <p><i>5. Companies in which the individuals listed above have obtained direct or indirect benefits or otherwise exert beneficial ownership;</i></p> <p>Add to Definitions:</p> <p>Beneficial Ownership:</p> <p>Beneficial ownership is enjoyed by any natural person who, directly or indirectly, has any significant degree of control over a given legal entity, or has a significant economic interest in, or receives significant economic benefit from, such a legal entity, even where formal ownership (title) may be in the name of another entity. In addition to any other qualifying criteria, a person is automatically considered to be a beneficial owner if they own or control 5% or more of the legal person or arrangement in question.</p> <p>Politically Exposed Persons (PEPs):</p> <p>PEPs are defined as individuals belong to one of the following categories:</p> <ul style="list-style-type: none"> • Domestic PEPs: individuals who are or have been entrusted domestically with prominent public functions, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials. • Foreign PEPs: individuals who are or have been entrusted with prominent public functions by a foreign country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials
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	<p>Members of Parliament and members of the security forces.</p>	<p>complex chains of ownership and the direct shareholders may in fact be intermediate companies on which little or no information is publicly available.</p>	<ul style="list-style-type: none"> • International organisation PEPs: persons who are or have been entrusted with a prominent function by an international organisation, refers to members of senior management or individuals who have been entrusted with equivalent functions, i.e. directors, deputy directors and members of the board or equivalent functions. <p>PEPs shall also be defined to include:</p> <ul style="list-style-type: none"> • Family members who are related to a PEP in one of the categories above either directly (consanguinity) or through marriage or similar (civil) forms of partnership, to the second degree of relation • Close associates who are closely connected to a PEP in one of the categories above, either socially or professionally.
<p>4</p>	<p><i>A stipulation that natural resource contracts become valid only after they are made public.</i></p> <p>Contract publication is vital to transparency and accountability, and reduces the possibility of any contract being drafted in a way that facilitates corruption. Publication of extractive sector contracts is mandated by Presidential Decree since 2012, but implementation has been inconsistent and a significant number of recent contracts have not been published, including contracts linked to possible abuses. A much stronger mechanism would be to change Afghan law to</p>	<p>Article 23 (6) states that: <i>The Ministry of Mines and Petroleum shall publish the terms and conditions of any Minerals Development contract, and other ancillary agreements within ten (10) days after entering into such Minerals Development Contract. Publishing the personal information and any other relevant information to the security of personnel and methods of operations is not allowed without a written agreement of the Parties.</i> But this requirement only applies Minerals Development Contracts – it would not apply to the great majority or ordinary contracts.</p> <p>Article 41 allows individuals access to the</p>	<p>AMEND Article 18: License</p> <p>(5) Mining licenses, authorizations and contracts, with all ancillary documents relevant to the implementation and ownership of the contract, will be published in a publicly accessible format on the website of the Ministry of Mines, or other reputable and publicly accessible website as defined in the regulations, within ten (10) days of being granted. Beyond this period such licenses, authorizations and contracts will be made available freely upon request. Such licenses, authorizations and contracts shall not enter into force or be considered valid until such a time as they have been so published.</p>

	<p>stipulate that government contracts only become valid after they are made public. This would be an almost foolproof safeguard, creating a strong incentive for publication, and making clear that contracts that were not public were illegal. Indeed, this measure should be applied across state procurement (with tightly defined exceptions for the most sensitive security-related contracts).</p>	<p>license <i>register</i> and to ‘non confidential’ documents, but this is still a significant obstacle to full transparency. While Presidential Decree 45 of 26 July 2012 mandates publication of contracts, a number of them have not been published. This may be for technical reasons, but it is clear that an automatic mechanism would avoid this issue and guarantee transparency in the future.</p> <p>A draft amendment being worked on by Ministry of Mines states: <i>(6) Ministry of Mines and Petroleum shall, within 10 days of a contract conclusion or grant of a license, publish [any] mining contract and license together with their ancillary contracts while naming their shareholders and direct beneficiaries.</i></p>	
5	<p><i>A requirement that mining contracts be allocated according to strong principles of transparency and competitiveness, and with effective safeguards for fairness and transparency, and clear sanctions for abuses.</i></p> <p>The Afghan government has made some real progress in reforming procurement, but more could be done</p>	<p>Article 10 (1) 5 states that the duties of the Ministry of Mines include <i>Monitoring the bidding process to ensure that it is conducted transparently and fairly in accordance with the provisions of this Law and relevant Regulations.</i> Article 19 (4) (g) states that: <i>The manner of any bidding process and other licensing related issues shall be set forth in the relevant Regulations.</i> However, a certain number of protections are basic enough to good governance that they should be included in the law itself rather than the</p>	<p>AMEND Article 19: Types of License and its granting process and authorities</p> <p>(4) Tender proceedings for Mineral Rights shall be an open, transparent, competitive and impartial procurement system, based on effective budgetary and expenditure controls and reporting requirements designed to achieve efficiency, economy, the prevention of abuses and loss of state revenue, and a fair opportunity for participation by all prospective Bidders. The manner of tendering and other licensing related issues shall be set forth in the relevant Regulations, and shall include:</p> <p>a) Clear procedures for conducting the bidding or allocation process, and clearly defined pre-qualification criteria; established</p>

<p>to ensure that mining contracts be allocated according to strong principles of transparency and competitiveness, and with effective safeguards for fairness and transparency, and clear sanctions for abuses. In particular, they could amend Afghan law to require transparent, open and fair bidding and contracting processes – including for example publication of the substance of losing bids, public criteria for eligibility, legal penalties for preferential treatment and incorporation of the principles of Open Contracting.</p> <p>At the May 2016 London anti-corruption summit Afghanistan committed to initial work on Open Contracting. These standards should be applied across government procurement, but especially to natural resource contracts.</p>	<p>regulations.</p> <p>Article 99 has language on the illegality of preferential behavior, stating that: <i>Where an applicant, License Holder, Authorization or contractor, or any other person on behalf of them directly or indirectly provides any money or any other in-kind payments [with material or intellectual values] intended to as a gratuity, gift, fee or any other favor to any Afghan Government employee or any third party for the purpose of making that person grant any License, Authorization, or contract to the applicant or holder or other relevant facilities, it shall be considered a criminal act and the perpetrator shall be prosecuted under administration corruption provision.</i> This is a positive provision, but could be strengthened by applying the same standard to officials as well as license holders.</p> <p>Article 13 (1) of the Regulations to the 2010 Minerals Law state that <i>Tender proceedings for Mineral Rights shall be an open, transparent, competitive procurement system, based on effective budgetary and expenditure controls and reporting requirements designed to achieve efficiency, economy, the prevention of abuses, and a fair opportunity for participation by all</i></p>	<p>in advance of the bidding process and applied equally to all applicants;</p> <p>b) Timely and appropriate public consultation and notification that a mineral concession may be awarded, and provision of clear and accessible public information on how the award process will work;</p> <p>c) Provision to ensure equal access by all qualified bidders to available information, including geological information gathered by the state;</p> <p>d) For licenses allocated based on a bidding process, provision for the publication of the tender documents, winning bid documents, bid evaluation reports, and a summary of the substantive terms of all losing bids, immediately following the completion of the bidding process</p> <p>e) A requirement for the Ministry of Mines to provide a timely and public written justification for its licensing decisions, including granting a license and disqualification of an applicant;</p> <p>f) Clear criteria for the evaluation of bids, based on a full investigation of their merits and costs, including economic, financial, social and environmental issues, impact on local communities, conflict risks, and other relevant factors. The assessment will include a broad cost-benefit analysis, including costs (such as security) associated with mining but borne by the state. The prior record of an applicant company and its owners with regards to business competence, financial capacity, human rights, the environment, and community relations will also be a factor in the assessment of their bid.</p>
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		<i>prospective Bidders</i> . However, there is no actual requirement for measures like publication of a summary of losing bids.	
6	<p><i>Use of model contracts to reduce opportunities for abuses and help entrench best practice as matter of routine.</i></p> <p>The government should use model contracts as the initial basis for contract negotiations, incorporating international best practice on measures against corruption and conflict, and developed in consultation with civil society, business and other stakeholders. This would also reduce the risk that contracts may be challenged later, and increase the public legitimacy of natural resource deals.</p>	Ministry of Mines and Petroleum has responsibility for developing contracts.	<p>AMEND Article 19: Types of License and its granting authorities</p> <p>(5) The Ministry of Mines will develop model contracts, incorporating the commercial and social protections in line with international best practice, in consultation with relevant Ministries, civil society mining companies, and other stakeholders, and shall use them as the initial basis for the negotiation or granting of licenses of all types.</p>
7	<p><i>Language to enable community monitoring of mining, including allowing the payment of a small percentage of legal mining revenues to local projects through Community Development Councils.</i></p> <p>Community monitoring has had good results when applied to aid projects. It</p>	Various provisions for Community Development Agreements and consultation of communities in the development of CDAs. On revenue sharing, Article 85 allows for a 'special code': <i>The Ministry of Finance shall, in addition to its annual national budget allocation, allocate 5 % of the overall revenue from a Mine or Mines, in a special code [budget code] or wealth</i>	<p>NEW Article 101: Community monitoring and consultation</p> <p>(1) The Ministry of Mines will establish regulations to allow community monitoring of mining, including a framework for establishing an inclusive and legitimate community body to lead monitoring; requirements for companies and artisanal miners to liaise with and provide necessary information to communities; and protocols for communication between community monitoring bodies and government agencies, and for responding in a transparent, rigorous and impartial way to issues raised.</p>

<p>strengthens oversight and reduces corruption and conflicts, while making minimal demands on government capacity. IWA has already run a pilot community monitoring program for extractives: the Afghan government should now take the lead to create the legislative framework needed to roll the practice out across the sector.</p> <p>A key part of this is to ensure communities have some incentive to support legal extraction and to fight corruption. To do this, the Afghan government should consider providing local communities with a specific, small percentage of the legal revenue the government receives from a mine, something which could be integrated within the existing requirement under the Mining Law, which requires that 5% of mining revenues be returned to local government. A major part of this should be spent on projects that directly benefit the communities living around the mining site. One way to ensure this happens, and to minimize additional administrative cost and bureaucracy, would be to add the funds to the budgets of the local Community Development Councils, though additional safeguards against misuse might be needed.</p>	<p><i>fund, to the economic, social and environmental development purpose of the province or provinces where the Mines are located.</i></p>	<p>(2) The Ministry of Finance will establish a mechanism to transfer a small percentage of legal revenues from a given mine project to communities within its local area for the purpose of local development and infrastructure projects. These funds may be drawn from the 5% of revenue allocated to provincial development in accordance with Article 84 of this law. The mechanism shall incorporate full transparency, effective and inclusive community control, and proper oversight of the allocated funds; where conditions allow, this may take the form of a supplementary contribution to the development budget provided to a local Community Development Council. Good faith participation in community monitoring of mining shall be a condition for the payment of these funds.</p> <p>(3) The Ministry of Mines will establish regulations to allow community ownership of mining projects, including provision for establishing an inclusive, democratic and legitimate community body to control a mining project, bound by standard rules and governance structures in accordance with best practice; protocols for full transparency within local communities on production, revenues, and costs around a given project, and for significant management decisions; and safeguards against corruption or the illegitimate diversion of community benefit.</p> <p>(4) Communities located in or near mining areas shall have the right to be consulted and informed on decisions by the government of license holders relating to mining activities which may have a significant impact on them. The process for consultation shall be established according to the regulations in order to be genuinely representative (including participation of women and minorities), legitimate, timely, meaningful, and independent. Companies and the government will ensure communities are provided with accurate and timely information on the issues on which they are being consulted.</p> <p>(5) The government of Afghanistan shall, in addition to the</p>
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<p>Another idea that is worth serious consideration is community ownership of mining projects. In some areas (like Raghistan in Badakhshan province) there are already precedents for community ownership, with all members of a village receiving shares in a mining area (albeit often in the context of illegal mining). Concerns about corruption or the subversion of community ownership to benefit particular groups or individuals would need to be addressed, but safeguards could be put in place. For example, a standardised body to act as the vehicle for community ownership could be required, with a constitution incorporating strong protections against takeover by a single group and clear requirements for democratic decision-making and transparency within a community. A detailed arrangement would need careful consideration, but the law could at least create a foundation to be developed in the regulations.</p> <p>All these provisions should be in addition to (not in place of) other community benefits provided through Community Development Agreements or other means. The Mining Law has some provisions for communities, but</p>		<p>normal judicial channels, maintain non-judicial dispute resolution mechanisms that will enable individuals, communities and other non-State actors affected by mining activities access to effective remedy. The structure of the mechanism(s) will be detailed in the Regulations, and shall be established in accordance with relevant provisions of the UN Guiding Principles on Business and Human Rights, in order to provide a recourse that is: legitimate, accessible and affordable to plaintiffs and companies, fair, independent, impartial, transparent, timely, and invested with effective authority and capacity.</p>
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	<p>company obligations on service delivery and the recruitment of the local people should be clarified and strengthened.</p> <p>The government should also commit to strengthen requirements to consult communities before and during extractive projects, and to put in place stronger requirements for dispute resolution. Both are important to avoid conflict that might undermine an extractive project.</p>		
8	<p><i>Include provision for local, and not just Afghan employment in mining projects</i></p> <p>Communities living around the mining sites are directly affected by mining activities and should, therefore, be considered in the first instance for any available jobs related to any such mining activities. This can be an incentive for local people to cooperate with the miners and the government.</p> <p>The law has positive provisions requiring employment of Afghans wherever possible. That is laudable,</p>	<p>Several articles, including 21, 42, 65, and 98, talk about obligations to hire Afghans and buy Afghan goods and services. Article 111 addresses the issue directly, stating: <i>(1) A License or Authorization Holder or contractor shall employ only Afghan nationals as skilled, unskilled and vocational labor in its Mineral Activities (projects) in accordance with the provisions of this Law.</i></p> <p><i>(2) A License or Authorization Holder or contractor shall, in its recruitment of experts, give priority to Afghan nationals having similar degree, skill and profession over foreign citizens.</i></p> <p><i>(3) A License Holder shall give priority to procure Afghan goods and services</i></p>	<p>AMEND ARTICLE 111: : Local procurement of Local Goods and Services</p> <p>(4) Within these requirements, particular priority shall be given to local communities in mining areas for employment as skilled, unskilled, vocational and expert labour, and in procurement of goods and services.</p> <p>AMEND ARTICLE 21(1)(14) to read:</p> <p>14. An Employment program for Afghan citizens, with particular priority given to local communities in mining areas</p> <p>[SIMILARLY AMEND ARTICLES 42 (1) (10), 65 (1) (2), 98 (2) and any other relevant articles with the words ‘with particular priority given to local communities in mining areas’]</p>

<p>but there is a particular need to ensure employment of <i>local</i> Afghans from mining areas. This is an issue of fairness, but it can also be important to help prevent conflict. For example, a company which brings Afghan labourers from a different province into a mining area rather than employ locals could well cause a violent reaction.</p>	<p><i>provided they are substantially equivalent or similar to foreign goods in terms of quantity, quality and price</i></p> <p>Only one article talks about local communities as opposed to Afghans generally – article Article 42 (1) (10), which states that reconnaissance licenses must cover: <i>Proposals to employ Afghan citizens and procure goods, equipment and services from Afghanistan, considering the local community as a priority</i></p>	
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ⁱ A decree designed to implement contract publication was also issued by President Ghani’s predecessor, President Hamid Karzai, as early in 2012.

<http://president.gov.af/en/news/transcript-of-his-excellence-president-mohammad-ashraf-ghanis-remarks-at-european-union-conference>

ⁱⁱ Under article 2.4.a, EITI countries “are encouraged to publicly disclose any contracts and licenses that provide the terms attached to the exploitation of oil, gas and minerals.”

ⁱⁱⁱ <http://www.cgdev.org/blog/four-leaders-government-contract-publication>; <http://www.resourcegovernance.org/blog/takeaways-eiti-2016-contract-transparency-becoming-norm> https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61200/guidance-publication-of-new-central-government-contracts.pdf

^{iv} <http://www.transparency.sk/wp-content/uploads/2015/05/Open-Contracts.pdf>

^v <http://www.open-contracting.org/why-open-contracting/showcase-projects/ukraine/>

^{vi} https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/522697/Afghanistan.pdf

^{vii} Several articles, including 21, 42, 65, 98, and especially 111, talk about obligations to hire Afghans and buy Afghan goods and services, but only one article (42) specifically mentions local communities in mining areas.

^{viii} ‘A Shaky Foundation?: Analysing Afghanistan’s Draft Mining Law’, Global Witness, November 2013

http://www.globalwitness.org/sites/default/files/library/SHAKEY_FOUNDATION_GW.pdf

^{ix} ‘Building for the Long Term: Avoiding the Resource Curse in Afghanistan’, Global Witness, February 2014 http://www.globalwitness.org/sites/default/files/library/LONG-TERM_BUILDING_Report.pdf

^x ‘The Plunderers of Hope,’ Integrity Watch Afghanistan, December 2015, <https://iwaweb.org/wp-content/uploads/2015/12/The-Plunderers-of-Hope.pdf>

^{xi} See for example ‘A Citizens’ Checklist: Preventing corruption in the award of oil, gas and mining licenses’, Global Witness, January 2012

<https://www.globalwitness.org/sites/default/files/A%20Citizens%20checklist%20EN%20Jan%202012.pdf>; ‘Afghanistan and the extractive industries’, Integrity Watch

Afghanistan and Global Witness, September 2015 [file:///C:/Users/scarter/Desktop/September_2015_POLICY_BRIEFING_Afghanistan_and_extractives%20\(1\).pdf](file:///C:/Users/scarter/Desktop/September_2015_POLICY_BRIEFING_Afghanistan_and_extractives%20(1).pdf); ‘War in the Treasury of the People’, Global Witness, June 2016 <https://www.globalwitness.org/en/campaigns/afghanistan/war-treasury-people-afghanistan-lapis-lazuli-and-battle-mineral-wealth/>