



H.E. Nargis Nehan, Minister for Mining and Petroleum
Kabul, Afghanistan

October 16, 2017

Excellency,

We are writing to express our concern over the possibility that the government will agree new extractive contracts without first having implemented basic reforms to reduce the serious risks of corruption and conflict which have so badly undermined the sector since 2001. Our concern is focused first of all on the Badakhshan gold and Balkhab copper contracts, but we are equally worried about the prospect of new contracts which the US government has called for.

As civil society organisations we fully support the development of Afghanistan's mining sector and accept the need for responsible international investment. We are not calling for the cancellation of the Badkashan and Balkhab contracts. **However, we strongly believe that proceeding with them or any significant contracts without first addressing these risks would be against the government's commitment to safeguard resources which are the inheritance of all Afghans.**

Our concerns in relation to the Badakhshan and Balkhab contracts are based on six key questions.

1. Who will benefit? The Afghan Gold and Minerals Company (AGMC) is the sole preferred bidder in the Balkhab project, and a 49% shareholder in the Badakhshan mine. AGMC is itself 51% owned by Afghan Krystal, which belongs to Sadat Naderi, the current Minister of Urban Development. The rest of AGMC is owned by Centar, a consortium of international investors registered in Guernsey.

As you know, it is illegal for a Minister or other senior officials to benefit from or own a mining contract. Despite multiple requests, Naderi has yet to say whether or how he has divested his stake. Centar has also yet to give any comment on the record. Informally, officials have said Naderi will divest before the contracts are finalised, but we strongly believe the public deserves a clear legal guarantee that no inappropriate individuals will benefit from the deal, before it is signed.

The Afghan government has in fact made a very welcome commitment to require companies to publicly register their real or 'beneficial' owners – but it has yet to be implemented. These contracts should not go ahead without this basic protection being applied.

2. What are the contract terms? Afghanistan has been damaged by weak contracts in the past. Notably, the benefits Afghans hoped for from the Aynak copper contract have largely failed to materialise, and the government is under pressure to renegotiate key terms. Afghans deserve to know that we will not face a similar scenario. President Ghani promised in May 2016 that full details of all natural resource contracts would be published before they are awarded: we ask that he follow through on this very welcome commitment.

Critical unanswered questions on the two contracts include the period of the contract and of any exploration phase, royalties, transfer pricing protections, dispute mechanisms, and community support. It is even unclear if there has been an Environmental and Social Impact Assessment.

One obvious way to address these concerns would be to develop public model contracts for different types of concessions, integrating strong protections against abuses. But meanwhile, we ask that the

draft contracts be made public, with a chance for public review before they are signed. We strongly urge the government to carry out and publish a full economic modelling of benefits under different economic and security conditions before granting such major concessions.

3. Will production and payment data be published? The need for transparency is even greater when it comes to production data and the payments the companies make to the government. This is one of the single most important safeguards against abuses and revenue loss common in Afghanistan. We understand the government has promised to publish this data, but we believe a legal guarantee is essential to remove any suspicion of underpayment.

4. What happens when there are security problems? Insecurity is perhaps the biggest danger to the projects. The Taliban already have a major presence in the Badakhshan gold mines, and would surely want a cut of any new extraction. Risks like these can seriously affect project viability. At Aynak, the Afghan government has had to spend large amounts on security, potentially weakening the economic case for the project. Elsewhere mine owners have created their own militias – raising human rights concerns – and many have paid off armed groups or insurgents. We have serious doubts whether the Afghan government should go ahead with contracts in such insecure areas at all – but it certainly should not without full consideration of what happens if violence flares.

5. How will the contract benefit local communities in the mining areas? This is critical not just as a basic matter of justice, but because the support of local communities can make a huge difference to security. There are innovative ways to give communities an interest in legal mining: we would strongly urge the government to allocate a suitable, modest percentage of the value of the production of the mines as a supplement to the budget of local Community Development Councils. But we, and local communities, have not been informed what, if anything, the company is offering.

6. Does the Ministry of Mines have the capacity to oversee the projects? The government has itself acknowledged the poor condition of the Ministry of Mines, and oversight capacity is especially weak. With such obvious and extreme risks of corruption and conflict around Afghan mining, it is reasonable to ask whether the government should be granting major contracts if it does not yet have means to adequately oversee them.

We would urge the government to focus on smaller contracts until it can carry out a reform of the Ministry and of relevant Afghan law and regulations, which have major weaknesses of their own. Civil society organisations have outlined our concerns and suggested a limited number of realistic amendments to address them. We note that the government is due to publish amendments to the law in the near future, which could provide the opportunity to address this issue relatively quickly.

We are deeply concerned that the government is moving towards signing largely because of a threat from AGMC to sue if there is further delay, and as a result of pressure from donors. That is deeply regrettable, not least because we do not intend these questions to be unanswerable. Many of them demand fairly basic reforms, which could be implemented in months, with the right political will.

Afghanistan needs a thriving mining sector, and foreign investment is a key part of that. AGMC could play a positive role, and may have legitimate concerns about the time it has taken to resolve the contracts. They should be protected against abuses themselves. But the interests of the Afghan people must come first.

We respectfully ask that these contracts - and indeed any others – should not proceed until these questions have been addressed – not just superficially, but rigorously and fully. The urgency of

developing the sector should lead us to act on reforms all the more quickly now, not to press on regardless of the obvious risks. Afghanistan deserves better.

Sincerely,

L.Y.S.A

FETWO

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Mis-e-Aynak Council

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Abdul Hai Gardezi Council

Logar Civil Society

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AMAL Foundation

Hajigak People's Shura

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Global Witness

Integrity Watch Afghanistan