

New mining minister will face test of government credibility on reforms and revenue: Civil Society letter to president Ghani

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To his Excellency Mohammad Ashraf Ghani

President of the Islamic Republic of Afghanistan

The Arg, Kabul

March 29, 2017

Excellency,

We are writing first of all to welcome the appointment of Nargis Nehan as the new Minister of Mines. We understand that work on amendments to the mining law is also progressing, and that specific suggestions have now been submitted to you by your advisors. We would like to thank you for your efforts to address the serious weaknesses in the law, to re-iterate the reforms we believe are vital to its credibility, and to respectfully ask that these should be the first and most urgent priority for the new Minister.

We believe a small number of key amendments are critical in determining whether the law will be capable of protecting Afghanistan's natural wealth. We attach our update document with more detailed information on these key reforms. Among them, we would highlight the following as especially urgent:

1. **Contract publication as a condition of validity**

Despite very welcome commitments from your government and a clear requirement to publish contracts, we are aware of significant contracts which have not been made public. Linking publication with validity would provide a very strong mechanism to ensure every contract was published, and allow citizens to be sure abusive deals could not be hidden.

2. **A legal requirement for publication of production and payment data**

Publication of this data is vital for transparency – making it much easier for Afghans to establish whether illegal mining or other abuses are taking place and whether full taxes are being paid. While some of this information is released under the Extractive Industries Transparency Initiative (EITI) there are major gaps. A legal requirement would help address this.

3. A requirement for all extractive payments to be made through a **single, transparent account, as a condition of their receipt**

A single transparent account would be a powerful practical mechanism to allow Afghans to see the revenues from extractives and make it harder to conceal tax avoidance and illegal mining. Again, a critical element to make this work is to make payments to other accounts or individuals legally invalid – an incentive for transparency that would be very hard to avoid.

4. A requirement for the **publication of beneficial ownership as a condition** for holding or bidding for a license.

Your government has made a very welcome commitment to publish beneficial ownership. We believe that for this to be effective, the law should require publication as a condition of a company being able to own or bid for a contract – again creating a clear incentive for compliance.

5. Provision to allow **community monitoring of, and direct benefit from, mining**

Community monitoring, community ownership of mines, and a community share in the proceeds of mining can help to reduce abuses and provide an incentive to protect legitimate mining, if they are implemented carefully. The law should create the basic framework to allow them to be put in place where conditions are right.

These amendments are inspired by your own proposals around transparency and accountability, and are specifically designed with the aim of allowing progress in these areas while minimising the need for additional administrative capacity.

As you know, many of the actions they would enshrine in law are required or strongly encouraged under the Extractive Industries Transparency Initiative and other existing Afghan government commitments. Their implementation would do much to ensure Afghanistan met the EITI standard, and to demonstrate to donors and to the Afghan people that the government is serious about protecting this treasury for the good of all.

The appointment of the new Minister is a critical step to allow these amendments to proceed – and to address the other long-delayed reforms urgently needed to strengthen capacity, transparency and oversight at the Ministry of Mines. We have urged Parliament to consider Ms. Nehan's candidacy quickly and with an open mind. We greatly hope that once she has been confirmed, these reforms will be her first and greatest priority.

Excelsency, we would be happy to discuss these issues in person if you would be available to meet. We greatly look forward to working with you in our common battle to ensure Afghanistan's riches are used for the benefit of the Afghan people.

Sincerely,

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Afghanistan Research and Evaluation Unit	Abdul Hai Gardezi Council
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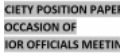
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