



## POLICY BRIEF

# Extractives for sustainable development in Afghanistan

Natural resource exploitation is a source of both great hope and great peril for the people of Afghanistan. The Tokyo Process can play a major role in deciding whether our enormous wealth of minerals, oil and gas will harm us or help us. The Afghan people, and the people of the countries which are helping Afghanistan, deserve immediate action to fulfill the repeated promises that have been made to implement the strongest available safeguards against corruption and conflict in the sector.

## A TREASURE OR A POISON?

Afghanistan's minerals alone are estimated to be worth around \$1 trillion.<sup>1</sup> The extractive industries are almost unique as a potential source of economic growth, revenue, and the development of the country for the benefit of all Afghans. Managed responsibly and transparently, the sector can help create long term jobs for a growing army of unemployed youth, and directly contribute to building roads, railways and other infrastructure. With decreasing foreign assistance and the ongoing conflict, it is critical to the very future of the country.

But the harsh reality is that extractives are instead a major driver of corruption and conflict around the country, fund armed groups and the insurgency, and provide little benefit either for communities in mining areas or for the government budget. Minerals are being fought over from Badakhshan to Nangahar, they are corrupting our security services, empowering warlords, and alienating communities from the government.<sup>2</sup> In Helmand marble is the second largest source of funding for the Taliban; in Badakhshan

security forces, private militias, and insurgents are all benefitting from the lapis trade.<sup>3</sup> Many contracts are being exploited by local strongmen or are awarded through political influence; even major contracts like the Mes Aynak copper project have been full of controversy and have so far produced little of the benefit the promised the country.<sup>4</sup> Without better governance, mining will never fulfill its promise: indeed, it will be a poison for the whole country.

Afghanistan has made commitments in a variety of international fora to meet and exceed international best practices, including becoming fully compliant in the Extractive Industry Transparency Initiative (EITI).<sup>5</sup> It has committed at the London Conference to put in place the strongest available measures against corruption and conflict linked to mining.<sup>6</sup> We warmly welcome these commitments. Yet until now successive governments have not followed through on those promises, failing to implement basic safeguards which are an increasingly routine part of international best practice, most of which do not require great administrative capacity. The current Mining Law especially is deeply flawed. When extractives are so critical to our hopes for our future, and when they are so much a threat in the present, this is unacceptable. We respectfully ask that the government and donors act with the utmost urgency to put in place and enforce the full range of measures so that our resources can be a blessing and not a poison to the people of Afghanistan.

The Tokyo Process is a key part of this, as the primary forum for setting out the mutual obligations of the Afghan government and its international partners. We ask that extractives be on the agenda for the September 2015 SOM meeting, as well as the 2016

inter-ministerial conference, and that both meetings not just reiterate general goals, but include commitments on specific measures the Afghan government and its partners will carry out to give practical expression to their promises. We ask that these include:

### Make contract publication a condition for validity

Contract publication is vital to transparency and accountability in the mining sector and to avoiding contracts that facilitate corruption. A 2012 presidential decree already mandated contract publication, and 300 contracts were made public – but implementation has since been inconsistent and a significant number of contracts have not been published.<sup>7</sup> As much stronger mechanism exists: the Mining Law should be changed to stipulate that natural resource contracts become valid only after they are made public. This would be an almost foolproof safeguard – indeed it should be applied across government procurement.

### Require publication of project-level production and payment data

Again this is a key tool, making illegal mining, tax avoidance and theft of revenues much more visible. The law should be amended to require the Ministry of Mines and extractive companies to disclose payment and production figures – including the amount and quality of material that is mined, and all payments between companies and the government, broken down to project level to allow it to be traced to specific mines. The Afghan government already committed at several previous conferences to publish much of this data through the Extractive Industries Transparency Initiative (EITI)<sup>8</sup> – putting this requirement into law, and gathering project-level rather than more general data, would greatly strengthen Afghanistan’s chances of fulfilling one of its key commitments under the Tokyo Process.

### Publish beneficial ownership

Much of the corruption in Afghan mining – as elsewhere in the world – involves politically connected figures using illegitimate influence to secure control of mining contracts, often through third parties. The Afghanistan Investment Support Agency (AISA) is in charge of publication of business registry, yet the agency does not publish any details on the identity of the real owners and shareholders.<sup>9</sup> 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 Members of Parliament and members of the security forces.<sup>10</sup>

For this reason a key measure is to require companies to publish their ultimate beneficial ownership (that is, the real individuals who exercise significant control or gain significant benefit from a concession, by whatever means). This measure is strongly encouraged under the EITI, and many countries are in the process of implementing it.<sup>11</sup> The Mining Law should be amended to require that companies applying for or owning mining licenses publish this information, to set out clear penalties for hidden ownership, and to publicly define who is forbidden from beneficial ownership, including defining a wider named group of Politically Exposed Persons (PEPs).

### Require a transparent and fair bidding process

The government could commit amending the 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, and legal penalties for preferential treatment. This should incorporate the principles of Open Contracting. These standards should be applied across government procurement, but especially to natural resource contracts.

### Create a single, transparent account for all natural resource payments

Confusion and complexity over payments undermines efforts to prevent corruption and tax avoidance. The government should establish a single, transparent and published account for all natural resource payments to and from companies or individuals – including license payments, royalties, and bonuses.

### Use model contracts

Use of model contracts helps entrench best practice as matter of routine. The government should commit to use model contracts, incorporating international best practice on measures against corruption and conflict, as the initial basis for contract negotiations. To ensure they are effective and legitimate, they should be openly developed in consultation with civil society, business and other stakeholders. This would also reduce the risk that contracts were challenged by these groups later, and increase the public legitimacy of natural resource deals.

## Enable community monitoring and dispute resolution

Community monitoring has had good results when applied to aid projects: it 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 roll the practice out across the sector.

A key part of this is to ensure communities have some incentive to support legal mining and to fight corruption. To do this, the Afghan government should provide local communities with a specific, small percentage of the legal revenue the government receives from a mine. This amount 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 administration would be to add the funds to the budget of the local Community Development Councils.

This provision 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 company obligations on service delivery and the recruitment of the local people should be clarified and strengthened. The government should also commit to including in the law a requirement for a dispute resolution process that is effective, timely, impartial, and accessible to all, and should strengthen requirements to consult communities before and during mining projects.

## Require supply chain due diligence

In conflict-affected areas with minimal government presence, supply chain due transparency can help restrict illegal mining. The government and donors should commit to requiring that companies carry out responsible risk assessment and due diligence on their supply chains to ensure they do not fuel corruption or support armed groups.

## Address security in mining areas

Mining areas are particularly prone to conflict, and security forces there are often tied to corruption and other abuses. The government should commit to requiring that security forces at mine sites operate according to a higher standard of accountability and oversight. At a minimum this should incorporate the Voluntary Principles on Business and Human Rights, and requirements for consultation with local

communities. Mining Police units should be reviewed and reformed to prevent the coming under control of political actors.

These measures form a basic road-map for saving the Afghan extractive sector from the resource curse. This road map could be incorporated into the Tokyo commitments through a single paragraph. A suggested wording is as follows:

*The Afghan government re-affirms its commitment to put in place the strongest available measures to counter the threat of conflict and corruption linked to mining, and to fulfil the requirements of the Extractive Industries Transparency Initiative (EITI). To achieve this, among other measures, the government will amend Afghan law to: require publication of project-level payment and production figures from companies and government, and of the beneficial ownership of mining companies; make extractive contracts valid only on publication; strengthen protections for the rights and interests of local communities, with effective, independent and accessible mechanisms for consultation and dispute resolution; provide for community monitoring of mining, linked to a mandate for local communities to receive a small percentage of legal revenues from extraction; mandate use of publicly-developed model contracts; establish a single, transparent account for natural resource revenues; and require transparent and fair bidding and contracting processes, in accordance with Open Contracting principles, for the extractive sector and across government. In addition, the Afghan government will strengthen safeguards against abuses by armed groups or by security forces at mining sites. Afghanistan's international partners commit to provide material and technical support for these reforms, and to ensure accountability from extractive sector companies operating in Afghanistan over which they have jurisdiction.*

For the 2015 SOM meeting, we suggest a shorter wording – a single sentence that incorporates the most important protections:

*As part of Afghanistan's commitment to implement EITI and to put in place the strongest available measures to counter the threat of conflict and corruption linked to mining, the government will amend existing laws to*

*require the publication of project-level payment and production figures from companies and the government, as well as the beneficial ownership of extractive companies; to make publication of extractive contracts a condition for their validity; and to establish a framework for community monitoring of mining.*

If it is to be at all meaningful, the Tokyo process must include move beyond broad goals and a singular focus

on the EITI (important though that mechanism is), to set out commitments on the specific measures that will be taken to put in place ‘the strongest available protections against corruption and conflict.’ Almost four years after the Tokyo conference, the people of Afghanistan – and the people whose taxes fund the aid given by our international partners – deserve nothing less.

## ABOUT INTEGRITY WATCH AFGHANISTAN

Integrity Watch is an Afghan civil society organization committed to increase transparency, accountability, and integrity in Afghanistan.

### **Integrity Watch Mission**

The mission of Integrity Watch is to put corruption under the spotlight through community monitoring, research, and advocacy. We mobilize and train communities to monitor infrastructure projects, public services, courts, and extractives industries. We develop community monitoring tools, provide policy-oriented research, facilitate policy dialogue, and advocate for integrity, transparency, and accountability in Afghanistan.

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