



A Balancing Act for Extractive Sector Governance

Javed Noorani and Lien De Brouckere

May 2016



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Sector Governance**

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About Afghanistan Research and Evaluation Unit

The Afghanistan Research and Evaluation Unit (AREU) is an independent research institute based in Kabul. AREU's mission is to inform and influence policy and practice by conducting high-quality, policy-relevant research and actively disseminating the results, and by promoting a culture of research and learning. To achieve its mission AREU engages with policy makers, civil society, researchers and students to promote their use of AREU's research and its library, to strengthen their research capacity, and to create opportunities for analysis, reflection and debate.

AREU was established in 2002 by the assistance community in Afghanistan and has a Board of Directors comprised of representatives of donor organisations, the United Nations and other multilateral agencies, and non-governmental organisations.

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Foreword

The framework of good governance is strongly anchored according to the 3rd Sustainable Development Goals which is, “Developing the capacity of public and the government at the local level to cooperate in increasing welfare of the people.” Further, it is guided by the SDG’s objectives and one of which is “to develop on effective government within a democratic system, and to implement sustainable development principles through global partnership.” As Afghanistan is one of the 193 countries who are signatories of the United Nations to implement actions of the Rio Resolutions and Agenda 21 for real progress towards sustainable development, it is steadfast in its commitment to this initiative. Such UN framework is operationalized in Afghanistan through the Governance Forum Afghanistan (‘Govern4Afg’) programme.

The Govern4Afg, which is being launched by German and Afghan partners is very timely as it provides in establishing a platform for policy dialogue on governance topics in our country. Researchers and policy-makers provided evidence-based inputs to foster dialogue aiming to strengthen development cooperation in the governance sector. One of the six selected essential topics of the Govern4Afg is the “future role of the mining sector.” A major potential source of wealth in the country is its mineral reserves which are in abundance and can hugely contribute billions to government revenue when properly managed.

This paper on “A Balancing Act for Extractive Sector Governance” depicts the role of the mining sector as Afghanistan is estimated to hold \$ 1 to 3 trillion in untapped mineral deposits. Most of the extractive sector activities today in Afghanistan are artisanal, small or medium scale. The absence of good governance structures and existence of informalities in the sector with continued conflict and violence has resulted in a significant loss from the illegal extraction that undermines Afghanistan’s development.

This paper rightly argues that the extractive sector is confronted with practical challenges concerning the execution of Environmental and Social Impact Assessments (ESIA), corruption among companies in tendering consultancies to conduct ESIA’s, monitoring of impacts, poor reviews and access to data and weak regulatory capacities. Furthermore, an unstable legal framework, characterized by rushed development because of internal pressure to generate revenues, and decreasing political will to implement the Extractive Industries Transparency Initiative (EITI) are the main causes faced by the civil society to effectively play their role in improving transparency, accountability and equitable sharing of the sector’s benefits.

I believe that such dialogues can highly contribute to a better understanding of the governance context in this country particularly in the mineral governance sector which is a major driver for the country’s development.

For a progressive and accountable Afghanistan!

Nader Nadery
Chief Advisor to the President
Public and Strategic Affairs and
Ambassador-at-Large for Freedom of Expression

May 2016

Foreword

Govern4Afg (Governance Forum Afghanistan) as a dialogue platform supports policy reform and implementation in the governance sector of Afghanistan. Good governance, rule of law, accountability and transparency are of paramount importance for development and stability of Afghanistan. The Afghan people need to regain confidence in state institutions, corruption needs to be fought effectively and reforms need to improve people's daily lives. It is not enough for reforms to be drafted on paper - their implementation needs to take place in the villages and towns of Afghanistan.

The objective of the platform is to foster policy dialogue between Afghan and German 'Drivers of Change' in the field of good governance. Researchers and policy-makers from both countries provide evidence-based input to foster high-level dialogue and consultation in the governance sector. Thus, policy discussions are undergoing a reality check. Ultimately, the platform serves as a vehicle for the implementation of the BMZ Country Strategy for Afghan-German Development Cooperation 2014-2017.

Following upon the successful kick-off workshop in early 2015, six topics (Provincial Planning & Budgeting, Gender Responsive Budgeting, Mineral Governance, Subnational Governance, Civil Society and Civil Service Reform) were selected for in-depth dialogue according to Afghan and German priorities. In the course of 2015, research teams from both countries provided expertise and facilitated discussion between experts and practitioners through several open dialogue forums and other consultation methods, and prepared issue papers with recommendations for policy dialogue.

BMZ is expressing its wish that these issue papers are fostering further discussion in Afghanistan and will enhance donor engagement in the sector.

On this issue paper

The first issue paper which is presented to the public in June 2016 concerns mining governance.

Afghanistan is estimated to hold 1 to 3 trillion USD in untapped mineral deposits, ranging from lootable ones (such as gems, marble, gold, coal, lapis lazuli and the like) to more non-lootable ones (such as iron ore, copper, oil and gas). Yet, most of the extractive sector activities today in Afghanistan are artisanal, small-or medium-scale. Up to 10,000 deposits are not under government control and marred with continuing conflict and violence, resulting in significant revenue losses from illegal extraction.

At the same time, donors have encouraged initiatives for the extractive sector to support the country's economic development. During the last years, the Ministry of Mines and Petroleum (MoMP) has confronted many challenges at the policy and strategy level as well as regarding efficient governance structures.

Furthermore, implementation of regulations is lacking. Impact assessments, required by law in Afghanistan, have only been done for less than 5 % of government-approved mining contracts. Besides the lack of monitoring the environmental and social impacts, corruption in tendering, review and access to data, weak private sector and regulatory capacity, unclear shared regulatory authority, ambiguous and incoherent regulatory requirements, and a token public participation requirement that can be easily waived are further challenges within the governmental institutions.

After a series of Govern4Afg consultations with the government agencies and an open dialogue with representatives of the Afghan government, affected communities, private sector, civil society actors and other stakeholders, the key findings of the Govern4Afg expert-team lead to recommendations towards an overarching policy approach for the extractive sector:

- Setting peace as the prevailing objective, supporting slow and incremental resource extraction, fostering development of a social contract, and setting the goal of economic diversification and social spending;
- Conducting multi-layered and multi-level policy dialogues among Afghan policy makers on the one hand and German and international stakeholders on the other hand in order to ensure continuous dialogue;
- Enhancing accountability and transparency (in the whole process of bidding and contracting) by ensuring strong civil society consultation in the policy making for the sector;
- Improving impact assessments, including reviewing existing contracts for progressive implementation and monitoring.

This issue paper will serve as a basis for further dialogue not only within the Govern4Afg context but also between governmental institutions of Afghanistan, inside the donor community, and the academia. A broad dissemination of the issue paper will foster discussions and policy reforms on and between various levels. Within Govern4Afg the issue paper will be followed up by an in depth review of the current functions of governmental and non-governmental entities in terms of oversight, monitoring & evaluation, complaints addressing mechanism and accountability in the course of 2016.



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May 2016

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Javed Noorani and Lien De Brouckere

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Acronyms

AEITI	Afghanistan Extractive Industries Transparency Initiative
AREU	Afghanistan Research and Evaluation Unit
CSO	Civil Society Organisation
EIA	Environmental impact assessment
EITI	Extractive Industries Transparency Initiative
ESIA	Environmental and Social Impact Assessment
ESMP	Environmental and Social Management Plan
GoIRA	Government of the Islamic Republic of Afghanistan
MoMP	Ministry of Mines and Petroleum
MSG	Multi-Stakeholder Group [of AEITI]
NEPA	National Environmental Protection Agency
NUG	National Unity Government
SIGAR	Special Inspector General for Afghanistan Reconstruction
TAPI	Turkmenistan-Afghanistan-Pakistan-India [pipeline]
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
USGS	United States Geological Survey
SESA-EI	Strategic Environmental and Social Assessment for the Extractives Industry

Glossary

Artisanal and small-scale mining:	All exploitation by manual and traditional methods and processes, usually characterised by the use of manual labour, rudimentary tools, and low levels of mechanisation and investment.
Extractive industry:	Any process of extracting or sampling minerals, rocks, and precious stones from the soil or sub-soil in order to produce a product that can be sold.
Imam:	A person who leads prayer among Muslims.
Industrial mining:	All exploitation by modern and mechanised methods and processes, usually characterised by the use of sophisticated machinery and engineering, fixed large-scale installations, and high levels of mechanisation, investment, and production.
Jihad:	In the Islamic context, it is a struggle against an evil. Today, it is equated with holy war.
Jirga:	A traditional assembly of leaders who make decisions by consensus.
Kareze:	Fragile irrigation systems comprised of vertical wells, underground canals, aboveground canals, and small reservoirs.
Kuchi:	Afghan nomad communities who travel seasonally
Mirab:	Water master who decides the water allocation.
Mullah:	An educated Muslim trained in religious law and doctrine and usually holding an official post.
Shura:	A local council.
Wolusi Jirga:	Lower House of Parliament in Afghanistan.

Executive Summary

Introduction

Today, most extractive sector activities in Afghanistan are artisanal, small-, or medium-scale. As stated by the Minister of Mines and Petroleum, Daud Shah Saba, in late 2015 and largely confirmed by other sources, up to 10,000 deposits remain out of government control.¹ This is linked with continuing conflict and violence in the country, resulting in significant revenue losses from illegal extraction. At the same time, donors have poured money into initiatives for the extractive sector to support the country's economic development, and the Ministry of Mines and Petroleum has faced significant challenges in improving governance in the sector. For example, the Multi-Stakeholder Group of the Afghanistan Extractive Industries Transparency Initiative (AEITI) was effectively used by civil society organisations (CSOs) until late 2013. Yet today, participants are subject to pressure so as to not demand too much information, and so companies cooperate less frequently. Given this context, the extractive sector as it operates today has little chance to support the country's economic or sustainable development. Based on analyses supporting post-conflict economic reconstruction, we propose several principles to support the development of the sector: setting peace as the prevailing objective, supporting slow and incremental resource development, fostering development of a social contract, and setting the goal of economic diversification and social spending.

Main objectives of the study

This issue paper aims to examine the role and governance of the extractive sector in the economic development of Afghanistan. Specifically, the paper first addresses the threshold question as to whether, and if so, how the extractive sector can support economic development in Afghanistan without creating or contributing to conflict. Next, it identifies challenges and presents recommendations in two interrelated areas: (1) minimising negative impacts and (2) enhancing transparency and accountability about benefits.² In analysing this balancing act, the study looks at existing procedures (i.e., regulatory impact assessment and AEITI) and the role of public participation and civil society actors in these.³ More broadly, the study serves as a basis for a joint review and discussion among Afghan and German experts, and feeds into the broader Afghan-German Govern4Afg dialogue about the future of the extractive sector in Afghanistan.

1 For Mines and Petroleum Minister Daud Shah Saba's statement, see Eltaf Najafizada, "The Taliban is Capturing Afghanistan's \$1 Trillion in Mining Wealth," Bloomberg Business, 2015. According to the MoMP online records, there are around 710 illegal mining activities in Kabul and 395 in two districts of Samangan, and about 100 emerald extraction sites in Panjshir and over 100 sites in Badakhshan, not to mention the illegal extraction occurring in all the remaining provinces of the country. According to interviews with several key informants from the mentioned provinces, over the past three years, there have been over 200 mining sites in Nangarhar, over 50 in Kunar, about 50 in Laghman, over 80 in Nooristan, as well as hundreds in Logar, Khost, Pakteya, and Paktika respectively.

2 The United Nations Environment Programme previously identified these two core challenges in Afghanistan as key for the government to address in order to develop a successful extractive sector that does not create or exacerbate conflict. See Oli Brown and Erin Blankenship, "Natural Resource Management and Peacebuilding in Afghanistan" (United Nations Environment Programme, 2013), 40-42.

3 The Govern4Afg Terms of Reference stated: "issue paper on the strategic role of mining sector in Afghanistan's economic development, focussing on: environmental impact assessment, social impact assessment, and the role of civil society/AEITI in ensuring accountability and transparency."

Research methodology

Using both an academic and a practical research lens, the methodology entailed a literature and desk review to ground the study, structure the themes, and identify questions for data collection. Over 30 key stakeholders representing the government, private sector, civil society, and donors along with industry technical experts were requested. Semi-structured interviews lasting one to two hours were conducted in person and by telephone with 27 of these informants. The findings and recommendations were tested during an open dialogue hosted by Govern4Afg in Kabul in December 2015 with more than 50 participants representing the government, private sector, civil society, and donors. This final draft was prepared in response to comments received during the open dialogue and peer review process.

Results

The primary regulatory procedure to manage and minimise the extractive sector's negative impacts is an environmental and social impact assessment (ESIA): such a management process predicts the major potential impacts of a project on people and their environment, and designs ways to prevent or mitigate such impacts in an environmental and social management plan. ESIA has been required by law in Afghanistan since 2007 with the entry into force of the Environment Law.

Civil society actors have a key role to play in promoting civic participation and good governance, and enhancing transparency and accountability of the sector's benefits through AEITI.

Conclusions

Practical challenges in terms of ESIA include a failure to do them (ESIAs have been submitted for less than 5 percent of government-approved mining contracts) or monitor impacts, corruption among companies in tendering for consultancies to conduct ESIA, poor reviews and access to data, weak private sector and regulatory capacity, unclear shared regulatory authority, ambiguous and incoherent regulatory requirements, and a token requirement for public participation that can be easily waived.

Practical challenges faced by civil society to play their role in improving transparency, accountability, and equitable sharing of the sector's benefits include an unstable legal framework characterised by rushed development because of pressure to generate revenues internally, decreasing political will to implement the Extractive Industries Transparency Initiative, and variable and decreasing role of CSOs, let alone other civil society groups, in AEITI.

Recommendations

Recommendations to improve ESIA include reviewing existing contracts for progressive implementation and monitoring, building government capacity, strengthening coordination and cooperation between the Ministry of Mines and Petroleum and the National Environmental Protection Agency, building private sector capacity to conduct ESIA, expanding calls for transparency to include secure access to reliable geologic data and ESIA, raising awareness of the importance and methods of public participation, and conducting a legal and regulatory review to address gaps and ensure coherence across laws.

Recommendations for civil society to play a more effective role in improving the transparency and accountability of the sector include developing a locally owned agenda for slow resource development, raising the government's awareness about the extractive sector not being conflict-neutral, facilitating communication at multiple levels, strengthening inclusion of civil society beyond CSOs to support communication, developing robust plans for economic diversification, and strengthening the role of civil society in AEITI.

Keywords

Afghanistan, Aynak, extractive sector, mining, oil and gas, industrial mining, artisanal mining, illegal mining, governance, good governance, environmental impact assessment, social impact assessment, economic development, transparency, accountability, EITI, civil society, public participation, consultation, conflict, conflict-sensitive, peacebuilding.

1. Introduction and Context

1.1 Natural resource wealth

In 2010, the US announced that it had discovered almost \$1 trillion in untapped mineral deposits in Afghanistan,⁴ based on aerial surveys conducted by the United States Geological Survey (USGS), which estimated the country's extractive sector resources at \$908 billion.⁵ Yet speculation abounds, and Afghan senior governance sources have repeatedly stated that the country's mineral worth exceeds \$3 trillion. While geologists agree that Afghanistan's complex geology is very attractive for prospectors hoping to locate a significant mineral resource, there is little to no information on the proven economic viability of these resources.

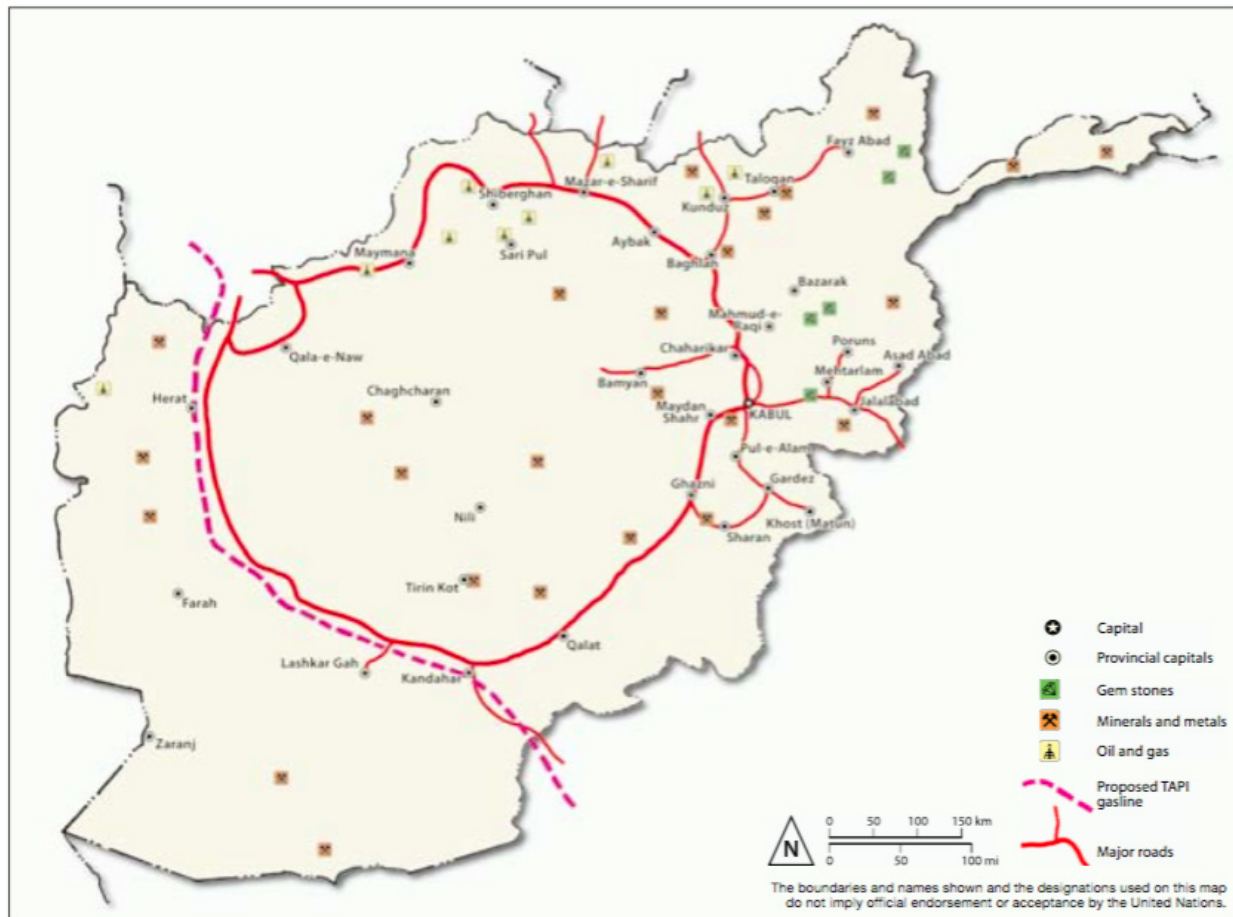
Much attention has been captured by the dream of exploiting these mineral riches for the country's benefit. Common Afghans have high expectations regarding the wealth and economic growth from this sector, and they perceive the presence of international actors as a conspiracy to exploit these natural resources.⁶ Afghan officials have expressed mixed views: the old school sees the foreign presence in the sector as a quest to capture the country's natural resources and exploit them, while the younger generation and the Western-educated perceive this as an opportunity to earn money to contribute to the country's development.⁷

4 James Risen, "U.S. Identifies Vast Mineral Riches in Afghanistan," New York Times, 13 June 2010.

5 Tom Mills et al., "Institutional, Regulatory and Enabling Environment Assessment of the Extractive Industries in Afghanistan" (Adam Smith International for Department for International Development of the United Kingdom, 2014), 34.

6 Interviews conducted by Noorani for previous research, 2010-2014. See also Mills et al. "Institutional, Regulatory and Enabling Environment Assessment," 20-21.

7 Interviews conducted by Noorani for previous research, 2010-2014.

MAP 1: MAP OF MINERAL AVAILABILITY IN AFGHANISTAN⁸

1.2 Resource exploitation, non-state actors, and conflict

While the extractive sector has existed for more than 6,000 years in Afghanistan, with its abundance of minerals and metals ranging from those that are relatively easy to extract and sell (sometimes referred to as “lootable,” such as certain gems, marble, gold, and coal) to those that are relatively more difficult to extract and sell (such as iron ore, copper, oil, and gas). The global literature on natural resource exploitation, violence, armed conflict, and the financing of conflict is vast, and it has been explored in some prior studies on Afghanistan.⁹ We will not reiterate this literature here, but instead we will attempt to provide a brief overview of the involvement of non-state actors, conflict financing, and conflict triggers.

In Afghanistan, most of the sector’s activities today are artisanal, small-, or medium-scale, often operated by militias, local warlords, powerbrokers, and others outside of government control. Some estimates indicate up to 10,000 deposits outside of government control and subject to looting.¹⁰ For example, there are 100 emerald mines in Panjshir Valley alone, and Taliban commanders operate government-owned marble mines in Helmand Province.¹¹ Products are smuggled across the border unchecked or through collaboration with the smuggling mafia and armed groups operating in the region.

⁸ Brown and Blankenship, “Natural Resource Management and Peacebuilding,” 37.

⁹ See, for example, the literature review in Arne Strand et al., “Afghan Hydrocarbons: A Source for Development or for Conflict? A Risk Assessment of Norwegian Involvement in Development of the Afghan Oil and Gas Industry” (Bergen: Chr. Michelsen Institute, 2010), 3-7.

¹⁰ Najafizada, “The Taliban is Capturing Afghanistan’s \$1 Trillion in Mining Wealth.”

¹¹ Matthew DuPee, “Afghanistan’s Conflict Minerals: The Crime-State-Insurgent Nexus,” CTC Sentinel 5, no. 2 (2012): 11.

Minerals are a significant source of income for the Taliban, with some saying that it is their second largest source of income.¹² According to recent reports from the Sanctions Monitoring Team of the United Nations Security Council, Taliban involvement in natural resource exploitation is characterised as deep, through direct involvement in extraction, pervasive extortion, or acting as service providers for unlicensed operators.¹³ An example of direct involvement is that in Helmand alone, the Taliban earned US\$10 million annually from illegal and unlicensed onyx marble extraction at 25 to 30 sites close to the Pakistan border.¹⁴ In terms of extortion, the Taliban and other groups are said to “regularly threaten” mining and extractive companies, causing at least one government-licensed mining operation to cease operations.¹⁵ Extortion also occurs through the control of roads providing access to (unlicensed) mines, for example, extorting an estimated \$1 million annually from lapis lazuli mines in Kiran-wa-Minejan District in Badakhshan Province. Finally, as service providers, this occurs by providing “security,” for instance, at unlicensed ruby mining operations in Jagdalak in Kabul Province for a fee of 15 percent of the proceeds (with total unlicensed ruby mining proceeds estimated at \$16 million annually), with local Taliban groups earning additional fees for transporting the rubies across the border for a fee of 20 percent of the proceeds.¹⁶

In the late 1990s, anti-Taliban militias are said to have earned \$60 to \$200 million annually from precious stone extraction and trafficking.¹⁷ And going back further to the early 1970s, the loss of revenue from illegal extraction and smuggling of contraband was estimated at 20 to 25 percent of Afghanistan’s total foreign trade.¹⁸ Today, this percentage is estimated to have at least doubled due to the massive illegal extraction of lapis, tourmaline, chromite, talc, onyx stones, and coal: last year, over 2,000 tons of lapis were extracted and exported from Badakhshan to China.¹⁹ Currently, over 300 trucks full of illegally extracted lapis (around 6,000 tons) are parked in Kiran-wa-Minejan, Barak, Joram and Angam districts of Badakhshan. The most conservative estimates for this amount to about \$300 million.²⁰

Natural resources have long played a role in conflict in Afghanistan.²¹ This has been shown most recently in the violent conflict over the natural lapis in Badakhshan among groups of warlords who are backed by political elites in Kabul. They want to keep control of the mines, generate revenues, and pay the insurgents some money as well.²² Aynak is another place of contest between the company and local people who have a claim over the land allocated for mining. Local people have asked the government and company for compensation for the losses incurred due to the activities. This dispute has not yet been solved.²³

More broadly, as a source of scarce livelihood resources and with weak dispute resolution mechanisms available, disputes often turn violent. Powerful stakeholders use access to land and water as instruments of coercion or influence; land is indeed a significant source of power. As already stated, natural resources are a source of illicit revenues, creating incentives for ongoing insecurity because of vested interests.

12 Najafizada, “The Taliban is Capturing Afghanistan’s \$1 Trillion in Mining Wealth.”

13 Report of the Analytical Support and Sanctions Monitoring Team on specific cases of cooperation between organized crime syndicates and individuals, groups, undertakings and entities eligible for listing under paragraph 1 of Security Council resolution 2160 (2014), United Nations Security Council, Document S/2015/79 (2 Feb 2015), paras. 22-30.

14 Fourth Report of the Analytical Support and Sanctions Monitoring Team submitted pursuant to resolution 2082 (2012) concerning the Taliban and other associated individuals and entities constituting a threat to the peace, stability and security of Afghanistan, United Nations Security Council, Document S/2014/402 (10 June 2014), paras. 51-54.

15 Report of the Analytical Support and Sanctions Monitoring Team on specific cases of cooperation between organized crime syndicates and individuals, groups, undertakings and entities eligible for listing under paragraph 1 of Security Council resolution 2160 (2014), United Nations Security Council, Document S/2015/79 (2 Feb 2015), paras. 22-30.

16 Report of the Analytical Support and Sanctions Monitoring Team on specific cases of cooperation between organized crime syndicates and individuals, groups, undertakings and entities eligible for listing under paragraph 1 of Security Council resolution 2160 (2014), United Nations Security Council, Document S/2015/79 (2 Feb 2015), paras. 22-30.

17 DuPee, “Afghanistan’s Conflict Minerals,” 11.

18 DuPee, “Afghanistan’s Conflict Minerals,” 11.

19 Interview with Afghan lapis trader based in China, Oct 2015.

20 Interview with a lapis trader from Badakhshan, Mar 2016. See also, more generally, Brown and Blankenship, “Natural Resource Management and Peacebuilding,” 38.

21 See Brown and Blankenship, “Natural Resource Management and Peacebuilding”; Renard Sexton, “Natural Resources and Conflict in Afghanistan: Seven Case Studies, Major Trends, and Implications for the Transition” (Afghanistan Watch, 2012).

22 Interview with lapis trader from Badakhshan, Oct 2015.

23 Interview with local elder, Sept 2015.

Finally, local grievances about land or water grabs foster opportunities for anti-government elements to strengthen their position by addressing the grievances, thus further delegitimising the Government of the Islamic Republic of Afghanistan (GoIRA).²⁴

1.3 Agenda-setting challenges

The estimate of potentially trillions in untapped mineral wealth spurred an agenda for the GoIRA to focus on developing the extractive sector to support its economic development, at first by focussing on the fast-track development of a few industrial projects. A simplified view of this business-as-usual agenda holds that an enabling legal framework for private (foreign) investment, along with institutions capable of implementing the framework and token support for civil society engagement, will support revenue-generating industrial extractive activities in Afghanistan.²⁵ Donors have largely organised their programmes in pursuit of this agenda, yet they too have faced implementation challenges. For example, a recent audit report of the US Special Inspector General for Afghanistan Reconstruction (SIGAR) concludes that there was no unified US strategy to develop the extractive sector in Afghanistan, with little coordination of interagency activities and \$488 million in funding at risk.²⁶

This standard view tends to ignore systemic factors (e.g., conflict in its many forms) that can easily make the sector's governance nearly impossible and so dispel dreams of quick revenue generation and any potential contribution to economic development, let alone sustainable development. There are also several unstated and questionable assumptions. Firstly, it assumes that the GoIRA will collect the revenue, which in turn is assumed to be the primary economic benefit of the sector's activities. Secondly, it supposes that the GoIRA will spend this collected revenue to replace dwindling donor flows. Thirdly, it assumes that spending revenue on today's budget shortfalls will support the country's economic development.

The initial approach of the Ministry of Mines and Petroleum (MoMP) over the past five to seven years was to follow the business-as-usual approach and to “learn by doing,” including attempting to tender and contract for significant oil and gas projects in the Afghan-Tajik and Amu Darya Basins, the “jewel” of Hajigak's iron ore, and copper at Mes Aynak.²⁷ However, the 338 contracts tendered, negotiated, and signed by the MoMP in this manner from 2010 to 2013 (with the exception of Mes Aynak, signed in 2007) exceeded its low capacity to ensure robust agreements whose implementation is monitored, revenue collected, and non-compliance effectively sanctioned. For the contracts signed by the government, researchers have demonstrated that companies operate with an “absurd” level of impunity and that the government does not collect any taxes or royalties, let alone exercise any effective inspection or monitoring of the sites.²⁸ The Minister of MoMP, too, recently stated that the government has failed to manage the extractive sector, with some in the MoMP similarly commenting that there is no effective regulatory framework in place.²⁹

24 Brown and Blankenship, “Natural Resource Management and Peacebuilding,” 43.

25 Tom Mills et al., “Institutional, Regulatory and Enabling Environment Assessment,” 12.

26 Special Inspector General for Afghanistan Reconstruction, “Afghanistan's Mineral, Oil and Gas Industries: Unless U.S. Agencies Act Soon to Sustain Investments Made, \$488 Million in Funding is at Risk” (SIGAR 16-11 Audit Report, Special Inspector General for Afghanistan Reconstruction, 2015), 9.

27 Interview with government informant, Sept 2015.

28 William A. Byrd and Javed Noorani, “Exploitation of Mineral Resources in Afghanistan without Government Revenues or Development Benefits” (Peace Brief, United States Institute of Peace, 2014).

29 Najafizada, “The Taliban is Capturing Afghanistan's \$1 Trillion in Mining Wealth”; Interview with government informant, Kabul, Oct 2015.

Today, the government continues to pin many hopes on the extractive sector; the National Unity Government (NUG) in Kabul recently set out an agenda (available only in English) to realize self-reliance, according to which the “extractives industries will be a key source for revenue generation over the next few decades and beyond”; this was one of the three pillars alongside the agriculture and transport sectors.³⁰ The MoMP is said to be adopting a new approach: to slow down and review the contracts that were signed, and focus on the extractive sector value chain, especially to improve small-scale mining and share mining infrastructure. As a first step, the MoMP is beginning to inspect illegal mining sites close to Kabul.³¹

Most estimates of the revenue that could be earned from high-profile large-scale projects such as Aynak and Hajigak appear highly inflated—they are based on the most optimistic possible outcomes of the potential revenue that could be earned from extractives. It was once estimated to be between \$300 and \$400 million for each project. But even the most optimistic revenues would be insufficient to replace aid flows and would not be able to do so in the short-term to meet the country’s budget, which was around \$6.8 billion in 2013.³² The reports of the Afghanistan Extractive Industries Transparency Initiative (AEITI) show a **very small amount of revenues from the mining sector**, which amounted to around \$2.98 million in 2013.³³ This flags the long way ahead to identify realistic revenue potential and to even begin to capture the evaporating rent from the sector today. What is more, the current use of government revenue is opaque, as are plans on how to spend future revenue.

30 Government of the Islamic Republic of Afghanistan, “Realizing Self-Reliance” (presentation, The London Conference on Afghanistan, 4 December 2014).

31 Interview with government informant, Sept 2015.

32 Mills et al., “Institutional, Regulatory and Enabling Environment Assessment,” 25, 27, 29, 31.

33 Calculated based on 2,028,176,599 Afs for the Afghan fiscal year 1392 (2012-2013). See Afghanistan Extractive Industries Transparency Initiative, “Fourth Reconciliation Summary Report: Fiscal Years 2012-2013” (Kabul: 2016), 12.

2. Views and Concepts

2.1 Working definitions

With good **governance**, this paper refers, in the broadest sense, to the “establishment of effective systems of cooperation, coordination and decision making.”³⁴ While such governance is broader than the State, governments are nevertheless major actors influencing war or peace. In this sense, factors of **state-level governance** that can help build peace include state capacity (including security capacity to control territory and resist incursion from non-state actors, and social capacity to provide social services and public goods) as well as institutional quality (systems characterised by inclusiveness, representativeness, transparency, and accountability).³⁵ In Afghanistan, there exists a wide range of interacting formal and informal governance providers.³⁶

Extractive sector in this paper refers to the full range of activities of extracting mineral or fossil fuel resources from the soil, whether those activities are artisanal, small-scale and informal, or sophisticated, industrial, formal, and commercial. This includes oil and gas development, pipelines, gemstones, marble, coal, gold, copper, iron ore, and more.

In referring to **economic development**, this paper refers to a qualitative change and restructuring in a country’s economy—a concept closely linked to economic growth. The main indicator of economic development is increasing gross national product per capita, which is said to reflect an increase in the economic productivity and average material wellbeing of the country’s population.³⁷

In Afghanistan’s case, instead of economic development, it may be more relevant to speak of post-war **economic (re)construction** in a society of intervention since 2001. In this respect, experts stress that “peace and development are intrinsically linked: one cannot be achieved if the other fails.”³⁸ Experts on the World Bank’s Comprehensive Development Framework as applied in conflict-affected countries similarly emphasise economic and social stability and human security as pre-conditions for sustainable development.³⁹ Afghanistan is an important case where lack of peace in some parts has denied its citizens residing there any development. For example, the South of Afghanistan has no peace, and therefore there can be no development.

While **civil society** in Afghanistan is often equated with registered civil society organisations (CSOs) funded by donors, this is too narrow a definition. Our working definition of civil society is broader, referring to a wide range of actors who are not part of or funded by the GoIRA, such as local councils (e.g., shuras and jirgas), religious civil society (e.g., mullahs and imams, who can be influential and support social cohesion), religious organisations, workers’ unions, teachers’ unions, independent journalists, journalists’ unions, social organisations, registered CSPs, and informal community-based movements or initiatives.⁴⁰

34 David Cortright, “Governance, Democracy and Peace: How State Capacity and Regime Type Influence the Prospects for War and Peace” (One Earth Future Foundation, 2013), 5.

35 Cortright, “Governance, Democracy and Peace,” 5.

36 For a detailed discussion, see Nijat, Aarya, Kristof Gosztonyi, Basir Feda, Jan Koehler. Sub-National Governance in Afghanistan: The State of Affairs and the Future of District and Village Representation, Afghanistan Research and Evaluation Unit and German Federal Ministry of Economic Cooperation and Development. June 2016.

37 World Bank, “Beyond Economic Growth: Glossary,” <http://www.worldbank.org/depweb/english/beyond/global/glossary.html> (accessed 18 May 2016).

38 Graciana del Castillo, *Rebuilding War-Torn States: The Challenge of Post-Conflict Economic Reconstruction* (Oxford: Oxford University Press, 2008), 33.

39 Roel von Meijenfeldt, “Comprehensive Development Framework and Conflict-Affected Countries” (Issues Paper, World Bank, 2001), 6.

40 See Role of Civil Society in promoting Good Governance in Afghanistan for a full discussion on the topic. See also, Saferworld, “Afghanistan’s Transition: Challenges and Opportunities for Peace” (C4P Briefing, 2015), 8-9.

Sustainable development, as defined in the seminal Brundtland Report, is considered as:

*development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts: the concept of needs, in particular the essential needs of the world's poor, to which overriding priority should be given; and the idea of limitations imposed by the state of technology and social organisation on the environment's ability to meet present and future needs.*⁴¹

The Tokyo Mutual Accountability Framework signed by Afghanistan in 2012 commits the GoIRA to good governance, sustainable development, and transparency, among other milestones.⁴²

2.2 Conceptual framework

Given the context described above—the nexus among non-state actors, conflict, and extractive sector activities, along with the government's agenda-setting and implementation challenges in a violence-afflicted country—there appears little chance that the extractive sector can support economic development in Afghanistan by adopting a business-as-usual approach.

For this reason, based on the recognised principles supporting post-conflict economic reconstruction, this issue paper proposes the following broad public policy **principles for the extractive sector to favour economic development** in Afghanistan. These four principles will inform the discussions below on minimising the sector's negative impacts, and improving the role of civil society in enhancing transparency and accountability of the sector's benefits.

Setting peace as the prevailing objective

Firstly, when rebuilding the economy of war-torn societies, **peace must remain the prevailing objective**.⁴³ A local elder from Aynak, who has some of the closest experience with local communities affected by the attempted industrial activities and violent conflict, agreed with this objective most eloquently, emphasising that the government needs a “proper plan for the sector,” and that this plan must “prioritise peace as an important enabler for investment and development.”

The peace objective has two important sub-principles of adopting conflict-sensitive practices and context-specific peacebuilding practices.

Firstly, high-value natural resource extraction in fragile and conflict-affected settings is **not likely to be “conflict-neutral”** and will have an impact on conflict dynamics in one way or another.⁴⁴ Such interactions with conflict are excessively complex in Afghanistan. Today, relationships across the country are characterised by intense **mistrust**, a lack of effective institutions, compounded by historical ethnic conflict, root conflicts (those that have fuelled the occupation, jihad, the Taliban regime, etc.), conflicts stemming from the 2001 intervention, and alienated local communities affected by extractive activities, such as at Aynak.⁴⁵ Decision-making is **highly centralised and opaque**, with most provincial actors perceiving a lack of willingness of central government to share information.⁴⁶ There appears little political will to change this status quo, and indeed a number of high-ranking officials clearly benefit from it.⁴⁷

41 Gro Harlem Brundtland, “Report of the World Commission on Environment and Development: Our Common Future” (United Nations, 1987).

42 Tokyo Mutual Accountability Framework, 2012. http://mof.gov.af/Content/files/TMAF_SOM_Report_Final_English.pdf (accessed 18 May 2016)

43 del Castillo, *Rebuilding War-Torn States*, 221.

44 Raymond Gilpin, “Economic Drivers of Mass Atrocities” (Stanley Foundation, 2015), 1; Rob Bailey et al. “Investing in Stability: Can Extractive-Sector Development Help Build Peace?” (London: Chatham House, 2015), 5; International Alert, “Conflict-Sensitive Business Practice: Guidance for Extractive Industries” (London: International Alert, 2005).

45 Strand et al., “Afghan Hydrocarbons,” 12, 18, 24.

46 Strand et al., “Afghan Hydrocarbons,” 13; Raymond Gilpin and Ashley Pandya, “Improving High-Value Resource Contracting in Afghanistan” (United States Institute of Peace, 2010), 2.

47 Strand et al., “Afghan Hydrocarbons,” 24.

Most key analyses supporting the development of the extractive sector in Afghanistan fail to recognise the most basic lesson that industrial extractive activities are not conflict-neutral and carry inherent risk.⁴⁸ Despite ongoing violence in the country, few major analyses set out robust or clear mechanisms to assess these conflict dynamics, let alone manage or prevent the likely conflict consequences of industrial extractive industries.

Secondly, **peacebuilding** is not one-size-fits-all; it must be **context-specific** and tailored to the conflict dynamics as its key driving factors. As a peacebuilding activity, the promotion of good governance (or good enough governance) must similarly be context-specific. While on record and in analyses, MoMP and donors strive to implement “international best practice”⁴⁹ to improve governance of the extractive sector, such “best practice” is not necessarily a fit-for-purpose approach in Afghanistan. In fact, for emerging producers of industrial extractives and for conflict-affected contexts, many actors—including at times the World Bank itself—recognise that **international best practice may not be appropriate**.⁵⁰ Instead, the aim should be more appropriate practices in light of the national context, more effective practices to achieve rapid results, and better practices to allow incremental governance improvement.⁵¹

To conclude this point, while conflict-sensitivity and peacebuilding are related concepts, and sometimes challenging to define, they also have important differences. Broadly speaking, peacebuilding aims to prevent the outbreak, recurrence, or continuation of armed conflict and so includes a wide range of political, developmental, humanitarian, and human rights activities.⁵² This means that peacebuilding works on conflict, aiming to change the dynamics of the conflict itself by reducing key drivers of conflict and contributing to societal-level peace. In contrast, conflict-sensitivity works in the context of conflict, so that an intervention (whether a peacebuilding programme or not) can manage its intended or unintended consequences in that conflict context by aiming to minimise negative impacts and maximise positive ones.⁵³ Conflict-sensitive programmes do not necessarily contribute to peace, as they likely do not address key driving factors of conflict; development programmes do not necessarily prevent conflict and may actually deepen inequities; and peacebuilding is not, by definition, always conflict-sensitive.⁵⁴

Slow and incremental resource development

Secondly, strong and effective institutions for governance, especially for revenue management and use, are challenging to develop for any State, including those in the middle- and high-income bracket.⁵⁵ In Afghanistan, the challenge is even greater, and the time needed is much longer, even with the “best” technical advice and donor support.⁵⁶

Given this reality, if a locally-owned agenda exists to pursue development of the sector, that agenda has a higher chance of contributing to economic development if it pursues **slow and incremental development** for a government-regulated extractive sector, rather than “going for gold” with a singular focus to fast-track a few high-value industrial projects, which are particularly vulnerable to fluctuating global commodity prices and geo-political considerations.⁵⁷ Such an agenda would have to be locally planned and could focus on regularising existing informal artisanal and small-scale activities, such as quarrying, coal, and gemstones, and adding value to these activities by marble processing and polishing in-country,

48 Among dozens of reports that largely ignore the issue, two important reports addressing the conflict linkages directly include the UNEP and Chr. Michelsen Institute reports: Brown and Blankenship, “Natural Resource Management and Peacebuilding”; Strand et al., “Afghan Hydrocarbons.”

49 See, for example, Ministry of Mines, “Business Plan 2010-2015”, http://mom.gov.af/Content/files/Business%20Plan%202010_Synopsis_28Aug_am.pdf (accessed 18 May 2016).

50 del Castillo, *Rebuilding War-Torn States*, 33, 221; Valérie Marcel, ed., “Guidelines for Good Governance in Emerging Oil and Gas Producers” (London: Chatham House, 2015).

51 Marcel, “Guidelines for Good Governance.”

52 Peter Woodrow and Diana Chigas, “A Distinction with a Difference: Conflict Sensitivity and Peacebuilding,” (Cambridge, MA: CDA Collaborative Learning Projects, 2009), 3

53 Woodrow and Chigas, “A Distinction with a Difference,” 10

54 Woodrow and Chigas, “A Distinction with a Difference,” 4-9.

55 Bailey et al. “Investing in Stability,” 10.

56 Bailey et al. “Investing in Stability.”

57 Bailey et al. “Investing in Stability.”

for example.⁵⁸ Incremental improvements would increase oversight and accountability, necessarily in both Kabul and the provinces, and build capacity in checks and balances as resources become proven.⁵⁹ Along the same lines, according to a joint United Nations Development Programme (UNDP) and United Nations Environment Programme (UNEP) initiative under development in Afghanistan, an approach to support artisanal, small-, and medium-scale mining can bring more immediate revenues to the State—and incomes to people—while improving the sector’s environmental and social performance.⁶⁰

Fostering development of a social contract

Thirdly, the extractive sector can have a greater chance of contributing to economic and sustainable development if it is managed by a locally owned, viable, and comprehensive social contract—a framework of widely agreed-upon rules of social cohesion and trust, along with external or self-policing enforcing institutions.⁶¹ In post-conflict settings, many argue that **developing such a social contract is just as important as formal structures and institutions.**⁶² This requires significant time and patience, active communication among central, provincial, and local government structures, private sector, civil society, and other key actors, accompanied by specific actions such as information-sharing, dialogue with authentic representatives, identifying and articulating common values and preferences, and maximising incentives for cooperation, to name just a few.⁶³ Devising a plan and taking concrete steps to implement it would help address the strong expectations and demands of citizens that the exploitation of these resources must be for the benefit of all Afghans.⁶⁴

Economic diversification and social spending

Fourthly, for the extractive sector to contribute to economic and sustainable development, the goal must be diversification away from the sector, into productive, job-creating activities.⁶⁵ With industrial resource extraction activities, “a country does not become more productive or generate wider economic impetus.”⁶⁶ Experts have recognised that in Afghanistan, the sector’s impact will “not in itself be transformative” and “may not be a source of inclusive growth.”⁶⁷

Only by investing the revenue (such as in an income-earning asset) or by using it to create forward and backward linkages (for example, investing in upstream activities such as seismic studies, survey, and exploration, or downstream activities such as processing, polishing, or preparing minerals as raw material for other industries) can the extractive sector support economic development. Such linkages are not a panacea, and there is a strong risk of over-adaption, collapse, or regress.⁶⁸ This kind of diversification is very challenging for all governments and has, for example, been challenging for Gulf Cooperation Council states.⁶⁹

58 World Bank, “Afghanistan: Mining as a Source of Growth” (Washington, DC: World Bank, 2004), 5-6; Afghanistan Investment Support Agency, “Doing Business in Afghanistan: Sector Overview—Mining, Power and Water” (Kabul: Afghanistan Investment Support Agency, 2008) 18.

59 Marcel, “Guidelines for Good Governance,” 2.

60 United Nations Development Programme and United Nations Environment Programme, Building Sustainability in the Extractives Sector in Afghanistan Initiative (2016-2017). See also Mills et al., “Institutional, Regulatory and Enabling Environment Assessment,” 43, which recommends a sector-wide approach.

61 Jurgen Brauer and Paul J. Dunne, *Peace Economics: A Macroeconomic Primer for Violence-Afflicted States* (Washington, DC: USIP Press Books, 2012), 112-113. See also Bailey et al. “Investing in Stability,” 38.

62 Strand et al., “Afghan Hydrocarbons,” 3.

63 Brauer and Dunne, *Peace Economics*, 114-119.

64 Strand et al., “Afghan Hydrocarbons,” 20.

65 Bailey et al. “Investing in Stability,” 24, 38.

66 Bailey et al. “Investing in Stability,” 9.

67 International Bank for Reconstruction and Development, “Islamic Republic of Afghanistan Resource Corridor Strategy and Plan: Making Mining-Based Growth More Inclusive” (Report No. ACS1205, May 2013) 11.

68 Hailu et al., “How Does the Extractive Industry Promote Growth, Industrialization and Employment Generation?” (presentation, Dialogue on the Extractive Sector and Sustainable Development, Brasilia, Brazil, 3-5 December 2014), 8; Bailey, “Investing in Stability,” 16-17.

69 Hailu et al., “How Does the Extractive Industry Promote Growth,” 9; Bailey et al. “Investing in Stability,” 9.

The GoIRA has made vague statements that resource revenue will be spent on current budget expenditures, especially security, to replace dwindling donor flows. **But resource revenues should not be spent for such consumption;** they are not revenue *per se*.⁷⁰ Resource rents are better understood as an asset—moving it from underground to aboveground—in order to make production of goods and services possible.⁷¹ There is a strong consensus that resource rents should be invested in public assets, such as rail, road, and energy infrastructure.⁷²

Whether the sector contributes to economic development “is determined by the extent to which a country can capitalise on [moving the asset aboveground]—namely, by investing the cash productively and by forging linkages between the extractive sector and the rest of the economy.”⁷³ The figure below highlights these intermediate steps (fiscal, production, infrastructure and consumption linkages, leading to a diversified economy) that are necessary in order for the extractive industry to eventually contribute toward growth, industrialisation, and employment, and so sustainable development goals.⁷⁴

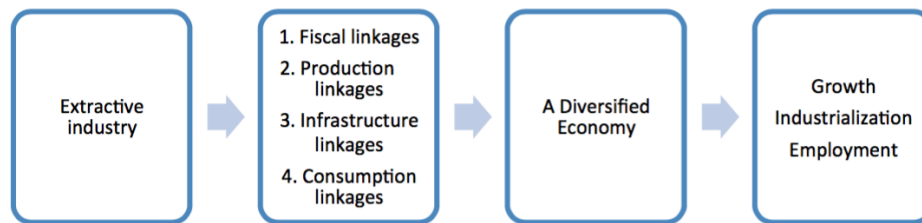
70 Hailu et al., “How Does the Extractive Industry Promote Growth,” 9.

71 Bailey et al., “Investing in Stability,” 9.

72 Hailu et al., “How Does the Extractive Industry Promote Growth,” 8.

73 Paul Stevens et al., “Resource Curse Revisited” (London: Chatham House, 2015), 3.

74 Hailu et al., “How Does the Extractive Industry Promote Growth,” 5.

FIGURE 1: LINKAGES FROM EXTRACTIVE INDUSTRIES TO SUSTAINABLE DEVELOPMENT GOALS⁷⁵

Today, there is limited capacity for any such spin-off economic growth from mining in Afghanistan.⁷⁶ In terms of local content, supplying goods (such as uniforms, fruits, vegetables, oil drums, etc.) or services (construction, transport, catering, technical services, etc.) are challenging when the quality, reliability, and quantity of local goods and services in the immediate area is highly variable or non-existent. This means “local” goods can be brought in from the capital or other regions, though in the eyes of people living near the operations, these goods and services are not “local,” which can also exacerbate pre-existing socio-ethnic tensions.

There appears to be no local GoIRA plan that—realistically—identifies the full gamut of linkages (fiscal, production, infrastructure, and consumption) between the extractive industry, economic development, and sustainable development goals. (There is, however, a resource corridor strategy that looks primarily at infrastructure linkages, and a strategic environmental and social impact assessment of the sector.⁷⁷) Such an assessment would permit a “go/no-go” decision or a strategy for how to equitably and transparently share those benefits with citizens and affected communities alike. Even according to the most optimistic scenarios, significant resource revenues in Afghanistan are at least a decade away. But current estimates are widely exaggerated and these resource revenues will never wholly replace donor flows.⁷⁸

Moreover, government revenue is just one way that industrial mining contributes to the economy, as shown in Figure 3 below of the contribution of mining to the economies of low- and middle-income countries, produced by the International Council on Mining and Metals:⁷⁹

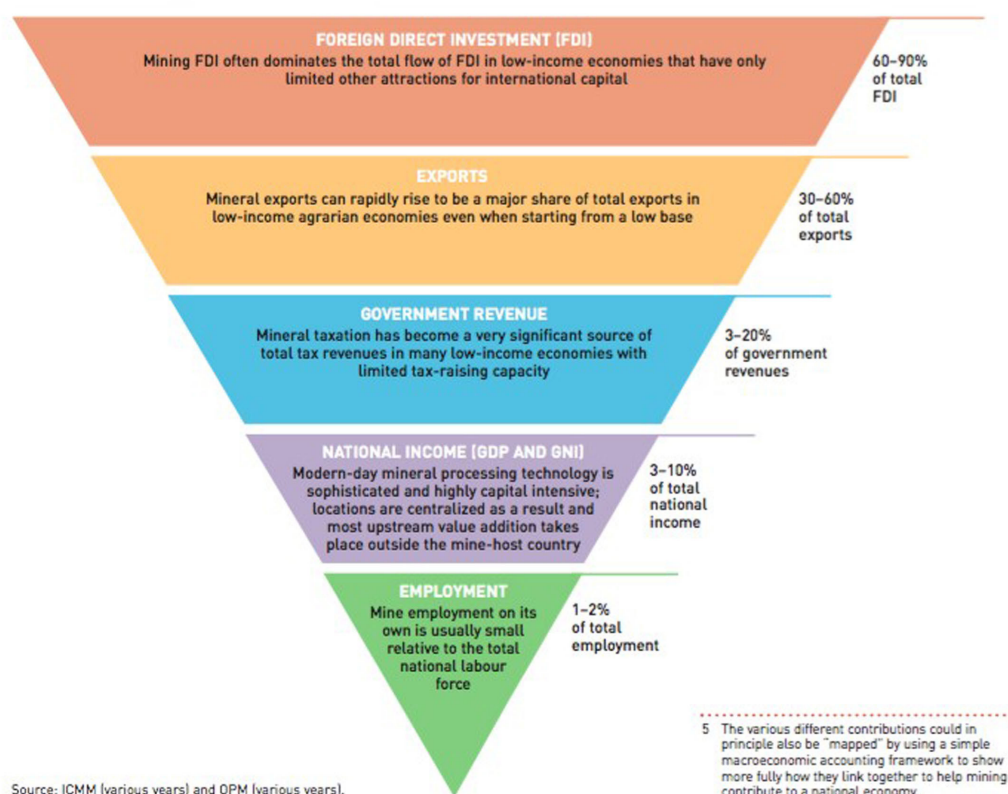
⁷⁵ Hailu et al., “How Does the Extractive Industry Promote Growth,” 5.

⁷⁶ Mills et al., “Institutional, Regulatory and Enabling Environment Assessment,” 37.

⁷⁷ International Bank for Reconstruction and Development, “Islamic Republic of Afghanistan Resource Corridor Strategy and Plan”; Government of the Islamic Republic of Afghanistan, “Strategic Environmental and Social Assessment for the Extractive Sector in Afghanistan (SESA-EI),” Third and Final Version (Kabul: Government of the Islamic Republic of Afghanistan, 2013).

⁷⁸ Mills et al., “Institutional, Regulatory and Enabling Environment Assessment,” 31, 43.

⁷⁹ International Council on Mining and Metals, “Role of Mining in National Economies,” 2nd ed. (International Council on Mining and Metals, 2014), 18.

FIGURE 2: MACRO-LEVEL CONTRIBUTIONS OF MINING IN LOW- AND MIDDLE-INCOME COUNTRIES⁸⁰

This figure helpfully highlights that **very few jobs are created** by mining relative to other sectors; industrial hard rock mines and oil and gas operations have a very limited and short-term need for unskilled labour, perhaps 1 to 2 years during the construction phase when the life of the mine could be more than 30 or 50 years.⁸¹ This is usually the opposite of local people’s expectations, who overwhelmingly believe that the fathers and sons from that area (and not from another province or country) will be employed full-time by the mine.

More broadly, there is very little capacity available in the country for skilled labour for industrial resource extraction. There are also significant socio-cultural barriers for women to share in potential local content benefits. For unskilled labour, there are no clear indications of recruitment policies that would favour conflict-sensitive priority recruitment of local people from the affected area. Given long-standing ethnic issues, if jobs are given out on the basis of favours, networks, and contacts—without conflict-sensitive and transparent recruitment and procurement policies—there is a very high risk that this aspect could lead to violence and conflict.⁸² Communities in some locations around mines are not receptive to the ideas of in-migration and import of skilled labourers. Some individuals in government have also expressed concern that local content policies may conflict with World Trade Organisation rules.⁸³

⁸⁰ International Council on Mining and Metals, “Role of Mining in National Economies,” 2nd ed. (International Council on Mining and Metals, 2014), 18 (Figure 11).

⁸¹ International Council on Mining and Metals, “Role of Mining in National Economies,” 7.

⁸² See, for example, International Alert, “Conflict-Sensitive Business Practice,” 11.

⁸³ Interview with government informant, Oct 2015.

2.3 Problem statement

Despite the country's riches in natural resource wealth and the attempts to valorise the sector in recent years, the much-needed and desired revenues from the extractive sector have not yet materialised due to various external and internal circumstances. In particular, obstacles related to mining governance to effectively develop, implement, and monitor policies and strategies to stem corruption and manage the economic, social, and environmental costs and benefits are seen as standing in the way of allowing Afghanistan to transform the capital related to this mineral wealth into a lever to support development. Weak sector governance—whether relating to financial flows or environmental and social impacts—directly affects the levels of benefits and revenue that the State and its people can realistically gain from the sector, and it also determines whether these benefits will be siphoned off by other actors or otherwise lost due to conflict, project stoppages, delays, sunken costs, etc.

This paper first steps back to address the threshold question of whether, and if so, how the extractive sector can support economic development in Afghanistan, and on the basis of the principles laid out, it then identifies the challenges and recommendations in the balancing act to be achieved in minimising negative impacts through environmental and social impact assessment, and enhancing transparency and accountability of benefits with the support of civil society and AEITI.

3. Research methodology

3.1 Objective and methodology

This study focussed on the governance and strategic contribution of Afghanistan's extractive sector to the economy, which required a mixture of different approaches to examine the government's policy and vision with regard to the sector's development, the legal framework, institutional capacity, and cross-institutional coordination and synergy. Contract monitoring and compliance with contractual terms were also examined. To pursue this objective, the study used a combined approach of academic and practical research, including literature and desk review of cases from overseas to frame the issues, pose relevant questions, and guide the data collection process.

The literature review of the sector's key themes included the social and environmental impact of the extractive sector as well as its interactions with conflict and potential contribution to peacebuilding. This was followed by a review of official documents, surveys, and research papers on the extractive sector of Afghanistan. For example the Mineral, Hydrocarbon, and Environment laws, the National Mining Policy and Regulations were studied, along with the standards of the Extractive Industries Transparency Initiative (EITI).

3.2 Data collection

The study called for engaging with all stakeholders in the sector, such as officials of the government, private sector, civil society, and donors who had interest in the sector. Not only were interviews conducted with each group of stakeholders, but the findings and recommendations were also shared with them at a meeting for their review and comments. The extractive sector is complex and can be challenging to understand and analyse. As a result, the questionnaires for data collection addressed to each informant were semi-structured and distinct. Both expert and snowball sampling was used to identify and interview key informants. In light of the limited local expertise on the subject, over 30 interview requests were made, and the consultants were successful in interviewing 27 of them. Interviews were primarily done in person in Kabul, although a handful was conducted by telephone. Each interview lasted approximately one to two hours, with follow-up correspondence by email to clarify any remaining questions or share documents and information. The names of some informants have been kept confidential on their request due to commercial and professional issues.

3.3 Testing the findings and recommendations

A first draft was prepared based on desk-based research undertaken by the two consultants as well as the 27 key informant interviews conducted mostly in Kabul from September to October 2015. In November, the Afghanistan Research and Evaluation Unit (AREU) and Govern4Afg submitted a working draft for peer and internal review. The working draft was also presented for discussion at an open dialogue hosted by AREU on 20 December 2015, with about 50 participants representing the government, private sector, civil society, and donor community. The working draft was edited to respond to and integrate comments received from the peer review process and the open dialogue.

3.4 Limitations

Some key informants did not respond to requests for interviews, whether due to time constraints or security reasons. Additional limitations include project design and security constraints that prevented the study from including interviews and open dialogues in one or more provinces beyond Kabul.

4. Minimising and Managing Negative Impacts

4.1 Environmental and social impact assessment

An environmental and social impact assessment (ESIA) is a legal and regulatory requirement in Afghanistan for any project that is likely to have a significant adverse effect on the environment,⁸⁴ as it is in most countries. ESIA is a licensing process requirement, prior to the commencement of any project activities that can have significant negative impacts on the environment and people. Environmental and social impacts are interrelated and so must be examined together.

Specifically, the Environmental Impact Assessment (EIA) Regulations (2008) classify into four categories the projects that require the National Environmental Protection Agency (NEPA) to approve an ESIA:

1. Category 1 activities, defined as those likely to have significant and unprecedented adverse impacts, including mining and processing of iron, coal, gold, copper, sulphur, and precious stones, constructing large smelting plants, building large dams, and disposal of hazardous or toxic wastes.
2. Category 2 activities, defined as those with potential significant adverse environmental impacts less severe than Category 1 activities, including small power generation facilities, commercial extraction of sand, gravel, limestone, clay, sulphur, and other minerals with a cost of less than \$1.5 million, small dams, and domestic waste or limited quantities of industrial waste.
3. Activities in environmentally sensitive areas.
4. Activities determined by NEPA as likely to have a significant adverse impact on the environment.⁸⁵

While the benefits, advantages, and opportunities of extractive sector activities are usually captured at the national level, the negative impacts primarily fall at the local level, affecting the environment, communities (on a social and cultural level) habitually living in and near the area, local economies, and local infrastructure, not excluding the negative consequences relating to the influx of people coming to the site in search of work. The nature and scope of the benefits accrued (mostly at the central level) and the negative impacts falling on local communities depend on the scale, nature, and duration of the project's activities, the geology and geography of the site, and the people who use the land and resources in and around the project's area of influence.

What is ESIA?

ESIA is a management system that: (1) predicts the major potential impacts of a proposed project on people and their environment, including impacts from alternative project designs and a no-go alternative, and (2) designs ways to prevent or mitigate such impacts, defining these mitigation and monitoring measures in an Environmental and Social Management Plan (ESMP). The success of ESIA **depends on the extent to which precautions and mitigations set out in the ESMP are actually implemented**, especially during the construction and operation phases when the impacts can be most severe.⁸⁶ Implementation is often the most challenging aspect.

84 Environment Law (Official Gazette no. 912), 2007 (SY 1387), Art. 16; (<http://nepa.gov.af/Content/Media/Documents/ELFINA L2007English1820151675045553325325.pdf>) (accessed April 2016) Hydrocarbons Law (Official Gazette no. 972), 2009 (SY 1387), Art. 52; ([http://mom.gov.af/Content/files/Hydrocarbons_Law_2009-\(Unofficial_English_Translation_dated_March_2014\)-Final.pdf](http://mom.gov.af/Content/files/Hydrocarbons_Law_2009-(Unofficial_English_Translation_dated_March_2014)-Final.pdf)) (accessed May 2016) Minerals Law (Official Gazette no. 1143), 2014 (SY 1393) (<http://mom.gov.af/Content/files/Afghanistan-%20Minerals%20Law-19-May-2015%20English.pdf>) (accessed May 2016) Art. 89; National Mining Policy, 2011 (SY 1391), Section 13.2. (http://mom.gov.af/Content/files/Mining_Regulations.pdf) (accessed May 2016)

85 Environmental Impact Assessment Regulations (Official Gazette no. 939), 2008 (SY 1388), Reg. 2, Schedule I: Screening of Activities. (http://mom.gov.af/Content/files/EIA_Regulations_PDF.pdf)

86 Robert Goodland, "WRI's Informative Memo for Access Law and Practice: Environmental and Social Assessment" (Washington, DC: World Resources Institute, 2008); 3.

If no significant impact is expected, the ESIA must include a clear statement to that effect. The ESIA must assess **direct, indirect, induced, and cumulative impacts** during all stages of the project lifecycle (from pre-construction to post-closure), as well as other short- and long-term impacts within the project's zone(s) of influence and potential impacts of extreme events—without segmenting the project.⁸⁷ A financial guarantee must be calculated to take into account the risk of catastrophe (including from flooding, earthquakes, and landslides), and these guarantees must be paid prior to commencement of activities.

Typically, the **phases of the ESIA** include screening during project selection, scoping to identify key issues to be examined during preparation and pre-feasibility, and then the ESIA process examining these key issues. Depending on the scale of the activities and nature of the site and its inhabitants, the process of studying potential impacts can take about two years to complete before the proponent submits the ESIA report to the regulatory authorities. Approval is required before activities can begin. When the project receives approval, the ESMP mitigation plan becomes part of the project and is implemented immediately, especially during construction and operation phases. When the project is decommissioned, the ESMP decommissioning or closure plan is implemented.⁸⁸

The **participation of people potentially affected by the project activities** is increasingly recognised as a process that improves the quality of the ESIA and helps build community support for a project by involving local people in the process and related decision-making.⁸⁹ Public participation should start as soon as the project is identified and continue through design, construction, and operation phases, ending when the closure and restoration of the site are completed, sometimes lasting to perpetuity if the site requires long-term water treatment.⁹⁰ Public participation in the ESIA also supports stronger linkages between the extractive project activities and **local economic and community development**. The purpose of social impact assessment is increasingly to enhance benefits to affected communities. For example, the impact assessment may facilitate:

*modifying project infrastructure to ensure it can also service local community needs; providing social investment funding to support local social sustainable development and community visioning processes to establish strategic community development plans; a genuine commitment to maximising opportunities for local content (i.e., jobs for local people and local procurement) by removing barriers to entry to make it possible for local enterprises to supply goods and services; and by providing training and support to local people.*⁹¹

The standard **contents of an ESIA report** include: (1) executive summary, (2) overview of the policy, legal, and administrative framework, (3) project description, (4) baseline data, (5) identification of social and environmental impacts, (6) analysis of alternative project design and impacts, and (7) ESMP.⁹² Specifically, the ESIA and its ESMP must “identify and assess **all potentially significant social and environmental impacts**,”⁹³ and must explicitly consider potential impacts, including (but not limited to) the following areas:

- Environmental impacts (e.g., surface disturbance, waste generation, air quality, biodiversity, species at risk, noise, water use and quality, spills, seismic hazard, etc.);
- Social impacts (e.g., housing, infrastructure, social services, poverty, community physical and mental health and safety, local economies, resettlement, ecosystem services, employment, population movements, differential and/or specific impacts on women);
- Labour and working conditions;
- Human rights;
- Transboundary effects (e.g., air pollution, use of international waterways);

87 Initiative for Responsible Mining Assurance, “Standard for Responsible Mining,” Draft v 2.0 (Initiative for Responsible Mining Assurance, 2016), Ch. 4.1.2.

88 Goodland, “WRI’s Informative Memo,” 5.

89 Initiative for Responsible Mining Assurance, “Standard for Responsible Mining,” Ch. 4.1.

90 Goodland, “WRI’s Informative Memo,” 11.

91 Frank Vanclay et al., *Social Impact Assessment: Guidance for Assessing and Managing the Social Impacts of Projects* (Fargo, ND: International Association for Impact Assessment, 2015), iv.

92 Goodland, “WRI’s Informative Memo,” 6.

93 Initiative for Responsible Mining Assurance, “Standard for Responsible Mining,” Ch. 4.1.2.

- Greenhouse gas emissions;
- Potential impacts on World Heritage Sites;
- Potential impacts on indigenous peoples and/or other vulnerable individuals or groups (e.g., women, ethnic minorities, youth and elderly, etc.), including impacts on culture and cultural heritage;
- Socio-political risks, including potential infringement of human rights, conflict, and political instability.⁹⁴

Such impacts must be assessed in terms of how they fall on different peoples living in the potentially affected area. ESIs must identify **existing inter-ethnic or inter-communal tensions**. They must consider **gendered impacts**, because extractive industries have a disproportionate negative impact on women and reinforce existing structural inequalities. Similarly, ESIs must consider **impacts on vulnerable groups**, such as handicapped persons, landless rural households, Kuchis (nomadic pastoralists), orphans, returnees, internally displaced persons, and others.⁹⁵



Image 1: Salt Mine, Taqcha Khani Boliwary, Takhaar Province (by MoMP)

⁹⁴ Initiative for Responsible Mining Assurance, “Standard for Responsible Mining,” Notes to Ch. 4.1.

⁹⁵ Liz Alden Wily, “Land Governance at the Crossroads: A Review of Afghanistan’s Proposed New Land Management Law” (Kabul: Afghanistan Research and Evaluation Unit, 2012), 5.

The **ESMP** is the most substantive and important section of the ESIA report. It consists of the “set of prevention, mitigation, compensation, monitoring, and institutional measures to be implemented during construction, operation and decommissioning to eliminate adverse environmental and social impacts, offset them, or reduce them to acceptable levels.”⁹⁶ The ESMP provides an implementation schedule for measures that must be carried out as part of the project, and a cost estimate and sources of funds to implement the three aspects of the ESMP: mitigation, monitoring, and capacity strengthening.⁹⁷ **ESMP must be established and operational prior to the start of any site-disturbing operations related to the project.**⁹⁸ ESIA must be accompanied by a closure plan with a financial guarantee.⁹⁹

Different from the SESA-EI

To clarify, an ESIA is a site-specific assessment produced by a project proponent; it is a regulatory requirement for a company to obtain a license to undertake its activities. In contrast, a **Strategic Environmental and Social Impact Assessment for the Extractive Industries (SESA-EI)** is a **national government policy document**, usually produced by and for the MoMP, to identify the cumulative impacts (i.e., the combined impacts of all projects in the various provinces and the country as a whole) of the extractive industry sector and identify policy recommendations.

The MoMP commissioned SESA-EI, which was completed in November 2013. The SESA-EI is intended to inform national policy to better manage the sector. While the SESA-EI was a lengthy exercise, it seems to have some limitations as a primarily desk-based exercise, producing a paper not easily accessible to the public and only available in English. Its usability also appears limited, given its lengthy (and unprioritised) list of 92 recommendations. The process for developing the SESA-EI seems to have included little public participation through multi-stakeholder dialogue—including with local communities across the country—to establish environmental and social priorities among the 92 recommendations.¹⁰⁰ While ambitious in the topics covered, the SESA-EI still has some noticeable gaps, such as addressing cumulative impacts (e.g., from a concentration of projects in a particular area), a no-go alternative, significant seismic and geologic hazard of extractive activities on and near the active Chaman Fault, integrating traditional local water management, the Turkmenistan-Afghanistan-Pakistan-India (TAPI) pipeline project, socio-political and ethno-religious risks, and more.

Laws and policies related to managing negative impacts

Environment Law

In environmental matters, the Environment Law is supreme and trumps all other laws excepting the Constitution.¹⁰¹ The Environment Law sets out provisions on managing activities affecting the environment, including an EIA¹⁰² and mitigation plan approval procedure with an EIA Board of Experts and requirements to prove public participation. According to the Environment Law, NEPA must first approve a project’s environmental impact statement and mitigation plans before a ministry or national authority may authorise a person or company to undertake an “activity or implement a project, plan or policy that is likely to have a **significant adverse effect** on the environment.”¹⁰³ People and companies are also prohibited from carrying out these activities until after they have received NEPA’s approval.¹⁰⁴

96 Goodland, “WRI’s Informative Memo,” 9.

97 Goodland, “WRI’s Informative Memo,” 9.

98 Initiative for Responsible Mining Assurance, “Standard for Responsible Mining,” Ch. 4.1.1.

99 Initiative for Responsible Mining Assurance, “Standard for Responsible Mining,” Ch. 4.2.2. See also Gerardo Damonte, “ELLA Policy Brief: Improving Environmental Management of Extractives through Environmental Impact Assessments” (Lima: ELLA Practical Action Consulting, 2013) 3.

100 See Fernando Loayza and Juan Albarracin-Jordan, “Mining Sector Strategic Environmental and Social Assessment” (Washington, DC: World Bank, 2010), which sets the parameters for public participation in strategic environmental and social impact assessments in the mining sector.

101 Environment Law (Official Gazette no. 912), 2007 (SY 1385), Art. 76.

102 Environment Law (Official Gazette no. 912), 2007 (SY 1385), Art. 22

103 Environment Law (Official Gazette no. 912), 2007 (SY 1385), Art. 13

104 Environment Law (Official Gazette no. 912), 2007 (SY 1385), Art. 13

Water Law

In April 2009, Afghanistan's new Water Law came into effect. The Water Law adopted a river basin approach, meaning that natural river basin boundaries (and not administrative boundaries) govern all aspects of natural resources management and planning. Customary law tends to govern the use of water on private land and in private systems, the resolution of conflicts over water, and water resource conservation. Customary law generally governs the allocation of water through the community-based *karez* system.¹⁰⁵

The Water Law provides for the management of water resources through river basin agencies and local water-user associations. It recognises the **existing social water management system**, operated through *mirabs* (water masters), allowing them to serve as members of local associations and water councils.¹⁰⁶ Each village has a *mirab* who delegates authority to sub-water masters. It is an open question as to how much authority the central government has over the *mirab*. For example, government authorities in Samangan and Balkh provinces openly admit that they do not even know, let alone have any regulatory authority over, the majority of *mirabs* in their province.¹⁰⁷ In some regions, military commanders have taken control of water resources, which undermines local traditional authority and can cause conflict with water users adversely affected by the military decisions.¹⁰⁸

Land-related legal provisions

The Constitution of Afghanistan provides a number of guarantees for rights to housing, land, and property, and prohibits forced evictions, such as in Art. 40(4): "nobody's property shall be confiscated without the provisions of law and the order of an authorized court."

Under Art. 14 of the Hydrocarbons Law, compensation for access to land or damages is determined by the MoMP, which is confirmed in Art. 31 of the Hydrocarbons Regulation. Art. 40(3) of the Hydrocarbons Law requires companies to "compensate any loss inflicted." Such involvement in land-related compensation by the MoMP is likely contrary to compensation requirements set by the Land Management Law or the Law on Land Expropriation, which requires the involvement of a Council of Ministers to determine compensation. Under Art. 25 of the Environment Law, the Ministry of Finance is the authority for the valuation of natural resources and compensation rates. However, the law does not anticipate the possibilities of a dispute over the issue of compensation and therefore has no provision for an alternative process for people to appeal.

In all, the legal and regulatory framework governing land acquisition and compensation in Afghanistan is both unclear and in any case fails to provide certain basic protections to those facing resettlement.¹⁰⁹

Projects with significant adverse effects

The Environment Law defines **adverse effect** broadly as any actual or potential effect on the environment that may in the present or in the future harm the environment or human health or that may lead to an impairment of the ability of people and communities to provide for their health, safety, and cultural and economic well-being.¹¹⁰

105 United States Agency for International Development, "Afghanistan—Property Rights and Resource Governance Profile" (Washington, DC: United States Agency for International Development, 2010).

106 USAID, "Afghanistan—Property Rights and Resource Governance Profile."

107 Sexton, "Natural Resources and Conflict in Afghanistan."

108 USAID, "Afghanistan—Property Rights and Resource Governance Profile."

109 See, for example, Caroline Howard and Jelena Madzarevic, "Still at Risk: Security of Tenure and the Forced Eviction of IDPs and Refugee Returnees in Urban Afghanistan" (Geneva: Internal Displacement Monitoring Centre and Norwegian Refugee Council, 2014), 13-14. See also Michael Stanley and Ekaterina Mikhaylova, "Mineral Resource Tenders and Mining Infrastructure Projects Guiding Principle: Case Study—The Aynak Copper Deposit, Afghanistan," Extractive Industries for Development Series No. 22 (Washington, DC: World Bank, 2011), 70.

110 Environment Law (Official Gazette no.912), 2007 (SY 1385), Art. 4(1).

There are a number of different activities undertaken by people or companies that have significant adverse impacts on the environment and that require NEPA's approval. Concerning minerals, the Environment Law states: "holders of permits and authorizations and related documents authorising mineral exploitation and exploration that may affect the environment, shall not initiate activities prior to receiving written authorization from the National Environmental Protection Agency."¹¹¹ This is supported by the National Mining Policy, which states that "no Mine Plan shall be approved without a comprehensive Environment Impact and Social Assessment (EISA) accompanied by a time-bound detailed Environmental Management Plan (EMP) that is approved and enforced by NEPA and MoMP, respectively."¹¹²

The EIA Regulations passed in 2008 classify activities with adverse effects into four categories. Category 1 activities are those likely to have significant adverse impacts, and include the construction, installation, or upgrading of petroleum refineries, mining and processing of coal, gold, copper, sulphur, and precious stones, major non-ferrous metals, and iron, as well as all activities in environmentally sensitive areas. Category 2 activities are those with potentially adverse impacts and include pipelines, oil and gas extraction projects, commercial extraction of sand, gravel, limestone, clay, sulphur, and other minerals not identified in Category 1 with a total cost of less than \$1.5 million.¹¹³ The EIA Regulations are considered interim; revised regulations have been drafted and are awaiting cabinet approval.¹¹⁴

Content of ESIA

The EIA Regulations require the following subjects to be included in the ESIA:¹¹⁵

1. **Type of activity:** A full description of the activity, its need, and desirability.
2. **Location of the proposed activity:** A description of the property and environment in the vicinity of the property where the activity will be done, including any significant geographical, physical, social, and cultural features of the property.
3. **Impacts, alternatives, and remedies:** An identification, description, and assessment of all impacts and benefits (including on soil, water, air, forests, climate, human health, animals and plants, landscape, archaeological property, cultural heritage, cultural values, social and economic well-being and livelihoods, human settlements, and their interactions), alternative means of carrying out the activities, measures to avoid, remedy, or mitigate adverse impacts, and measures to monitor.
4. **Public participation:** A description of the public participation process and the concerns raised.

According to the National Mining Policy, "at a minimum, the EMP shall address solid and liquid waste management, water and soil pollution mitigation and abatement, impacts of removal of overburden, and deforestation."¹¹⁶ Art. 89 of the Minerals Law requires proponents to conduct an ESIA, which must include an environmental baseline, and an ESMP that includes the following: negative environmental impacts, tailings impacts, mitigating actions, equipment, budget, measures and actions necessary to mitigate negative environmental impacts, and public meetings.

111 Op-cit Environment Law (Official Gazette no. 912), 2007 (SY 1385), Art. 77.

112 Op-cit National Mining Policy, 2011 (SY 1391), Section 13.2.

113 Environmental Impact Assessment Regulations (Official Gazette no. 939), 2008 (SY 1386), Reg. 2 and Schedule I: Screening of Activities. (http://nepa.gov.af/Content/Media/Documents/EIARegulationsGazettedVersion_Englishtranslation18201516172727553325325.pdf) (accessed May 2016)

114 Interview with NEPA informant, Oct 2015.

115 Op-cit, Environmental Impact Assessment Regulations (Official Gazette no. 939), 2008 (SY 1386), Reg. 7.

116 Op-cit National Mining Policy, 2011 (SY 1391), Section 13.2.



Image 2: Shabashak Coal Mine, Dara-e Suf-e Baalaa, Samangan Province (by MoMP)

Art. 43(9) and (10) of the Hydrocarbons Law require an assessment of the impact on environment and socio-economic conditions, measures to observe laws for health and safety, human rights, use of water, environmental protection and safeguarding of affected communities. Clean-up requirements are provided in Art. 46 of the Hydrocarbons Law, and Art. 56 addresses environmental protection.

Shared regulatory authority

Regulation 3 of the EIA Regulations state that NEPA is the “sole authorised agency” to issue a Certificate of Compliance to undertake prohibited activities that can have adverse environmental impacts. Art. 90 of the Minerals Law requires license holders to submit an annual ESIA report to the MoMP. Art. 56 of the Hydrocarbons Law states that the Environmental Protection Department of the MoMP shall act in cooperation with NEPA to carry out duties and responsibilities concerning environmental protection, technical studies, and monitoring compliance with environmental protection matters and regulations.

Public participation

The Environment Law states that “local communities should be involved in decision-making processes regarding sustainable natural resource management.”¹¹⁷ The law also states that the government “has the duty to provide the public with information and opportunities to participate in making decisions about human health, the environment and natural resources,”¹¹⁸ and affirms the right of every person to access such information and participate in ESIA processes.¹¹⁹ Art. 92(5) of the Minerals Law states that the “environmental, social, and community development reports and studies” submitted by a proponent are non-confidential.¹²⁰

117 Op-cit, Environment Law (Official Gazette no. 912), 2007 (SY 1385), Art. 5.

118 Op-cit, Environment Law (Official Gazette no. 912), 2007 (SY 1385), Art. 6.

119 Op-cit, Environment Law (Official Gazette no. 912), 2007 (SY 1385), Art. 7.

120 Op-cit, Environment Law (Official Gazette no. 912), 2007 (SY 1385), Art. 92(5).

Art. 7 of the Environment Law recognises communities' rights to "legally use natural resources in accordance with customary traditions and practices," to access information, and to participate in meetings, demonstrations, protests, marches, and referenda relating to the sustainable use of natural resources.¹²¹ Art. 38 obligates the government to involve local communities in all activities related to national protected areas.

Art. 19 of the Environment Law affirms the right of affected persons to "express their opinion" on a proposed project, ESIA, and ESMP. The burden is on the project proponent to "demonstrate to the satisfaction" of NEPA that there has been a public hearing.¹²² The Environment Law also allows "any person" to appeal the decision of the granting or refusal of a permit to the Director-General of NEPA.¹²³

121 Op-cit, Environment Law (Official Gazette no. 912), 2007 (SY 1385), Art. 7.

122 Op-cit, Environment Law (Official Gazette no. 912), 2007 (SY 1385), Art. 19.

123 Op-cit, Environment Law (Official Gazette no. 912), 2007 (SY 1385), Art. 17.

4.2 Challenges in practice

ESIA is not conducted

Of the 338 contracts awarded by the MoMP, **ESIAs have been submitted for less than 5 percent of the MoMP contracts**; an estimated total of 8 to 15 ESIAs have been submitted for extractive sector activities.¹²⁴ A recent study of contracts for 5 medium-sized mining companies similarly shows none had submitted an ESIA.¹²⁵ No ESIA has yet been submitted for the high-profile Mes Aynak copper project; although the report was due in 2012, the company has nevertheless started activities.¹²⁶

Related to this, a key step to ensure the achievement of a process such as ESIA is, of course, to ensure that people involved in monitoring and implementing the system actually know about it. There is a considerable lack of awareness about ESIA, whether out of negligence or wilful blindness; very few informants interviewed knew what the ESIA process was, and even fewer had any kind of experience with it to answer our questions. This also significantly reduces any chances for NEPA or other actors (such as local authorities, CSOs, or other institutions) to hold companies accountable for their environmental impacts, let alone impose sanctions to remedy those impacts, rehabilitate the lands, and provide compensation to affected people.

Lack of monitoring of negative impacts

Regulation and monitoring are not currently being done by the MoMP or NEPA for the few ESIAs that have been submitted or even more broadly.¹²⁷ For example, experts observe that oil is leaking into groundwater in north-western Afghanistan, and that as much as 30 percent of gas is lost in leakages during production and transmission.¹²⁸ There are also reports that 24 villages in two provinces were affected by salt water due to the activities of the Takhcha Khana salt mine.¹²⁹ Communities living around Mes Aynak who have since been displaced now have to travel further to fetch water. Women would traditionally fetch water because the water pump was not far. However, due to the insecurity associated with the longer distance to the pump, women send their children to fetch water, who consequently miss school, thus contributing to illiteracy in the area. Coal mines have major impacts on environment and agriculture, as confided by a senior official of the legal department of MoMP, who observed coal dust inside apricots grown in the area. The coal mine operator had no mechanism in place to control the dust that flew freely affecting fruits, the environment, and people.

124 Interviews with NEPA and other government informants, Oct 2015.

125 Byrd and Noorani, "Exploitation of Mineral Resources in Afghanistan," 2.

126 Author interviews. See also Gilpin and Pandya, "Improving High-Value Resource Contracting," 4.

127 Mills et al., "Institutional, Regulatory and Enabling Environment Assessment," 17. See also Byrd and Noorani, "Exploitation of Mineral Resources in Afghanistan," 3.

128 Mills, "Institutional, Regulatory and Enabling Environment Assessment," 3. See also John F. Shroder, "Afghanistan: Rich Resource Base and Existing Environmental Despoliation," *Environmental Earth Sciences* 67, no. 7: 1971-1986, at 1979-1980.

129 Interview with a senior government informant, Oct 2015.



Image 3: Coal Mine factory, Deh Sabz, Kabul Province (by Javid Noorani)

Corruption in tendering to conduct ESIA

Allegations have been made that a “mafia” exists for ESIA consultants, that certain members of NEPA demand **bribes** when proponents submit an ESIA, that the EIA Board has approved reports in return for gifts, and that the Inspectorate Department similarly solicits bribes for any monitoring. This was confirmed by an official of NEPA.¹³⁰

Poor access to information and data

ESIAs are **not made available to the public**, even though they are non-confidential under Afghan law and must be disclosed under international standards. It is said that under the new ESIA Regulation, a non-technical summary will be made available on NEPA’s website. However, there are no plans or requirements to make the contents of the non-technical summary or full ESIA locally available in a manner understandable to people who have limited literacy.

Although Afghanistan has some of the best **geologic imaging data** in the region, this data is no longer freely and publicly accessible, and what remains is likely corrupted, destroyed, or sold.¹³¹ The geologic data collected by the USGS were previously housed on a USGS beta site, but that site has been taken down as of 1 October 2015, as attempts to securely transfer hosting and rigorous maintenance of the data to the MoMP or another Afghan host largely failed, despite repeated attempts.¹³²

¹³⁰ Interview with a NEPA informant, Oct 2015.

¹³¹ Interview with USGS informants, Sept 2015.

¹³² Interview with USGS informants, Sept 2015.

Weak private sector capacity of ESIA

Weak private sector capacity of ESIA consultancies unsurprisingly translates into **poor-quality ESIA reports**. Among the private sector ESIA consultants, most teams include civil engineers, but few, if any, mining geologists, sociologists, or other multi-disciplinary specialists. It was described as “exceptional” that an ESIA consultancy had sent staff to the field to collect samples or data at the site. Most data used in the ESIA reports is from dated secondary sources with statistics about Afghanistan in general (not necessarily concerning the province or locality of the site in question) or copy-pasted from ESIA reports from other countries found by searching on Google. The reports are generalised, and read more like a Wikipedia page about the extractive process with a subjective interpretation, rather than a detailed, company- and site-specific assessment based on objective and quantifiable analysis.¹³³

For example, **specific gaps** in a Socio-Environmental Study of Mazar-i-Sharif Block, Afghan-Tajik Sedimentary Basin, submitted in 2014, include: a failure to describe the applicable laws or license, the company, the project activities in detail including a length of time, scope, and quantifiable data, or any analysis of the project’s need or desirability. Instead, the report cites secondary sources, such as a general graph of oil exploration activities from the “EandP Forum/UNEP” from 1997. There is no description of the property and its environment, the villages, and significant geographical, physical, social, and cultural features. There is no environmental baseline with up-to-date and site-specific values for air quality, air pollution, frequency, or quantity of volatile emissions control. Most glaringly, there is **no provision for compensation to affected people** for damage to land or other resources, especially due to the seismic surveys. Public participation was only done during the screening report, and these “opinions were evaluated,” according to the ESIA report, without any description of the opinions that were raised.

In the ESMP for the same ESIA, there is no identification of specific standards to be met, only stating instead, for example, “all the required standards and criteria” or “relevant guidelines.” Significant choices, such as the method of soil pollution and solid waste management, are explicitly left to the discretion of the project proponent. The ESMP’s recommended signage for warnings is in English. There is no emergency response or spill plan, no schedule for monitoring, no influx management plan, no local hiring or procurement plan, no decommissioning plan, and no estimated cost of a financial guarantee.

The one social impact assessment available on the MoMP website states that it was done in accordance with relevant Afghan laws and international standards.¹³⁴ The assessment identifies the company, the legal framework, its survey methodology, and attempts to assess the lands and livelihoods of people living at two potential sites for the Aynak tailings pond. However, it was carried out by surveyors accompanied by “security guards provided by the police.”¹³⁵ Further, the team was unable to assess a third site due to community members refusing to cooperate as well as security conditions.

In all, the social impact assessment succeeded in quantifying the people and their livelihoods in two distinct areas, in part based on obsolete Russian data. However, it did not succeed in a number of important areas, such as failing to identify and assess the relative likelihood of the wide range of social impacts (e.g., impacts from the threat of eviction presented by the surveyors themselves and their police security guards, detail on the concerns and negative perceptions held by community members, risks of land grabbing and land speculation due to the surveyors’ visit, inflation, influx, cultural sites, etc.). Other significant limitations of the assessment include its segmentation (addressing only one small slice of a complex project with associated infrastructures), and its failure to propose specific mitigation measures for social impacts that would occur in the area due to the tailings pond, regardless of its precise siting (such as measures to meet minimum information and consultation requirements).

¹³³ Interviews with informants from NEPA and two ESIA consultancies, Sept and Oct 2015, as well as a review of the five ESIA reports that the team was given access to.

¹³⁴ Harjot Kaur, “Aynak Copper Mine Project—Social Impact Assessment of Dashtak and Tobagai Areas in Aynak for Tailing Pond Options” (Kabul: Ministry of Mines, 2011).

¹³⁵ Kaur, “Aynak Copper Mine Project,” 8.

Weak government capacity, conflicts of interest, and unclear shared regulatory authority

NEPA is said to be developing “nominal capacity,” but today it has weak institutional and human capacity to carry out its mandate.¹³⁶ NEPA and the EIA Board conduct token or **formalistic reviews** of submitted ESIA reports, commenting not on the technical substance, but on the form (e.g., the use of a Dari word instead of a Farsi word). It has also been said that a proponent’s screening report was mistakenly accepted as a full EIA report (the proponent did not correct NEPA’s error).¹³⁷

Although the **EIA Board** should, in principle, be independent, many see serious **flaws in its independence** and a lack of basic technical capacity. To date, NEPA has not rejected any ESIA reports, even ones of obvious poor quality, most likely due to political pressure from the MoMP on high-priority projects. The government, whether through NEPA or the Environment Directorate of the MoMP, has also not yet developed the **requisite environmental baseline** against which changes can be measured.¹³⁸

Another challenge is the overlapping duties of MoMP’s Department of Environmental Protection and NEPA,¹³⁹ as well as the lack of coordination, indeed competition, especially in the shared NUG. There is a contest over every major seat in the state machines among the members of the NUG, which delays and makes the implementation of programmes even more difficult. Yet the alignment of priorities for a common national programme is important to improve citizens’ well-being. In addition, if MoMP is one of the primary authorities responsible for approving the ESIA and its associated ESMP, this presents a strong conflict of interest.

Ambiguous, incomplete, incoherent, and unimplemented regulatory requirements

The Environment Law is supreme in environmental matters, but the Minerals and Hydrocarbons Laws are not fully aligned with the Environmental Law, and the regulatory requirements are ambiguous and incoherent. In several instances, both the Minerals and Hydrocarbons Laws only refer to environmental, instead of both environmental and social impacts. For example, Art. 89 of the Minerals Law does not require detailed identification, analysis, or monitoring of social impacts. Art. 56 of the Hydrocarbons Law similarly only refers to the environment and not to social matters.

The law and regulations also have significant substantive gaps. First and foremost, there are serious **deficiencies in Afghan land laws**, especially on land acquisition and compensation.¹⁴⁰ This matters, because land access is critical for the extractive industry. At the same time, land and water are fundamental in Afghanistan: an estimated 70 to 80 percent of the population relies on the natural resource base for their daily survival.¹⁴¹ This places the **extractive industry in direct competition with assets key to rural people’s survival**. Major drivers of local conflicts relate to land, water and family issues, as well as violent conflicts with ethnic dimensions around Kuchi land use.¹⁴² The existing legal framework is, in any case, seemingly not applied: in a study completed by the Norwegian Refugee Council, no planned or applied evictions had been authorised by the constitutionally required court order.¹⁴³

There remains ambiguity over which ministry has **authority to determine compensation values, and which actor is responsible for their implementation**. Some say that for land compensation at Mes Aynak, details were left to MCC.¹⁴⁴ Others say that the government (not the company) is responsible for

136 Stanley and Mikhaylova, “Mineral Resource Tenders and Mining Infrastructure Projects Guiding Principle,” 49, 53.

137 Interviews with NEPA and ESIA consultancy informants, Oct 2015.

138 Interviews with NEPA and ESIA consultancy informants, Oct 2015.

139 Stanley and Mikhaylova, “Mineral Resource Tenders and Mining Infrastructure Projects Guiding Principle,” 67.

140 Stanley and Mikhaylova, “Mineral Resource Tenders and Mining Infrastructure Projects Guiding Principle,” 70.

141 Brown and Blankenship, “Natural Resource Management and Peacebuilding,” 43. See also Renard Sexton, “Natural Resources Should Be Taken Very Seriously” (Interview, Heinrich Böll Stiftung, 2013).

142 Strand et al., “Afghan Hydrocarbons,” 16.

143 See, for example, Howard and Madzarevic, “Still at Risk,” 13-14, 17. See also Stanley and Mikhaylova, “Mineral Resource Tenders and Mining Infrastructure Projects Guiding Principle,” 70.

144 Gilpin and Pandya, “Improving High-Value Resource Contracting,” 3.

land acquisition, resettlement, calculating compensation, and implementation, and that the company is responsible for paying all costs related to the resettlement.¹⁴⁵ For example, at Aynak, compensation for housing was said to be determined by villagers and agreed by the government. The most contentious issue in that case was the acquisition of agricultural land.¹⁴⁶ Local people were initially not consulted, and they have complained and protested against forced acquisitions of their land and their displacement in the past.¹⁴⁷

Secondly, the requirements for proponents to calculate and pay a **financial guarantee for mine closure and environmental rehabilitation** are unclear. Of the five ESMPs reviewed, which had each been confirmed by NEPA, none contained an estimate for the cost of closure. More generally, it was not known if any financial guarantees for environmental rehabilitation had ever been paid by a company.¹⁴⁸ Art. 91 of the 2014 Minerals Law requires a financial guarantee. The Hydrocarbons Law moreover seems to lack a clear requirement for companies to pay a financial guarantee for environmental rehabilitation (Art. 46). Some also claimed that this was a contractual, and not regulatory, issue.¹⁴⁹

Thirdly, neither law refers to the assessment of **cultural heritage impacts** during the ESIA process, something required under the Akwé: Kon Voluntary Guidelines relating to cultural impacts and sacred sites of the Convention on Biological Diversity.¹⁵⁰ Instead, the Minerals Law only states that “if in the course of operations” cultural heritage is identified, the company must “promptly notify” the government (Art. 109). Similarly, Art. 20 of the Hydrocarbons Law only refers to the discovery of cultural heritage “during hydrocarbons operations,” which is too late.

Fourthly, while a **water use and management plan** is required under Art. 21 of the Water Law, it is not currently required under Art. 51 or 59 of the Minerals Law. This must be harmonised.

Fifthly, there is no requirement to assess and mitigate **seismic or flood hazard** that can cause mining tailings dams to fail. Earthquakes, landslides, and floods are the leading causes of mining tailings dam failures. Worldwide, about two to five major tailings impoundment failures occur each year. If tailings dams are damaged by an earthquake or flood, the toxic mine waste is released into the environment, rivers, and streams and can cause irreparable damage.¹⁵¹ Downstream tailings facility construction is safest from a seismic point of view, but this is also the most expensive. Mining infrastructure requires safety and containment in perpetuity to manage the risk of failing.

Afghanistan is a prime country for earthquake hazards; it is one of the most actively and rapidly deforming regions of the world, with faults occurring much deeper than in other regions, thus making them more challenging to delineate. According to the most recent mapping from 2007, a number of mineral sites appear to fall on or near the active Chaman Fault running across the country, and any infrastructure (including, for example, mining installations or pipelines like the TAPI pipeline) and transportation are at risk if they are built along or cross that fault, as shown by the red line in Figure 4 below.¹⁵²

145 Stanley and Mikhaylova, “Mineral Resource Tenders and Mining Infrastructure Projects Guiding Principle,” 71.

146 Government of the Islamic Republic of Afghanistan, “Strategic Environmental and Social Assessment,” 82.

147 See, for example, Javed Noorani, “Aynak: A Concession for Change” (Kabul: Integrity Watch Afghanistan, 2013).

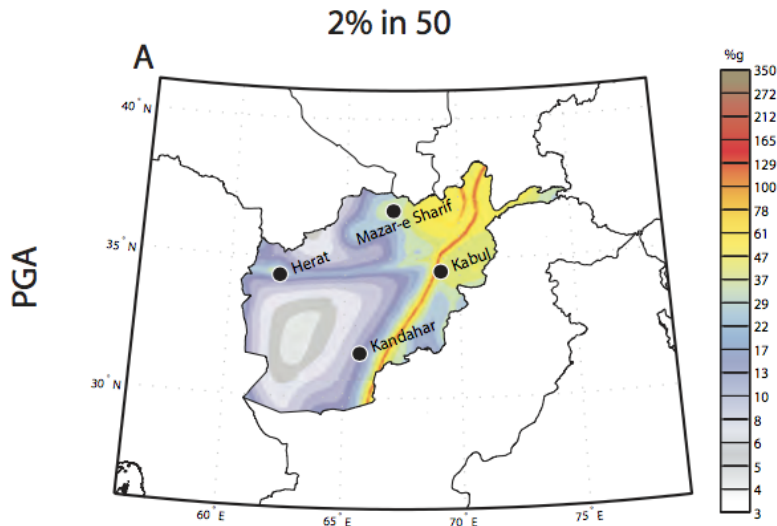
148 Separate interviews with NEPA and ESIA consultancy informants, Oct 2015.

149 Interview with an ESIA consultancy informant, Oct 2015.

150 Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments Regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities (Montreal: Secretariat of the Convention on Biological Diversity, 2004).

151 Michael P. Davies, “Tailings Impoundment Failures: Are Geotechnical Engineers Listening?” *Waste GeoTechnics*, *Geotechnical News* (Sept 2002): 31-36.

152 Oliver S. Boyd et al. “Preliminary Earthquake Hazard Map of Afghanistan,” Open-File Report 2007-1137 (United States Geological Survey, 2007), 18. The figure shows the peak ground acceleration (PGA) with a 2 percent probability of exceedance in 50 years along the Chaman Fault.

FIGURE 3: PEAK GROUND ACCELERATION ALONG THE CHAMAN FAULT¹⁵³

Token public participation requirement can be easily waived

NEPA requires proof of public participation in the ESIA. However, the quality of the participation remains unclear, especially given weak local capacity and torn social fabric. Some believe that this should likely be intra-government consultation with a select few local representatives, rather than broad-based and inclusive public consultation. This was authenticated by participants from Aynak during the open dialogue in 2015 where the findings and recommendations of this study were shared with over 50 participants. Moreover, NEPA can waive this requirement if the proponent cannot meet it. This is precisely one of the challenges in the Aynak ESIA: the security situation and the proponent's inability to hold a public meeting.¹⁵⁴

ESIA consultancies and project proponents regularly use **security forces** during data collection, including helicopters for aerial observation only, or police security guards like the surveyors from the MoMP did for the tailings dam assessment at Aynak. There are negative consequences to use security services, whether public or private, when conducting surveys for ESIA. The presence of security forces during consultations has created an environment of fear, biasing the assessment results, obscuring impacts, and potentially causing additional conflicts by virtue of the security force presence. As a result, participation can decrease, and voices and concerns of women and vulnerable groups are simply not recorded. This certainly weakens the findings of the ESIA and other recommendations.

Almost every country faces challenges to support effective participation in the ESIA process. A leading expert in the field observes that in most mandated statutory public participation procedures:

*the process itself is seldom satisfying to most participants, and the so-called participatory process rarely does more than attempt to legitimate pre-determined outcomes or conform with regulatory requirements in a perfunctory, box-ticking manner. Such misappropriation of 'participation' is not only deceitful, it could have repercussions for current and future interventions as local peoples are likely to become disillusioned and cynical about the process and the project. In situations where it is perceived that decisions have already been made and the project is being pushed through, local people may consider that their participation is pointless and their energy will be better invested in protest actions against the project rather than in participating in a seemingly flawed and/or unjust assessment process.*¹⁵⁵

¹⁵³ Oliver S. Boyd et al. "Preliminary Earthquake Hazard Map of Afghanistan," Open-File Report 2007-1137 (United States Geological Survey, 2007), 18. The figure shows the peak ground acceleration (PGA) with a 2 percent probability of exceedance in 50 years along the Chaman Fault.

¹⁵⁴ Interviews with informant from NEPA, Oct 2015.

¹⁵⁵ Vanclay et al., Social Impact Assessment, 20.

4.3 Recommendations

Building capacity, coordination, and cooperation among NEPA and MoMP

NEPA and MoMP must work out a **mechanism for collaboration** to be able to be effective in carrying out their mandates in the mining sector. There must be strong state capacity (centrally and provincially, with MoMP and NEPA) to review and approve ESIAs, and to monitor the implementation of management plans. Capacity building is especially needed on social issues. Locally affected communities and CSOs must be involved in the design of the survey intended for EIA. Civil society and communities need capacity and support to assist their effective participation.

The stronger technical capacity and independence of the EIA Board is also a key issue to be addressed. **Independently financed agencies** can, for example, be critical for monitoring and enforcement. It is also crucial that the responsibility for promoting and approving extractive industry investments be held by separate institutions. For example, in Chile, EIAs must be approved by multiple agencies: the Ministry of Mining as well as authorities for water and agriculture.¹⁵⁶ In Peru, a centralised autonomous agency evaluates and approves EIAs (for all sectors), while another agency oversees compliance.¹⁵⁷

One of the challenges for the MoMP to build its capacity is significant donor competition for skilled staff, offering monthly salaries of US\$2,000 instead of the MoMP's \$200, leading to significant attrition of MoMP staff to donor-funded projects. Given the significant gap, ministry officials and donors should discuss increased coordination and possibly a framework agreement to address these tensions and collaborate in bridging this issue that will take years to address.¹⁵⁸

Raising awareness about the importance and methods of public participation

Public participation in the ESIA process is an opportunity for local communities to have their concerns officially recorded in the ESIA, support conflict prevention and management, and reinforce social cohesion and more effective benefit-sharing.¹⁵⁹ Awareness-raising in Kabul as well as at the provincial and local levels—among government, civil society, and industry actors—is needed as a first critical step to improve social acceptance of what might be a misunderstood process, and address the issue of communities demanding payment to participate in the consultation. The MoMP must develop a manual for community engagement and train its staff to engage with the communities.

The **public participation requirement** must not be waived, especially for security reasons: “building more fences or employing more guards focuses on the symptoms rather than on the root causes of conflict and as such is not a sustainable or effective solution to anticipating and managing conflict.”¹⁶⁰ The government must identify, in the ESIA or mining regulations, the security strategy for ESIA consultants to use in data collection, such as the acceptance strategy, instead of protection or deterrence. Similarly, if government officials cannot inspect the site due to security concerns, then project activities should be suspended until the situation improves and effective government oversight can be exercised.

While Afghanistan is a challenging context, it is not a blank slate for community-based natural resource management, especially in areas such as water. Every effort must be made in the ESIA process to respect, build on—and if necessary depoliticise—existing **traditional natural resource management systems**.¹⁶¹ Similarly, an operational-level **grievance mechanism** must be built that recognises and builds on any existing, even if weak, local dispute resolution mechanisms. Both of these aspects should be included in the ESIA report and integrated into the ESMP.

¹⁵⁶ Damonte, “ELLA Policy Brief,” 5.

¹⁵⁷ Damonte, “ELLA Policy Brief,” 5.

¹⁵⁸ Interview with government informant, Oct 2015.

¹⁵⁹ See Gilpin and Pandya, “Improving High-Value Resource Contracting,” 4. See also Liana Lohde, “The Art and Science of Benefit Sharing in the Natural Resources Sector” (Washington, DC: International Finance Corporation, 2015), 61-62.

¹⁶⁰ Paul Kapelus et al., “Conflict-Sensitive Impact Assessment,” in *New Directions in Social Impact Assessment: Conceptual and Methodological Advances*, ed. Frank Vanclay and Ana Maria Esteves, 288-305 (Cheltenham, UK: Edward Elgar Publishing, 2011), page 304.

¹⁶¹ Brown and Blankenship, “Natural Resource Management and Peacebuilding,” 45.

Conflict-sensitive impact assessment requires an ongoing process of analysis, assessment, and relationship-building.¹⁶² Potentially impacted people, both men and women, must fully and openly participate in or be meaningfully involved throughout the two years that it can take to conduct an ESIA. This means that potentially affected people must actually participate in both collecting the data and then interpreting that data; **just talking at public meetings has little or no value in terms of public participation.**¹⁶³ Where possible, the operating company must encourage public participation in the process and **use participatory methodologies** to collect data for the ESIA, in developing options and proposals to mitigate the potential impacts of the project and in the ESIA monitoring programme.¹⁶⁴

Review existing contracts for progressive implementation and monitoring

Existing contracts should be successively reviewed, and NEPA and MoMP should jointly and proactively engage with and audit the companies to **monitor and enforce contractual requirements**, starting with the most basic requirements of (1) companies paying the taxes and revenues due under the contract, and (2) paying fair compensation (at a minimum in proportion to damages suffered) to affected people who are displaced.¹⁶⁵

Land and natural resources are crucial to the majority of Afghans' daily survival. The extractive industry can cause physical displacement (relocation or loss of shelter) and economic displacement (loss of assets or access to assets leading to loss of income sources or other means of livelihood), whether on a permanent or temporary basis. Resettlement should be avoided, and if any kind of displacement occurs, compensation for affected people must be explicitly included (and not excluded) in the ESIA. **Compensation must be calculated on an objective basis, and promptly paid to affected people for any displacement** related to the extractive activity.

Clear timelines should be set for companies to comply with this monitoring, and failure to meet the deadline should result in sanctions, such as suspension or cancellation of the contract. Such basic contract monitoring and enforcement should gradually be expanded to include submission of ESIA's by license holders, followed by annual audit reports of the ESMP in tandem with monitoring by the relevant government agency of the implementation of the ESMP.

NEPA and the MoMP must **identify and increase incentives encouraging companies to submit ESIA's**. They must not permit activities to take place without a Certificate of Compliance from NEPA. To address this challenge, slow and incremental development indicates starting with ESMPs for small- and medium-sized companies whose projects fall into the Category 1 screening, such as for coal.

Building private sector capacity and supporting registration to conduct ESIA's

Building both government and private sector capacity to conduct ESIA's starts most fundamentally with ensuring that Afghan universities offer credible, relevant, and competent technical training, with field training for geologists. The competencies and training needed range from geologists and environmental management professionals to sociologists, anthropologists, seismologists, hydro-meteorologists, and more.

Building private sector capacity for more companies to conduct ESIA's would strengthen competition, and as a result, improve the performance and efficiency of all the ESIA consultancies. Furthermore, ESIA consultancies should be recognised as environmental companies and given appropriate status to register as such in Afghanistan.

¹⁶² Kapelus et al., "Conflict-Sensitive Impact Assessment," 229.

¹⁶³ Robert Goodland, "Responsible Mining: The Key to Profitable Resource Development," *Sustainability* 4, no. 9 (2012): 2099-2126.

¹⁶⁴ Initiative for Responsible Mining Assurance, "Standard for Responsible Mining," Art. 4.1 and 4.2.

¹⁶⁵ Interview with an expert informant, Oct 2015.

Expanding calls for transparency to include access to geologic data and ESIA

Credible and uncorrupted digital geologic data for Afghanistan should be made accessible under secure and fair terms to credible actors. Such access, for example, is key for potential investors, and contributes to avoiding corruption and increasing competition among ESIA consultancies on this point. While full public access is positive in theory, in practice such access to information, particularly for highly loutable commodities, has increased insecurity through illegal mining by armed opposition groups.

The dozen or so **completed ESIA**s should be **immediately made publicly accessible**, in English, Pashto, and Dari, with non-technical summaries. The AEITI multi-stakeholder group may be a suitable forum to leverage to lobby for ESIA disclosure, as contract transparency should include disclosure of ESIA and related documents. The MoMP should analyse which of the 338 contracts require an ESIA (as per the requirements set out in the EIA Regulations, discussed above) and then publish a list of contracts where the ESIA was required, but not submitted. Such transparency also supports more effective public participation; “no social or environmental assessment report should be kept secret from potentially impacted stakeholders.”¹⁶⁶

Legal and regulatory review to address gaps and ensure coherence across laws

Any legal and regulatory review should strive to address the many gaps already identified in terms of what contents should be in an ESIA, land access and compensation, seismic hazard assessments, financial guarantees, security models, public participation requirements, and so forth. More fundamentally, such a review should strive for greater coherence among the multiple laws regulating the sector, including the Environment Law, many land laws, and the Water Law, to name just a few.

A clear regulatory framework is necessary to determine the appropriate responsibilities of the MoMP, Ministry of Finance, and others, in terms of valuing and paying **compensation** for displacement, including redress mechanisms. It has long been understood that financial compensation equivalent to the value of the lost land rarely allows displaced people to maintain the same standard of living—the money does not fully replace what was lost.¹⁶⁷ Compensation must also cover buildings and other improvements, the reduction in the value of any land as a result of the acquisition, and economic displacement (i.e., any disturbances or other losses to the livelihoods of the owners or occupants caused by the acquisition and dispossession).¹⁶⁸ In addition, experience shows that land-based people who are resettled should as a priority be compensated through land-based resettlement strategies, instead of cash compensation, because cash generally fails to restore their livelihood. Instead, they should receive livelihood restoration, social assistance, training, and so forth. More generally, a good starting point would be to examine existing efforts in the humanitarian field addressing the very questions of evictions in Afghanistan, such as the Afghanistan Protection Cluster’s “Guidelines for Mitigating Harm and Suffering in Situations of Forced Evictions.”¹⁶⁹

Another key domain for review is **clarifying and harmonising water use and management** across the Ministry of Energy and Water, NEPA, and MoMP, including their roles relative to local authorities such as mirabs. ESIA must seek coherence between traditional regulation of water quality and quantity, conflict resolution mechanisms (mirabs) and scheme established under any ESIA.

¹⁶⁶ Goodland, “Responsible Mining.”

¹⁶⁷ Food and Agriculture Organisation of the United Nations, “Compulsory Acquisition of Land and Compensation,” *Land Tenure Studies*, 10 (Rome: Food and Agriculture Organisation of the United Nations, 2008), para. 4.1.

¹⁶⁸ Food and Agriculture Organisation of the United Nations, “Compulsory Acquisition of Land and Compensation,” para. 4.12. See also United Nations Human Rights Commission, “Basic Principles and Guidelines on Development-Based Evictions and Displacement” (Annex I of the Report of the Special Rapporteur, A/HRC/4/18, United Nations Human Rights Commission, 2007); International Finance Corporation, “Performance Standard 5, Land Acquisition and Involuntary Resettlement” (Washington, DC: International Finance Corporation, 2012).

¹⁶⁹ Afghanistan Protection Cluster—Housing, Land and Property Task Force, “Guidelines for Mitigating Harm and Suffering in Situations of Forced Evictions,” http://www.globalprotectioncluster.org/_assets/files/field_protection_clusters/Afghanistan/files/HLP%20AoR/Guidelines_For_Mitigating_Harm_in_Forced_Evictions_Afghanistan_2012_EN.pdf, 2012 (accessed 18 May 2016).

Finally, the State must set in law and regulations a **tolerance level for earthquake-related and flood risks** that also apply to mining tailings dams, transport, and other infrastructure. For **earthquake-related (seismic) risk tolerance**, the level can be established by adopting the International Building Code and adjusting its standards to the level of seismicity in Afghanistan by using the three key USGS reports analysing the risk. However, these reports are based on assumptions that require ground proofing to understand site-specific elements. Local seismologists must be trained and use existing tools to carry out such site-specific assessments.¹⁷⁰ Similarly, for pipeline projects such as the TAPI pipeline or others, oil and gas engineers will need seismologists to conduct necessary analyses (i.e., probabilistic fault displacement scenarios).¹⁷¹

For **flood risk tolerance**, the government must define “high hazard dams” that carry a significant loss of life or damage to property based, for example, on the World Meteorological Organisation Manual for Probable Maximum Precipitation. Once a classification is made for high hazard dams, (1) any dams must be built to withstand the probable maximum flood determined based on site-specific studies, and (2) the studies must develop a dam break analysis, showing where the dams contents will go if it breaks and identifying potentially affected people living in the dam’s flood plain.¹⁷²

¹⁷⁰ One such example is the EZ-FRISK software.

¹⁷¹ Interview with Fugro Consultants, Sept 2015.

¹⁷² Interview with Applied Weather Associates, Oct 2015.

5. Enhancing Transparency and Accountability of Benefits

5.1 Civil society and AEITI

What is the role of civil society?

Citizens and civil society with its diverse actors (not only CSOs) have a key role to play in fostering an equitable and transparent sharing of the extractive sector's benefits and also play additional roles to inform communities, facilitate consultations, and contribute ideas. More broadly, civil society actors can play a wide range of roles to promote transparency, accountability, and effective forms of governance, as well as social mobilisation and service delivery, such as rural infrastructure projects.¹⁷³

While the understanding of civil society in Afghanistan has changed over time, and challenges in civil society actors' relationships with government actors persist, the fundamental principle remains that citizens are the **source of legitimacy** for governments and States in a democracy, and their role is boldly underlined in the construction of the current order. Citizens need opportunities and a political space to engage in, as well as an institutional capacity to function within. Citizens make nations, pay taxes, and legitimise governments through elections and participating in political processes; governments reciprocate by recognising and protecting their rights. Citizens are equal and can take part in political process if they want to.

The Constitution binds the State and citizens together in a relationship of mutuality and reciprocity. The Constitution of Afghanistan obligates the State to preserve citizens' dignity and protect the civil and political rights of Afghan citizens. This relationship has also been emphasised in other commitments by the Afghan government, such as in the 2012 Tokyo Mutual Accountability Framework, committing the Afghan government to good governance, sustainable development, and transparency among other milestones.¹⁷⁴

Much of the discussion around the extractive sector in Afghanistan and elsewhere focuses overwhelmingly on the transparency of contracting and revenue collected by the central government. Yet the effects of transparency may be limited and only effective in some contexts, and thus it is not a substitute for democratic processes.¹⁷⁵ So too, accountability—responsibility to account for one's actions—is broader in the extractive sector and includes both government and corporate accountability.

What is EITI?

EITI is founded on principles to put natural resources to prudent use for the benefit of citizens in a transparent and accountable manner by disclosing the revenue that a State has received from the sector and the payments made by a company to the State. The international principles of EITI have led to the following seven requirements for a country implementing and seeking compliance:

1. Effective oversight by the multi-stakeholder group.
2. Timely publication of EITI Reports.
3. EITI Reports that include contextual information about the extractive industries.
4. The production of comprehensive EITI Reports that include full government disclosure of extractive industry revenues, and disclosure of all material payments to the government by oil, gas and mining companies.
5. A credible assurance process applying international standards
6. EITI Reports that are comprehensible, actively promoted, publicly accessible, and contribute to public debate
7. The multi-stakeholder group to take steps to act on lessons learned and review the outcomes and impact of EITI implementation.¹⁷⁶

¹⁷³ For a detailed discussion of the issues please see, Nemat, A. Orzala, Karin Werner. Role of Civil Society in promoting Good Governance in Afghanistan. Afghanistan Research and Evaluation Unit and German Federal Ministry of Economic Cooperation and Development. June 2016.

¹⁷⁴ Op-cit Tokyo Mutual Accountability Framework, 2012.

¹⁷⁵ Aarti Gupta and Michael Mason, Transparency in Global Environmental Governance: Critical Perspectives (Cambridge, MA: MIT Press, 2014).

¹⁷⁶ Extractive Industries Transparency Initiative Standard, 2013. (https://eiti.org/files/English_EITI%20STANDARD_11July_0.pdf) (accessed April 2016).

The new EITI standards encourage and pressure implementing countries to expand into the governance of the natural resources and bring transparency mechanisms in terms of contracting, implementation, and revenue management.

The mandatory requirements of EITI standards provide **many opportunities for local civil society organisations** to engage with the government actively and meaningfully in monitoring the sector. Requirement 1, part 3 of the EITI, states that, “the government must ensure that there is an enabling environment for company and civil society participation with regard to relevant laws, regulations and administrative rules as well as actual practice in implementation of the EITI.”¹⁷⁷ This empowers civil society to hold government to account and discuss policy options to implement EITI meaningfully and thus develop an informed framework for the development of the sector. The requirement further states that “the government must ensure that there are no obstacles to civil society or company participation in the EITI process.”¹⁷⁸ Members of the multi-stakeholder group (MSG) are allowed to speak freely about transparency and resource governance issues. Requirement 3 of the EITI is to provide contextual information on the sector in the report, which provides yet another opportunity for civil society to cross-check the authenticity of the information based on the evidence in their possession and seek rectifications. Besides, it provides information on the activities in the sector, which could provide the basis for the calculation of current and future revenues as well as production and reserves underground.

Legal and policy framework

Financial benefits

Art. 80 to 84 of the Minerals Law (2014) determine the payment of fees, taxes, surface rent, and royalties. While royalties are to be paid into a dedicated State Treasury account, it is unclear to whom surface rent is to be paid. It is also unclear how the 5 percent “special code” funds provided for in Art. 84 (distribution of 5 percent of total revenues from a mining project to the hosting province) will be paid or allocated and in what manner to which provinces.

Afghanistan signed the candidacy form for EITI in 2009. A candidate country for the EITI has to implement the seven requirements of EITI to become a compliant country. Afghanistan has completed the five-year cycle for implementation of the EITI, but it has still not been granted compliant status. Afghanistan has produced three EITI reports, but most of them are deficient and have been critiqued by civil society for lacking data. Companies’ reluctance to share data such as production, reserve, prices, and audit reports are other hurdles in addition to the lack of political will for the implementation of EITI.

Local content

Art. 111 of the Minerals Law provides that “only Afghan nationals” shall be employed by a license or authorisation holder or contractor “as skilled, unskilled and vocational labour” in its activities. This provision also provides that a license holder “shall give priority to procure Afghan goods and services provided that these are substantially equivalent or similar to foreign goods in terms of quantity, quality and price.”

Art. 47 and 48 of the Hydrocarbons Law have similar provisions regarding the employment of “Afghan nationals” and the procurement of domestic goods and services, with some treatment of the topic in Art. 29 of the Hydrocarbons Regulation. The Labour Law sets out standards concerning training and higher education.

¹⁷⁷ Op-cit, EITI Standard, 2013, Requirement 1.

¹⁷⁸ Op-cit, EITI Standard, 2013, Requirement 1.

5.2 Challenges in practice

Unstable legal framework characterised by rushed development

The Minerals Law was revised twice in 2008 and 2014, since its initial adoption in 2004. The 2014 Minerals Law was adopted by the Wolusi Jirga despite intense advocacy and protest by civil society. The National Unity Government of Afghanistan has internally initiated another revision to the Minerals Law, and this draft may at some point be shared with civil society and other stakeholders. Consultation with stakeholders is key to a stable law.

Overall, the sector is characterised by **rushed development**, driven by the impending “fiscal cliff” and broader need to transition from an aid-dependent economy to a more diverse, resilient one.¹⁷⁹ No systematic consultations have been held at the provincial or village-level to determine Afghans’ local priorities regarding the development of the sector. Most government officials see the development of the extractive sector as a purely economic activity that has nothing to do with conflict and violence, socio-ethnic tensions, national reconciliation or peace-building. There exists an overall failure to recognise that opaque and rushed development of the extractive sector only hardens the already intense mistrust between the State and its people, who feel they are not part of any decisions. Such disillusionment with government is said, in turn, to draw people toward insurgents.

Decreasing political will to implement EITI

Afghanistan signed the candidacy form in 2009, and momentum was strong for implementation in 2010 and 2011. Afghanistan has completed the five-year cycle for the implementation of the EITI, producing two EITI reports, but it has failed the validation process. There were several reasons for this failure, especially: (1) **decreasing political will** to implement EITI in the country, (2) poor and unorganised representation of constituencies in the EITI, (3) poor coordination among the stakeholders, and (4) attempts by some stakeholders to dominate the MSG.

For example, certain champions of EITI (Minister of Mines and Petroleum and Minister of Finance) have participated very little over the last two years.¹⁸⁰ While civil society’s attendance was then, and of poor quality, with little preparation to engage in a rich discussion about implementing the EITI standard in the country. Successful implementation of EITI principles and standards would indicate necessary reforms in the legal and institutional frameworks, and coordination; none of these have happened, despite the country completing five-year cycle for implementation. In April 2015, Afghanistan received a conditional extension to implement the new EITI standard or face suspension.¹⁸¹

Variable and decreasing role of CSOs in AEITI

Civil society faces many challenges in promoting civic participation in the country, and most relationships among government, civil society actors, and local communities are characterised by mistrust, conflicts, and a lack of representation.¹⁸² Regarding AEITI, CSOs initially had little or no contribution to the extractive industries when Afghanistan applied for candidacy. However, over time, they received training and contributed to the implementation of the EITI in Afghanistan. For example, an important outcome of advocacy in 2012 through the EITI forum was the publication of all mining contracts (with the exception of the Aynak contract). CSOs were active in defining “materiality” (the threshold level to include companies to report under EITI requirements) within the MSG, and they had a fruitful and impressive discussion on the disaggregated reporting template for recording revenue data from mining companies. Afghan CSOs

¹⁷⁹ Mills et al., “Institutional, Regulatory and Enabling Environment Assessment,” 25-26.

¹⁸⁰ Observations by the author.

¹⁸¹ Extractive Industries Transparency Initiative, “Afghanistan Moves to EITI Standard,” <https://eiti.org/news/afghanistan-moves-eiti-standard>, 17 April 2015 (accessed 18 May 2016).

¹⁸² For a detailed discussion of the challenges please see: Nemat, A. Orzala, Karin Werner. Role of Civil Society in promoting Good Governance in Afghanistan. Afghanistan Research and Evaluation Unit and German Federal Ministry of Economic Cooperation and Development. June 2016.

were also active in commenting on the misrepresentation of facts in the validation report prepared by the EITI's validation team. However, CSOs could not make use of the contracts to make a major impact on policy and the behaviour of the State toward the sector. This is largely due to the limited ability and interest of the CSOs working in the sector.

In the past year, CSO constituency in the AEITI has been weak with minimal contribution. Factors affecting CSO performance in the EITI and MSG include the following:

1. CSO constituency is disorganised and does not speak with one voice.
2. CSOs visibly lack motivation to participate and support the implementation of AEITI. For example, they show interest for training abroad, but not in-country.
3. A high turnover rate among CSO representatives in the MSG, which means that when a person leaves, they leave behind a vacuum.
4. CSOs may not be an appropriate representative and can be subject to co-option in return for favours.

Members representing CSOs in the MSG have failed to highlight the gender issue in the forum, and therefore, there is a need for a change. There must be some female representatives, and the constituency must send informed representatives. Institutions present in the MSG must retain knowledge in case of staff turnover so that there is continuity in their contribution.

An EITI shadow validation report, funded by the AEITI in Afghanistan, showed the weaknesses of CSOs in Afghanistan.¹⁸³ However, there has been little implementation of the report's recommendations.

¹⁸³ Roya Aziz and Javed Noorani, "Shadow Validation: Analysis of Afghanistan EITI Reconciliation Reports and Civil Society Participation" (Kabul: Integrity Watch Afghanistan, 2012).

5.3 Recommendations

Locally-owned agenda for slow resource development

Slow resource development is needed to give time to strengthen state institutions and civil society. According to one expert, trying to accelerate the exploitation of mineral resources in the short-run to revive the Afghan economy would be counterproductive; the “sensible approach” is to hold off on new extractive projects and to focus efforts on better oversight and monitoring of existing mines, ensuring these activities yield at least some revenues for the government.¹⁸⁴ This would firstly require a strong commitment to **stop illegal mining** or find means to formalise existing extractive sector activity (coal mining, marble, gemstones, etc.), and **exercise effective oversight of existing contracts**, such as by establishing a team including members at the provincial level for contract monitoring.

In parallel, the Afghan government and MoMP must develop a **locally owned and well-understood strategy, developed through consultation**, to investigate whether and how to pursue extractive sector development as a viable and realistic manner to support the country’s economic development. While some have expressed resignation, others are optimistic that the direction of the extractive sector can still be changed at its nascent stage.¹⁸⁵ Such local ownership of the agenda could also contribute to building more political will to implement AEITI.

Raising awareness that the extractive sector is not conflict-neutral

Awareness must be raised within MoMP and among industry actors that the extractive industry is not conflict-neutral. The extractive industry takes place in and interacts with the surrounding (violent) conflict dynamics. In line with the principle that peace should be a prevailing objective, a related secondary objective in this respect is analysing conflict drivers and developing **conflict-sensitive practices** for both government and companies. Key flashpoint issues long recognised as recurring sources of conflict in industrial extractive projects include: communication and stakeholder engagement, resettlement, compensation, social investment (including recruitment policies and vocational training programmes), dealing with armed groups, security arrangements, human rights, corruption, and transparency.¹⁸⁶

Civil society can develop and advocate a set of guidelines and training materials on conflict-sensitive practices for both government and companies to ensure, at a minimum, that resource extraction does not exacerbate drivers of conflict and maximise any of the sector’s positive contributions. UNEP has, for example, prepared a rapid project-level peace and conflict assessment for natural resources in Afghanistan.¹⁸⁷ To develop these principles (whether at the project or national level), civil society actors should ideally work in a broad civil society coalition, and together with business associations and government representatives, perhaps through the EITI MSG. Although the context is quite different, the European Coalition on Oil in Sudan developed such a set of national-level business principles for companies, including Chinese companies, operating in Sudan. The principles are based on international law, voluntary standards for business behaviour, and Sudan’s peace agreement, the Comprehensive Peace Agreement.¹⁸⁸ To address conduct by security forces, key guidance is in the Voluntary Principles on Security and Human Rights designed specifically for the extractive sector.¹⁸⁹

184 William A. Byrd, “What Can Be Done to Revive Afghanistan’s Economy?” (Special Report, United States Institute of Peace, 2016), 11.

185 Interviews with a range of informants, Sept and Oct 2015.

186 International Alert, “Conflict-Sensitive Business Practice.”

187 Brown and Blankenship, “Natural Resource Management and Peacebuilding,” 49.

188 European Coalition on Oil in Sudan, “Business Principles.” (<http://www.ecosonline.org/others/2004/ECOSBenchmarksEUGoS/>)

189 Voluntary Principles on Security and Human Rights, www.voluntaryprinciples.org.

Facilitating communication and dialogue at multiple levels

More effective **communication, including outreach, awareness-raising, and dialogue**, among the State, citizens, civil society, and the many stakeholders involved can slowly contribute to building trust and support for a local agenda to develop the extractive sector. The ultimate aim could be to develop a **comprehensive national resource-management compact**, which clearly identifies the main goals of resource extraction, engages local leaders from the start of the tendering process, publicises the details of contracts, identifies how the extraction will benefit all citizens and locally affected communities (critical to manage high and often unrealistic expectations of local jobs), creates communication channels with the affected communities and all citizens, identifies opportunities for local content in the value chain, and establishes mechanisms to handle complaints, crimes, and resolve disputes.¹⁹⁰ Such an approach is recognised by economists as a method to help **counter rent seeking**.¹⁹¹

This communication and dialogue must be done by the MoMP in collaboration with other ministries and supported by a broad range of civil society actors beyond CSOs on multiple levels: at the **national and provincial levels**, with all citizens regarding the strategy for the sector and how the government will realistically leverage the revenues and other benefits of the sector to improve citizens' welfare, and at the **local level**, with affected communities concerning all aspects of the project, compensation mechanisms, and the ESIA process, monitoring, and inspection. There are existing channels that could be leveraged for such communication, whether through EITI multi-stakeholder forums at the central and provincial levels, local forums such as the Community Development Councils, and the many civil society actors in the broad sense of the term.¹⁹²

This communication must start with some basics, such as ensuring that key documents setting this agenda are ideally first drafted in Dari or Pashto, and at a minimum, **always translated** from English. They must be **publicly available in Dari and Pashto**, along with infographics, images, radio shows, and other communication methods that make the contents of the documents accessible to illiterate persons.

Strengthening the inclusion of civil society beyond CSOs to support communication

Civil society can play a key role in this respect for information-sharing as a broker between citizens, government actors, and companies. Civil society can support a government strategy for communication and consultation. However, given the lack of motivation and incentive of registered CSOs, more effort should be made to building the capacity of other civil society actors, such as traditional or religious authorities, to engage with the government as a representative of their constituencies. Among other measures, this requires the capacity-building of grassroots actors, networking among CSOs, strategic alliances with the media, integration of religious scholars and mullahs, open dialogue between CSOs and government.¹⁹³

190 Gilpin, "Economic Drivers of Mass Atrocities," 9. See also Gilpin and Pandya, "Improving High-Value Resource Contracting," 4.

191 Brauer and Dunne, *Peace Economics*, 111.

192 For a broader context in which such a process would take place, please see, see Nijat, Aarya, Kristof Gosztanyi, Basir Feda, Jan Koehler. *Sub-National Governance in Afghanistan: The State of Affairs and the Future of District and Village Representation*, and Bizhan, Nematullah, Ferhat Emil, Haroon Nayebkhail, *Bringing the State Closer to People Provincial Planning and Budgeting in Afghanistan*, Afghanistan Research and Evaluation Unit and German Federal Ministry of Economic Cooperation and Development. June 2016.

193 For a detailed discussion please see: Nemat, A. Orzala, Karin Werner. *Role of Civil Society in promoting Good Governance in Afghanistan*. Afghanistan Research and Evaluation Unit and German Federal Ministry of Economic Cooperation and Development. June 2016..



Image 4: Mining Basic Survey Training, Nader Khan hill, Kabul Province (by GIZ)

Developing robust plans for linkages to support economic development

While there is some focus on revenues through AEITI, there is not enough strategic government focus on economic diversification through fiscal linkages (smart taxes, stabilisation funds), production linkages (local content requirements in laws and contracts), infrastructure linkages (infrastructure sharing), and consumption linkages (incomes from the sector).¹⁹⁴ While piecemeal attention has been given by the MoMP to each of these topics, these four types of linkages must each be considered in greater detail and as an integrated whole. This is necessary, because these linkages are key in order for the extractive sector to contribute to economic development, and each faces significant barriers to their achievement.

To pursue **fiscal linkages**, the discussion about the utility and potential role of **stabilisation funds** must take place in greater detail. Given the volatility of commodity prices and the revenues that could be collected, resource or stabilisation funds are one means to guard against the risk of highly fluctuating incomes and values. The most well-known example, although not comparable on many dimensions to the Afghan context, is Norway's creation of a Government Pension Fund Global in 1990 as a fiscal policy tool to support long-term management of Norway's Petroleum Revenues. The fund gives leverage to the government to handle economic contraction due to a reduction in oil price. Today, the fund is worth over US\$900 billion, and in 2015, the return from the investment with fund money was higher than the total rent from the petroleum sector. The Norwegian National Budget receives 4 percent of the profit made from the investment through the fund. The government makes the fund strategy through consultation, and the Central Bank oversees the investment and audits it.

¹⁹⁴ Hailu et al., "How Does the Extractive Industry Promote Growth," 27-28.

Another aspect of fiscal linkages that has gone under the radar is the need to expand AEITI beyond Kabul and implement it at the provincial and community levels as well.¹⁹⁵ This could then be expanded to govern any revenue, such as the 5 percent Special Code designated for locally affected communities, and it should ideally contribute to the budget of existing structures such as CDCs, governed by effective oversight, with institutional capacity and a validated community development plan.

For production linkages, an aspect that has not yet been considered is assessing community dynamics (women's roles, tribal divisions, power structures, ethnic or religious divisions, traditional hierarchies, and project-induced in-migration) to define conflict- and gender-sensitive local recruitment and procurement plans, especially for the recruitment of unskilled labour, to manage the influx of people from other areas and countries coming to look for work.¹⁹⁶ In this respect, key instruments to develop at each site include a communication plan, recruitment and information offices, training centres, and databases.

Strengthening the role of civil society actors in AEITI

Civil society actors, including but not limited to CSOs, play a very critical role in the implementation of EITI in Afghanistan, and the new EITI Standard of 2013 further reinforced this role. This includes a number of important areas in the extractive sector as part of its mandate to see and report on. It discusses the governance of the extractive sector and the management of revenues where sharing and reporting on sub-national sharing is underlined.

Some key recommendations for civil society participation in the EITI MSG are as follows:

1. Donors funding civil society or CSOs in the MSG must seek reports of their participation on a monthly basis.
2. CSOs must include provincial civil society actors and share EITI.
3. CSOs must reduce their staff turnover rate and stabilise their presence.
4. CSOs must have a thorough understanding of EITI principles, requirements, and fiscal regime.
5. CSOs must know about natural resource governance.
6. CSOs must have a women's rights advocate in the MSG.

¹⁹⁵ Gilpin and Pandya, "Improving High-Value Resource Contracting," 3.

¹⁹⁶ Kapelus et al., "Conflict-Sensitive Impact Assessment," 10 of Ch. 17.

6. Conclusions and Recommendations

Reports indicate widespread illegal activities where several non-state actors, criminal groups, and a majority of private sector actors have engaged in. These certainly have had a major impact on security in some of the country's mineral-rich areas. This is further complicated by the mistrust among groups of people in Afghanistan. Peace must remain the priority in developing extractive sector activities, managing negative impacts, monitoring contracts, and collecting revenue.

Given the complicated nature of the sector and natural resource extraction, including positive and negative impacts that are not conflict-neutral, a prudent approach—a balancing act—is necessary in order to design a long-term vision, build the necessary legal framework and institutions, and so minimise and manage the negative impacts, and enhance transparency and accountability for capturing and sharing the benefits. The genuine participation of citizens and a range of civil society actors must be an important aspect of developing the sector, such as through ESIA processes and in the AEITI. Donors can play a major role in assisting the Afghan government with its capacity as well as building a responsive legal framework and transparent and accountable State institutions and mechanisms to manage negative impacts and revenues. Donors, however, must review their approach and engagements to apply their funds more effectively, and in a manner that is uniquely responsive to the local and dynamic Afghan context. Pressure from donors must be logical, and not push Afghanistan to award more contracts than its capacity can handle.

Frameworks to minimise negative impacts, such as ESIA, exist on paper, but they are insufficient and hardly applied in practice. The few ESIA's conducted and approved by NEPA are dotted with challenges, and monitoring mechanisms are non-existent. Afghanistan is in need of money, and the government plans to spend extractive sector revenue to cover its current expenditures, especially security. Yet extractive sector revenue is limited and must be invested in other diverse sectors in order to produce development benefits. This may call for creation of an extractive sector revenue fund and proper mechanism for the allocation of money in areas that would bring human development and economic diversification. The government can identify forward, backward, and side linkages and so encourage investments.

Afghanistan's mining sector is slipping into a vicious cycle; liberating it and taking on a virtuous trajectory requires political will and consensus, while allowing the State to function free of political influences to allow the State to carry out its lawful mandate to turn the underground wealth into a national wealth for all. Impact assessment processes and international initiative for transparency in extractive industry revenues is a good step for a country like Afghanistan, and these processes and forums must be strengthened through the credible and independent participation of civil society.

Appendices

Appendix 1: Overview of key laws and instruments

Theme	Key Laws and Instruments	Responsible Authorities, Ministries, and Agencies
Foundation of the State and Citizens	<ul style="list-style-type: none"> Constitution International environmental and human rights treaties and instruments (International Bill of Human Rights, Convention on Biological Diversity, United Nations Framework Convention on Climate Change, etc.) 	<ul style="list-style-type: none"> Office of the President Cabinet Parliament
Development, Local Governance, and Security	<ul style="list-style-type: none"> Afghanistan National Development Strategy 	<ul style="list-style-type: none"> Ministry of Commerce and Industries Independent Directorate of Local Governance Ministry of Interior
Environment	<ul style="list-style-type: none"> Environment Law, Environmental Impact Assessment Regulation, National Environmental Action Plan Clear Air Regulation National Waste Management Policy Ozone Regulation Disaster Management Act, National Disaster Management Plan, Strategic National Action Plan for Disaster Risk Reduction 	<ul style="list-style-type: none"> Ministry of Energy and Water NEPA
Land and Water	<ul style="list-style-type: none"> Law on Managing Land Affairs, Law on Expropriation of Land Water Law, Water Sector Policy, Framework Regulation for Water User Association Forest Law 	<ul style="list-style-type: none"> Ministry of Agriculture, Irrigation, Livestock Ministry of Energy and Water High Council on Water
Minerals, Hydrocarbons, and Energy	<ul style="list-style-type: none"> Minerals Law, Mining Regulation, National Mining Policy, and other diverse policies Hydrocarbons Law, Hydrocarbons Regulation Power Sector Master Plan Gas Sector Master Plan 	<ul style="list-style-type: none"> MoMP Ministry of Energy and Water
Labour	<ul style="list-style-type: none"> International Labour Organisation Conventions Labour Law 	<ul style="list-style-type: none"> Ministry of Labour, Social Affairs, Martyrs, and the Disabled Ministry of Public Health
Culture	<ul style="list-style-type: none"> Law on the Preservation of Afghanistan's Historical and Cultural Artefacts 	<ul style="list-style-type: none"> Ministry of Information and Culture
Economy and Investment	<ul style="list-style-type: none"> Law on Private Investment in Afghanistan Income Tax Law Customs Code 	<ul style="list-style-type: none"> Ministry of Finance Ministry of Economy High Office of Oversight and Anti-Corruption Afghanistan Investment Support Agency (AISA)

Appendix 2: Key informant interview questions

Extractive sector and development

1. Today, does the extractive sector favour peace or conflict? Why or why not? Please give a specific example, if you have one.
2. Do you think that, in the future, the extractive sector can contribute to peace and economic development in Afghanistan? Why or why not?
3. Do you agree that peace should be the primary objective in the management and development of the extractive sector? Why or why not?
 - a. Does the current approach to its management prioritise peace? Why or why not? Please give a specific example, if you have one.
 - b. Do you have any recommendations for change in this respect?
4. Do you believe the current approach to extractive sector management favours national reconciliation and a social contract? Why or why not? Please give a specific example, if you have one.
 - a. Do you have recommendations for change in this respect?
5. Could you please describe how—as far as you understand—the government intends to share the benefits (revenues, jobs, etc.) of extractive sector development with (1) affected communities and (2) the people of Afghanistan?
 - a. As far as you know, how do affected communities and citizens understand how the benefits will be shared? Please give a specific example, if you have one.
 - b. Do you have any recommendations for change in this respect?

Environmental and social impact assessment (ESIA)

1. Do you agree with the definitions that we have proposed for the environmental and social impact assessment (ESIA) in the draft issue paper? Why or why not? Please share any comments or observations.
2. According to your information, how many ESIA's have been submitted to MoMP and NEPA for their approval?
 - a. How many for oil and gas projects? For mineral projects? For coal projects?
 - b. Which consultants prepared them?
 - c. How (if at all) did affected community members participate in the process?
 - d. How many of the submitted ESIA's have been approved?
 - e. Who approved them? (NEPA, MoMP, or both?)
 - f. How (if at all) did the authorities analyse the ESIA?
 - g. For any ESIA that was approved, how (if at all) were the results of the ESIA shared with affected communities?
 - h. Who is monitoring the implementation of the ESMP for any of the approved ESIA's?
 - i. How many companies have submitted annual reports for implementing the ESMP? (Which sector and location?) What is the quality of the report? What is the procedure for verifying its accuracy and who is responsible for this?
3. Do you have any experience with an ESIA in Afghanistan? (Not the Strategic ESIA ...) If so, please describe the nature of the project and location (oil, gas, coal, gold, etc.), and if possible, the strengths and weaknesses of the ESIA and ESMP as you experienced them.

- a. Could you please describe how scoping was completed? How was a consultant selected?
 - b. How was baseline data gathered? Did any local people participate in data collection? Any local authorities (for land, for water (mirab?), others, etc.)?
 - c. How (if at all) were the affected community members consulted during the process? How (if at all) did the affected community members participate in the process?
 - d. How (if at all) did the authorities analyse the ESIA?
 - e. How (if at all) were the results of the ESIA shared?
 - f. How (if at all) is the ESMP being monitored and by whom?
 - g. Are the ESIA and ESMP documents available to the public?
 - h. In what language(s) is the ESIA and ESMP?
 - i. Was a financial guarantee calculated? If so, how? Was it paid?
 - j. Which plans were included in the ESMP? For example, environmental impact, geologic and seismic studies, health and safety plan, waste management, resettlement action plan, water use and management plan, influx management plan, emergency response plan, local content plan, community development agreement, mine closure and reclamation, etc.
4. What do you believe are the primary challenges regarding ESIAs? If you have experience with an ESIA, what was the primary challenge in that case?
 - a. Challenges could be about the process (security forces, completion and submission, data collection methods, review by authorities, etc.), substance (which impacts, land and water issues, seismic activity, time frame, social and cultural aspects, gender/vulnerable groups), and especially implementation of the environmental and social management plan (ESMP).
 - b. *Alternative question:* Do you agree with the challenges that we identified in the draft? Why or why not? Do you have any clarifications or specific examples to illustrate the challenges? Are there additional challenges you know of that we should add to the list?
 5. What specific recommendations do you have to address these challenges, to improve the ESIA process? ESIA substance? Implementation of ESMPs?
 - a. *Alternative question:* Do you agree with our recommendations? Why or why not? How could these recommendations be improved for on-the-ground implementation? Which of the recommendations would you prioritize?

Civil society and benefit sharing in the extractive sector

1. Do you agree with the definitions that we have proposed of the potential benefits of the extractive sector in the draft issue paper? Why or why not? Please share any comments or observations.
2. What do you believe are the primary challenges regarding benefit sharing in the extractive sector? For example, regarding civil society participation, local content, resource corridors, fees, surface rent, royalties, provincial or central budget, etc.
 - a. *Alternative question:* Do you agree with the challenges that we identified? Why or why not? Do you have any specific examples to share, whether about oil and gas, coal, minerals, gems, etc.?
3. Do you have any examples of challenges regarding local content (meaning purchasing local goods and hiring local labourers)?
 - a. Was the company successful in purchasing goods locally and hiring local labourers? How did the company define “local” (Afghan, or from the province, or from another neighbouring province)? What challenges did the company face?
4. Do you have any examples of challenges regarding sharing infrastructure? For example, the company sharing piped water or electricity with the neighbouring villages?

5. Do you have any examples of challenges regarding the payment of surface rent, royalties, and fees and budget practices? Regarding AEITI? At central level? At provincial level?
6. Do you have any examples of challenges regarding resource corridors?
7. What specific recommendations do you have to address these challenges for extractive sector benefit sharing?
 - a. Alternative question: Do you agree with our recommendations? Why or why not? How could these recommendations be improved for on-the-ground implementation?
 - b. What specific recommendations do you have for civil society participation?
 - c. Which of these recommendations would you prioritize? Why?

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- Suggested areas of research
- Your favourite AREU publications or events
- What you believe we could do better
- Your field of interest, employment or study, as well as location

Recent Publications from AREU

Date	Publication name	Author	Available in Dari	Available in Pashto	Research theme	Publication type
May 2016	Developing transboundary water resources: What perspectives for cooperation between Afghanistan, Iran and Pakistan?	Vincent Thomas with Mujib Ahmad Azizi and Khalid Behzad			Natural Resources Management	Case Study
May 2016	A Closer Look at Men and "Masculinities": Their Proactive Contribution to Gender Equality	Leah Wilfreda RE Pilongo, Chona R. Echavez, Pervaiz Tufail, SayedMahdi Mosawi		✓	Gender	Policy Note
April 2016	A State Built on Sand: How Opium Undermined Afghanistan	David Mansfield			Natural Resources Management	Book
April 2016	Briefing Note on Fieldwork in Kandahar Province, December 2015 - January 2016: Opium Poppy and Rural Livelihoods	Paul Fishstein	✓	✓	Natural Resources Management	Brief
March 2016	The Afghan National Army After ISAF	Antonio Giustozzi & Ali Mohammad Ali			Governance	Briefing Paper
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February 2016	The Political Economy Of Education and Health Service Delivery In Afghanistan	AREU			Governance & Political Economy	Issues Paper
January 2016	Household Water Insecurity: Changing Paradigm for Better Framing the Realities of Sustainable Access to Drinking Water in Afghanistan	Thomas Vincent	✓	✓	Sustainable Livelihoods	Discussion Paper
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November 2015	"90% real"- The rise and fall of a rentier economy: Stories from Kandahar, Afghanistan	Giulia Minoia & Adam Pain			Sustainable Livelihoods	Working Paper
October 2015	Reaching Boiling Point: High School Activism in Afghanistan	Antonio Giustozzi & Ali Mohammad Ali	✓	✓	Governance	Issues Paper
October 2015	Helmand on the Move: Migration as a Response to Crop Failure	David Mansfield	✓	✓	Natural Resources Management	Brief
October 2015	Briefing note on fieldwork in Balkh Province, May 2015 Opium poppy and rural livelihoods	Paul Fishstein	✓	✓	Natural Resources Management	Brief
October 2015	Women and the Elections: Facilitating and Hindering Factors in the Upcoming Parliamentary Elections	Orzala.A Nemat	✓	✓	Governance	Policy Note
October 2015	Taking village context into account in Afghanistan	Adam Pain	✓	✓	Sustainable Livelihoods	Policy Note
September 2015	Afghanistan Research Newsletter	AREU				Newsletter



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