



Afghanistan Watch
دیده بان افغانستان

Preparing for Resource Extraction

A learning guide for civil society in Afghanistan
to support equitable & peaceful resource extraction

In collaboration with Global Rights

June 2014

© 2014 Afghanistan Watch. All rights reserved.

First edition: June 2014

Cover photo: People of Sya Dara, Bamiyan province.

Credit: Lien De Brouckere (Global Rights), November 2013.

We encourage others to copy, reproduce or adapt to meet local needs any or all parts of this book, provided that the parts reproduced are attributed to the original publication and are distributed not-for-profit. Any organization or person who wishes to copy, reproduce, or adapt any or all parts of this book for commercial purposes must obtain permission from the publishers.

About Afghanistan Watch

Afghanistan Watch is an independent, non-governmental, non-political and leading Afghan civil society organization registered with the Ministry of National Economy of the Islamic Republic of Afghanistan. It envisions a democratic, peaceful, tolerant and just society in which all citizens have equal opportunities to realize their human potentials.

Its mission is to undertake activities that will promote peace, justice, and a culture of mutual tolerance and respect for human rights in Afghanistan. As its core values the organization is strongly committed to democracy, justice, human rights, sustainable and balanced social and economic development of the country and impartiality, independence and professionalism as guiding principles of its activities.

About Global Rights: Partners for Justice

Founded in 1978, Global Rights is a human rights organization working in partnership with local activists in Africa, Asia, and Latin America to build grass roots movements that promote and protect the rights of populations marginalized because of gender, ethnicity, race, socio-economic status, gender identity or disability.

We are unique among organizations in this arena because our model works and builds impact from the broad base of society upwards, teaching and training coalitions, organizations and individuals with a participatory approach that fosters long-term transparency and sustainable change. Global Rights is distinctive in its grass roots approach that strengthens partners to document and expose human rights abuses, conduct community outreach and mobilization, advocate for legal and policy reform, and provide legal and paralegal services.

Contents

EXECUTIVE SUMMARY	1
INTRODUCTION.....	2
Need for the Learning Guide.....	2
Purpose	3
Acknowledgments	3
1 AFGHANISTAN’S NATURAL RESOURCE WEALTH	5
Land.....	5
Water	5
Minerals.....	6
Mes Aynak.....	6
Hajigak	7
More areas of interest	7
Oil & Gas	8
Amu Darya Basin	8
Afghan-Tajik Basin	9
Sheberghan Gas	9
TAPI Pipeline	9
2 THE PLAYERS, THEIR ROLES AND RESPONSIBILITIES.....	10
Government.....	11
Central government.....	11
National Assembly	12
Provincial and local governments	12
Non-state actors	12
Foreign governments	13
States’ human rights obligations	13
Implementers.....	14
Mining and oil companies.....	14
Investors.....	15
EIA and other consultants	16
Contractors and suppliers	16
Security companies	16
About companies generally	16

Affected Communities	19
Civil Society & Media	19
Civil society	19
Media.....	20
3 PROCESS, IMPACTS AND BENEFITS	21
Process	21
Mining.....	21
Oil and gas	25
Changes	27
Potential Impacts	28
Land	28
Environment	31
Security	34
In-migration of people	35
Cultural sites	36
Health	36
Women & children.....	37
Economy	38
Potential Benefits	38
More money	38
Jobs.....	39
Local content.....	42
Infrastructure and service delivery	43
4 LEGAL FRAMEWORK	45
Context	45
Land	46
Legal framework.....	46
Administration	48
Land acquisition and compensation.....	49
Water	51
Legal framework.....	51
Administration	52
Priorities in water use.....	52
Environment	53
Legal framework.....	53
Administration	53
Environmental impact assessment & management.....	54
Public participation & information.....	56

Mining and Petroleum	57
Legal framework.....	57
Administration	58
Licensing process	59
Mine closure	61
Extractives revenue.....	61
Labour	63
Legal framework.....	63
Administration	63
Safeguard Policies	64
Legal framework.....	64
Administration	64
Human Rights	65
Legal framework.....	65
Administration	66
Rights-based development	67
Right to free, prior and informed consent.....	67
5 TOOLS FOR CIVIL SOCIETY	68
Challenges to Manage	68
Timing for Activities on Industrial Mining	70
Empower Local Communities	71
Mobilize local communities	71
Strengthen community land rights	71
Establish local information centers	72
Support community cohesion, representation and decision-making	73
Facilitate a community-led impact assessment	77
Advise on community development agreements	79
Document and Monitor	83
Monitor alone or together?	83
Conduct a baseline study.....	84
Ways to document and monitor	85
Kinds of impacts	88
Against what standards	88
Inform Policy and Practice of Governments and Companies	89
Transparency	89
Security	90
Artisanal and small-scale mining	93
Local content.....	94
Seek Accountability	95

Plan your advocacy & map stakeholders.....	95
Research the project and company	96
Pressure companies and authorities.....	98
APPENDIX.....	103
Definitions.....	103
Acronyms.....	108
Endnotes.....	111

Executive Summary

This learning guide is for civil society in Afghanistan to support peaceful and equitable resource extraction.

In the introduction we describe the **need for the learning guide**: the Government of the Islamic Republic of Afghanistan (GoIRA) is looking to revenue from its rich mineral wealth to replace the foreign development and military aid running the country. Both the fact and the way in which the GoIRA and resource extraction companies carry this plan out carries serious consequences for the security and cohesion of the country, local communities' lands and livelihoods, and sustainable development.

Part 1 is about **Afghanistan's natural resource wealth**, including its land, water, and mineral deposits, in particular the significant mineral deposits of Mes Aynak and Hajigak.

Part 2 describes **the players, their roles and responsibilities** in resource extraction in Afghanistan. We identify and describe the four main groups of players involved in resource extraction (government, implementers, affected communities, civil society and media) as well as their roles and responsibilities, including their human rights obligations.

Part 3 describes resource extraction **processes, impacts and benefits**. For the processes, we describe which activities take place during the different stages of the life cycle of industrial mining and oil and gas activities. We talk about the potential negative impacts on land, the environment, security, in-migration, cultural sites, health, women and children, and the economy. We also describe the potential benefits of more money, jobs, infrastructure and service delivery. Throughout, we highlight issues that influence whether these changes will be – and be seen to be – positive or negative.

Part 4 describes the **legal framework** of resource extraction. After first describing some of the challenges to resource governance in Afghanistan, we summarize the key relevant laws about land, water, environmental protection, mining and petroleum, labor, international safeguard policies, and human rights.

Part 5 has **tools for civil society** to advocate for more positive outcomes from resource extraction for everyone involved, based on the issues raised in Parts 1 through 4. We begin with a reality check of the challenges, give a suggested timeline for your activities, and then describe tools to empower local communities, document and monitor, inform policy and practice of governments and companies, and seek accountability.

The **appendix** has a list of definitions of words, a list of acronyms, and the endnotes indicating the source of the materials in the guide and providing you with many additional resources that you can consult.

Introduction

Need for the Learning Guide

For several millennia – some estimates say 6,500 years – Afghanistan’s stunning deposits of natural resources have been mined, including gold, cement, lapis lazuli, coal, rubies, emeralds, tourmaline, and uranium. The mining process used to date has been mostly artisanal, meaning people using human strength and rudimentary tools, such as shovels, sieves and picks, or in the case of lapis lazuli, explosives. The majority of these sites are run by organized criminal networks or individuals, many of whom have links to political elites and warlords, and are often backed by private militias and protected by political patronage, with the products smuggled outside of the country.

This status quo is set to change, as the Government of the Islamic Republic of Afghanistan (GoIRA) is looking to revenue from its rich mineral wealth – valued at USD 1 to USD 3 trillion – to replace foreign development and military aid currently making up 90 per cent of the country’s budget. The GoIRA says the sector will provide more than 500,000 new jobs and 50 per cent of the country’s gross domestic product by 2030.¹ Afghanistan’s location between the rich oil and gas fields of Central and Western Asia, and the high demand centers of China and India also makes it an important transit country for energy.²

The plan is for short-term government revenues to come from oil and gas fields in the north and medium-sized gold mines, and for long-term revenue to come from the country’s two largest known mineral deposits: the Mes Aynak copper deposit in Logar province worth an estimated USD 46 billion,³ and the Hajigak iron ore deposit – called the “jewel of Afghanistan” – straddling Bamiyan and Maidan Wardak provinces, worth an estimated USD 340 billion.⁴ Together, Mes Aynak and Hajigak are expected to generate an average of USD 900 million in revenues per year until 2031.⁵

Without a foundation based on peace building, good governance and social justice and accountability, the shift to industrial-scale extraction of Afghanistan’s mineral wealth runs a high risk of exacerbating drivers of conflict and increasing insecurity resulting in production stoppages, alongside irreversible long-term environmental damage, or social harms and human rights violations in an already fragile country. All this in turn threatens the very economic and development returns the government and country desperately seek and need.

In light of these many and significant changes that will occur with industrial-scale resource extraction, civil society has a key role to play in ensuring these changes will result in more positive than negative outcomes for the people of Afghanistan, today and tomorrow.⁶ To date, most attention about resource extraction in Afghanistan has focused on transparency of tendering, contracts and revenue management. This learning guide focuses less on those issues, and more on information and tools for civil society to anticipate and manage conflict triggers and flashpoints of real or perceived inequities in resource extraction.

Purpose

The audience for this learning guide is civil society groups in Afghanistan, whether community-based, civil society, or non-governmental organizations, who are new to resource extraction, especially industrial mining and oil and gas activities. The purpose of the learning guide is for them to learn about Afghanistan's natural resource wealth; the players' roles and responsibilities in development of those resources; the process, impacts and benefits of resource extraction; the legal framework in Afghanistan; and identify a suite of tools civil society could adapt and use to support equitable and peaceful resource extraction in Afghanistan.

The idea for the learning guide came from the content delivered and discussed during a capacity-building workshop on natural resources hosted in November 2013 by Afghanistan Watch and the Civil Society Natural Resources Monitoring Network (NRMN). The NRMN was formed in January 2013 after a series of deliberations and discussions between Afghan and international civil society organizations. Today, the NRMN consists of more than 35 Afghan civil society organizations and pursues the goal of promoting effective, transparent, balanced, sustainable, peaceful utilization of natural resources for Afghanistan's economic and social development.

Global Rights was invited by Afghanistan Watch to support NRMN in designing and delivering the November 2013 training workshop. That training only touched on a few aspects of large-scale extraction, and this learning guide aims to respond more closely to the concerns raised during the training, to provide a more complete overview and knowledge of the mining process, relevant laws and common issues with tools for civil society to act on these to ensure extraction brings – and is seen to bring – more good outcomes than bad.

Acknowledgments

We are grateful to the Ministry of Mines and Petroleum of the Government of the Islamic Republic of Afghanistan for their financial support for this project. We also extend our warmest thanks to Global Rights: Partners for Justice for their collaboration and significant in-kind contribution of time and resources that made this learning guide possible. The guide was written and edited by Lien De Brouckere, Director of Natural Resources & Human Rights with Global Rights. This learning guide draws on the work of Global Rights' Natural Resources and Human Rights program, and adapts materials from Bridges Across Borders Cambodia and Development and Partnership in Action, Rights & Democracy, Natural Justice, and borrows cartoons from Zoi Environment Network.⁷

From the author – I am particularly grateful for those who took the time to review drafts of this learning guide, including Javed Noorani (Integrity Watch Afghanistan), Stephen Carter (Global Witness), Cristina M. Villegas (Pact), and Ian Thomson (Shinglespit Consultants). I am also indebted to those who made the November 2013 training possible with their expertise, including Javed Noorani and Mariam Kosha (Integrity Watch Afghanistan), Jalil Benish (Afghanistan Watch), Ibrahim Jafari (Afghanite), insights from Mussa Mahmoodi (Logar Civil Society Association), as well as the USAID MIDAS team, including Atiq Sediqi, Leah Soroka, and Rachel Wareham. Several legal fellows with Global Rights, including Elham Kazemi, Rachel Jamison and Simon Ault, helped with editing.

This is just the first edition of a learning guide on a complex and dynamic topic in a fragile country. All opinions, errors and omissions are mine. I invite you to send me your contributions, comments and insights, by email to liend@globalrights.org, to improve this learning guide in a second edition.

1

Afghanistan's Natural Resource Wealth

Land

Agriculture remains a key source of livelihood for many in Afghanistan: an estimated 50 per cent of the labor force is engaged in agricultural production, with 70 to 80 per cent of Afghans relying on agriculture, animal husbandry, and artisanal mining for their daily survival.⁸ Afghanistan is the world's leading supplier of illicit opiates, responsible for 90 per cent of production of and trade in opium.⁹

Studies show that access to natural resources is the cause for more than half of local level conflict incidents in Afghanistan. Competition for land and water are regularly cited as two top causes of conflict in communities across the country.¹⁰

Water

As Afghanistan's climate varies, the country is vulnerable to both drought and flooding. Eighty per cent of its water resources come from snowmelt off the Hindu Kush mountains, contained in three major watersheds. The Panj/Amu Darya Basin includes about 50 per cent of Afghanistan's water resources.¹¹ All of these resources are vulnerable to contamination from human waste, dump sites and chemicals, and 11 per cent of the country has no water resources.¹² Access to fresh water is very important: only 25 per cent of the country's available water is considered safe to drink, and only 31 per cent of households have access to safe drinking water.¹³

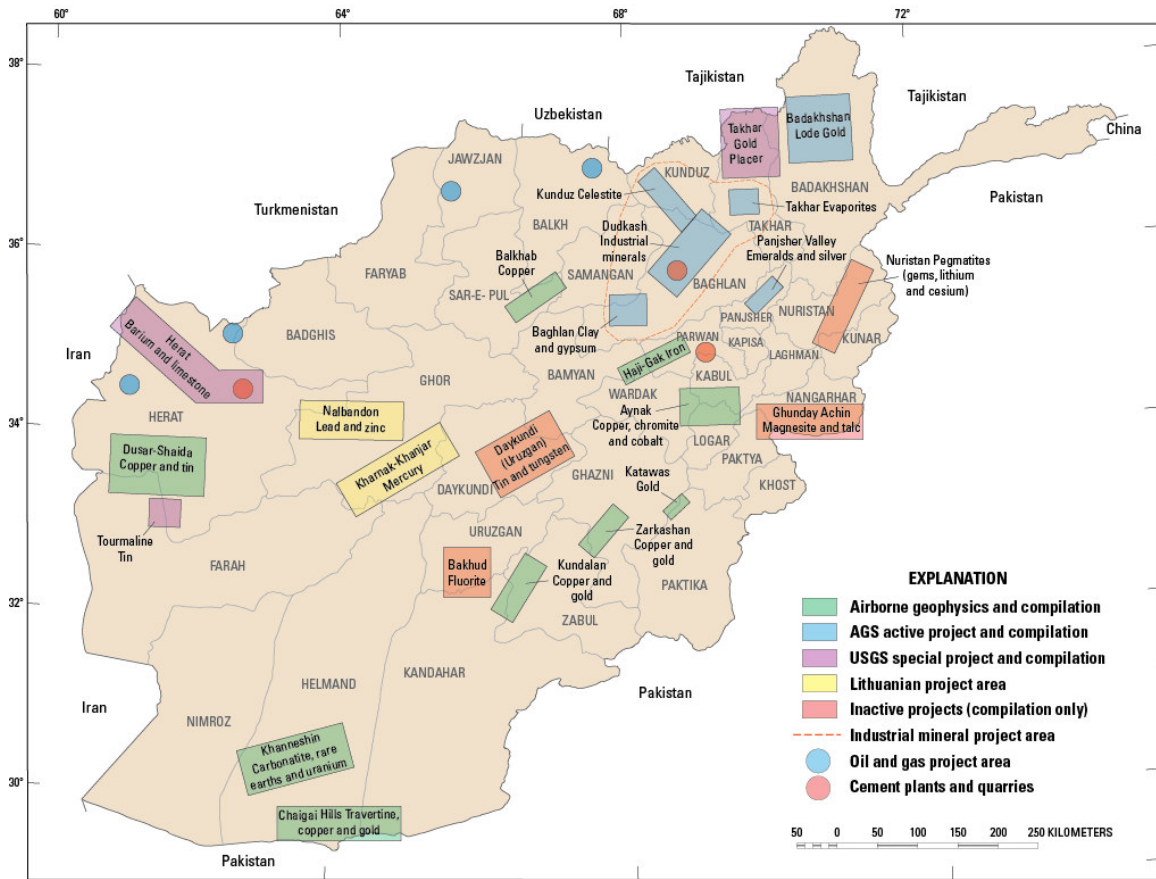
Rainfall has been decreasing by about 2 per cent per decade since the 1960s. By the end of the century, the average temperature is expected to rise anywhere from 2°C and 6.2°C while rainfall will decrease by as much as 1.6 inches. Afghanistan's overall water supply will be severely threatened by the rapid melting of glaciers in the Himalayas. The United Nations' Environment Program (UNEP) has identified Afghanistan as a country most vulnerable to climate change, reporting that since 1998, natural disasters and extreme weather events affected more than 6.7 million Afghans.¹⁴

Afghanistan suffered a severe drought from 1998 to 2006, again in 2008 to 2009 and is now in 2014 battling yet another dry spell with serious consequences for food security. The ongoing drought also increases the chance of flash floods as dry, compacted soils are unable to quickly absorb precipitation.¹⁵ Many areas of the country are prone to annual flooding, causing loss of life, farmland, villages, and infrastructure.

Minerals

Afghanistan has a large variety of subsurface and natural resources, including precious and semi-precious stones, common metals, rare-earth metals, precious metals, and a number of fossil fuel reserves of coal, oil and natural gas. Afghanistan’s mineral wealth has an estimated worth anywhere from USD 1 to USD 3 trillion dollars.¹⁶

Figure 1 Map of Afghanistan’s areas of interest for minerals, oil and gas¹⁷



Mes Aynak

The Mes Aynak copper concession in Logar province is estimated to have 5.5 million tons of high-grade copper ore, worth an estimated USD 43 to 46 billion. The mine is estimated to bring in around USD 541 million per year from 2016 onwards.¹⁸ Two Chinese state-owned enterprises, China Metallurgical Group Corporation (MCC) and Jiangxi Copper Corporation (JCC), made a USD 3.5 billion investment in 2008 with the Ministry of Mines and Petroleum

(MoMP) to mine and process the copper, and build a railway, a 400 megawatt power plant and copper smelter. This was the largest foreign investment in Afghan history.

Reports indicate the contract is being renegotiated, in particular about construction of the refinery and railway, likely due also in large part to falling copper prices and a slowing Chinese economy.¹⁹ The project has encountered a number of obstacles:

Corruption – Then mining minister, Mohammad Ibrahim Adel, was accused of taking a USD 30 million bribe, paid into a Dubai bank account, for awarding the copper contract to MCC by manipulating an exceptionally flawed bidding process.²⁰ Though Adel denied the accusation, he lost his job and was imprisoned.²¹ When the Ministry of Mines published the country's mining contracts, the contract for Aynak was not disclosed.

Security – News reports speak of rampant looting at the Aynak mine site, and up to 19 rocket attacks by the Taliban and militant groups in 2013 alone.²² News reports also speak of abduction threats aimed at local staff compelling MCC employees to leave, and that only a skeletal security staff remains.²³ The Ministry of Mines says there are no security issues at Aynak.²⁴

Coal mine closure – The government closed two operating coal mines included in the Aynak contract without adequate notice or compensation to laborers. This deprived an estimated 5,000 laborers, traders and their dependents of a livelihood. This has contributed to increased insecurity in Bamiyan province, and made it easier for anti-government fighters to recruit.²⁵

Archaeological site – The company suspended its work to allow an unanticipated archaeological rescue dig operation to excavate Buddhist artifacts.

Not enough phosphate – Geological issues are also halting progress, as it was only discovered last year that Afghanistan does not have enough phosphate, which the government had agreed to provide MCC to smelt the copper.

Hajigak

Iron deposits occur along a line from Badakhshan to Herat, and extend several hundred kilometers from Tajikistan to Iran.²⁶ Within this area, the largest and best-known iron deposit is at Hajigak straddling Bamyan and Wardak provinces. It is called the “jewel of Afghanistan” for its immensity and high-quality: 1.8 million tons of high-grade iron ore. The deposit is worth an estimated USD 340 to 350 billion.

The Afghan Iron & Steel Consortium (AFISCO), led by the Indian state-owned steel company, Steel Authority of India Limited (SAIL), and Kilo Goldmines Ltd (Kilo), a Canadian junior exploration company, were selected by the Ministry of Mines in 2010 as the preferred bidders. AFISCO, Kilo and the Ministry of Mines are negotiating the production contract. It is expected to be signed when the revised Minerals Law is passed.

More areas of interest

The country is said to have one of the largest untapped reserves of **lithium**,²⁷ which may be worth USD 149 billion when extracted.²⁸ Lithium is a soft metal used to make lithium-ion and

lithium-polymer batteries, which are used to power everything from electric cars to smart phones and computers.²⁹ Some predict that demand for lithium will more than double in the next decade.³⁰ Lithium deposits are in evaporite lakes in Ghazni, Herat, Nimroz and Helmand.³¹

While the largest deposit of sedimentary **copper** is at Aynak, deposits of porphyry copper are more widespread, occurring in the northeast primarily through Baghlan and Takhar Provinces, the southwest in areas such as Herat and Farah, and in the southeast and central regions throughout Hilmand, Kandahar, Zabul, Uruzgan, and Ghazni. **Tin and tungsten** deposits stretch from Bamiyan and Nangarhar in the northeast up to Badakhshan, and are also located in Hirat and Farah and from Kandahar Province up to Daykundi Province.³² **Gold** deposits are concentrated in the northeast, primarily in Badakhshan.³³ Contracts have been successfully tendered for Qara Zaghan deposit, and are in late negotiation stages for Badakhshan, Zarkashan, and Kundalan.³⁴

Bauxite is mostly in Daykundi and Urozgan, but smaller deposits extend through Ghazni up to Maidan Wardak.³⁵ Deposits of **lead and zinc** are dispersed from the northeast in Badakhshan, to central Afghanistan, and across into Herat and Farah.³⁶ The largest deposits are in Badakhshan and Bamiyan.³⁷

Afghanistan also has other resources under its surface, including barites, gypsum, graphite and pegmatites.³⁸ Uranium is in Hilmand Province,³⁹ and salt deposits are in the northwest corner, from Faryab across to Takhar.⁴⁰ Chromite and talc deposits extend in a line from Kabul, through Ghazni and Zabul, and down into Kandahar.⁴¹ Afghanistan also has over 40 varieties of marble found from northern Badakhshan, down through Nuistan and Kabul and out into Ghor and Daykundi.⁴² Finally, there is a long history of **gemstone** mining. Precious stones such as rubies, emeralds, lapis lazuli, and tourmaline are found in Kabul, Kapisa, Badakhshan, and Laghman Provinces and are primarily mined artisanally.⁴³

Oil & Gas

Oil, natural gas, and coal resources are also located within Afghanistan's borders, mostly in the northern provinces of Afghanistan, including Takhar, Baghlan, Parwan, and Samangan. Herat and Badghis additionally have smaller deposits.⁴⁴ The MoMP reports that Afghanistan has three proven basins (Afghan-Tajik Basin, Amu Darya Basin, and Herat Basin) and two potential basins (Katawaz Basin, Helmand Basin).⁴⁵ The country's hydrocarbons are estimated to be worth USD 2 trillion.⁴⁶

Amu Darya Basin

The Amu Darya Basin, straddling Sar-e-Pol and Faryab provinces in northern Afghanistan is estimated to contain over 80 million barrels of oil.⁴⁷ According to World Bank studies, Amu Darya Basin has the capacity to produce 250,000 barrels per day of crude oil. In December 2011, the Chinese state-owned enterprise China National Petroleum Corporation (CNPC) and an Afghan company, Watan Oil and Gas signed a USD 700 million Exploration and Production Sharing Contract with the Afghan government.⁴⁸ This project, too, has encountered a number of obstacles. Logistics and transport are a problem, because truck transport requires an agreement with Tajikistan and Uzbekistan, and rail transport requires a railway.⁴⁹ There have also been security concerns.⁵⁰

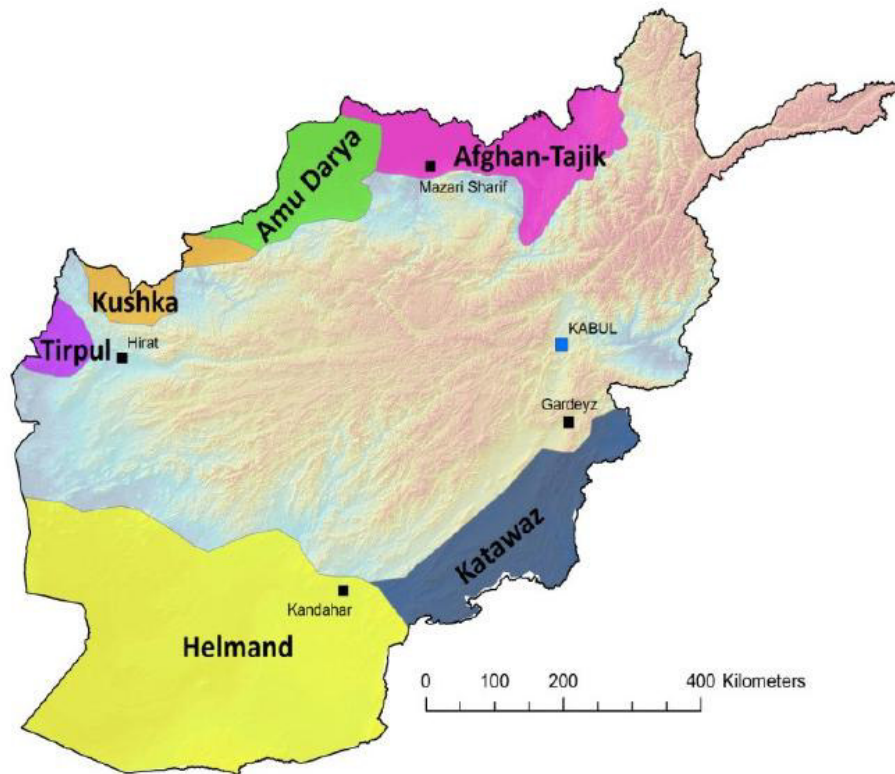


Figure 2 Map showing major hydrocarbon-bearing basins⁵¹

Afghan-Tajik Basin

The Afghan-Tajik Basin is estimated to have much larger oil reserves than the Amu Darya Basin. Six blocks in the Afghan-Tajik Basin were recently tendered in late 2012. A competitive bidding process selected a consortium made up of Turkish Petroleum (Turkey), Dragon-Oil (United Arab Emirates), Kuwait Petroleum (Kuwait) and Ghazanfar (Afghanistan) as the preferred bidder.⁵²

Sheberghan Gas

The Sheberghan gas fields are in Jawzjan province, and were originally discovered and brought into production by the former Soviet Union. In late 2012, the MoMP signed a USD 10 million contract with Turkish Petroleum Corporation to rehabilitate 8 wells, with support from the Asian Development Bank.⁵³ The United States Department of Defence's Task Force for Business Stability Operation (TFBSO) is supporting the development of a gas sweetening plant.

TAPI Pipeline

The Turkmenistan-Afghanistan-Pakistan-India (TAPI) pipeline is an 1,800 kilometer pipeline planned to transport natural gas from Turkmenistan through Afghanistan to Pakistan and India. This project has been discussed for more than 20 years, and could earn Afghanistan hundreds of millions in transit fees alone.⁵⁴ The relevant government and buy/sell agreements have been concluded with significant support from the Asian Development Bank. Today, the project is in the phase of establishing the pipeline company. Preparation for the project is scheduled to start in August 2015. Construction and commissioning is projected to start in August 2017.⁵⁵

2

The Players, their Roles and Responsibilities

Effective advocacy by civil society requires preparation, especially to understand who is involved in natural resource development, and what each player's roles and responsibilities are. By understanding the diversity of people involved and their responsibilities, CSOs can more effectively ensure that each actor is playing their role, and identify any gaps that should be filled.

In this part, we identify and describe the four groups of players involved in resource extraction, as well as their roles and responsibilities, including their human rights obligations:

Government, identifying and describing the role of ministries and agencies of the central government, parliament, provincial and local government, non-state actors, foreign governments, and the human rights obligations of the State.

Implementers of the resource extraction project, identifying mining and oil companies, investors, EIA and other consultants, contractors and suppliers, and security companies in Afghanistan, as well as the role of companies, their different ownership structures, as well as the human rights obligations of companies.

Affected communities, describing the different definitions of 'affected communities', which can broadly be understood as those communities affected physically, environmentally, socially, economically, and culturally by a resource extraction project.

Civil society and media, describing the various groups in civil society and their different roles, as well as the media, both national and international.

Each of these groups of players is diverse, meaning there are a number of different opinions within each group. Not everyone who is a 'government' player or an 'implementer' will hold the same opinions or share the same perspective. The same is true members of an 'affected community' – some may be in favor of mining, some against, and some members may be ambivalent. Similarly, within civil society, different groups will have varied interests that may or may not be shared by other civil society groups.

Government

Government or the authorities are the State institutions that control whether or not an extractives project can go forward, where it can operate, and how it can operate. A number of different State entities are involved in authorizing a company to operate, and then monitoring its activities.⁵⁶ Overall, government's role is to define, implement and monitor compliance with the policies, legislation and regulatory framework for all players involved in natural resource development.

Central government

The 2004 Constitution defines the role of the government to include implementation of laws in force, protecting the independence and territorial integrity of Afghanistan, maintaining public law and order, preparing the budget, regulating financial affairs and protecting public wealth, and devising and implementing programs for social, cultural, economic, and technological progress among other things.⁵⁷

Here we list some of the key ministries and agencies of the GoIRA involved in the regulation and oversight of the extractives industry, along with an indication of the most relevant aspects of their roles:

Office of the President – Overall responsibility for governing the country.

Ministry of Mines and Petroleum (MoMP) – Responsible as the primary agency for administration, oversight and regulation of “upstream” mining, including exploration and extraction.⁵⁸

Ministry of the Interior (Moi) – Responsible for security. The **Afghan National Police** has a special Mines Protection Unit (MPU) with a reported staff of 1,500 security personnel at Mes Aynak site. The MPU is planned to expand up to 7,000 security personnel to provide physical security to all sites.⁵⁹

National Security Council (NSC) – Responsible for security and stability in Afghanistan.

Ministry of Foreign Affairs – Responsible for relations with other countries, including investors from other countries.

Ministry of Finance (MoF) – Responsible for implementing fiscal management and revenue collection functions.⁶⁰

National Environmental Protection Agency (NEPA) – Responsible for regulating, certifying, coordinating, monitoring and enforcing the Law on Environment and its supporting regulations.

Ministry of Rural Rehabilitation and Development – Mandate is to enhance human security and promote equitable growth through poverty reduction.

Ministry of Women's Affairs – Responsible for women's affairs, including as affected by natural resource development.

Inter-Ministerial Committee (IMC) – Responsible for broad-based oversight of extractive industry activities in Afghanistan as well as to inform various government players of the status of sector developments. IMC membership is legally prescribed: Ministry of Mines (Chair); Ministry of Finance (Vice Chair); Ministry of Economy (Member); Ministry of Commerce & Industries (Member); Ministry of Foreign Affairs (Member), Independent Directorates of Local Government (IDLG) and the National Environmental Protection Agency (NEPA).

Ministry of Energy and Water – Responsible for providing the country with electricity and water, including regulating and monitoring water quality and availability.

Ministry of Public Works – Responsible for building the transport infrastructure to get Afghanistan's extracted natural resources to market.

Ministry of Commerce and Industries (MoCI) – Responsible for regulating “downstream” mining, including processing, transformation, trade and export of mineral products that take place once the raw mine material has been mined.

Ministry of Labor and Social Affairs, Martyrs and Disabled (MoLSAMD) – Responsible for regulating the labor market and providing the necessary and proper technical, educational and vocational training opportunities for the different sectors.

Afghanistan Geological Survey (AGS) – Principal agency for conducting geo-scientific studies including regional geological mapping, geochemical and geophysical surveys and regional mineral district assessment.

Afghanistan Independent Human Rights Commission (AIHRC) – Responsible for monitoring the situation of human rights in the country; promoting and protecting human rights; monitoring the situation of and people's access to their fundamental human rights and freedoms; investigating and verifying cases of human rights violations; and taking measures for the improvement and promotion of human rights in Afghanistan.

National Assembly

The National Assembly is the highest legislative organ of Afghanistan.⁶¹ The National Assembly is made up of two bodies: the *Wolesi Jirga* (House of People) and *Meshrano Jirga* (House of Elders).

Provincial and local governments

In addition to the ministries and agencies of the central government, provincial and local governments also play a key role. Provincial and local governments have a key role to play in the daily activities of the company.

Community Development Councils (CDCs) also have a role to play in ensuring that social and human development activities are aligned with local and provincial priorities.

Non-state actors

An estimated nearly 80 per cent of Afghanistan's existing mines are controlled by non-state actors.⁶² Coal, gemstones, talc powder, chromite and quarry materials are often produced

outside the formal control of the central government, and the government has not received royalties for the exploitation of the mineral resources.⁶³ Some estimates indicate that 3 million tons of coal is illegally exported every year. Today, the Taliban is believed to be earning in excess of USD 10 million from onyx marble mining in Helmand province alone.⁶⁴ If this trend continues, Afghanistan's mining industry could compete with its opium industry, which supplies nearly all the world's heroin supply and is controlled by gangs.⁶⁵

The National Mining Policy prohibits illegal mining in Afghanistan and foresees legal action for violators. In mid-2013, the Ministry of Mines released a list of 1,400 companies and individuals engaged in illegal mining, including minerals such as coal, chromite, and a variety of precious and semi-precious stones, lead, fluoride, talc, marbles, rocks, sand and more.⁶⁶ The NRMN has repeatedly called on the government to stop the looting of Afghanistan's mineral resources and close the illegal operations.⁶⁷

Foreign governments

Foreign governments play a role in natural resource development if companies operating the extractives or other resource development project are from a foreign country. This role can range from political influence, to promoting their country's investments in Afghanistan, to technical expertise and more.

Diplomats in embassies will help companies identify and pursue opportunities, and also collect market research, distributing it to interested companies back home. A government might also organize and finance a trade mission, often led by a senior politician with representatives of companies interested in doing business in a particular country or region.

A foreign government might intervene with the host government to secure favorable treatment for an investor, or to resolve a dispute. Governments also negotiate and sign bilateral trade and investment treaties to facilitate business relations between countries. Many have export credit agencies that provide funding to companies doing business in foreign countries.⁶⁸

Foreign governments and organized crime operating in countries such as Pakistan, Iran and China, also play a role in receiving smuggled goods, such as minerals and gems from warlords and local strongmen.

States' human rights obligations

States have an obligation:

To **respect** human rights

To **protect** human rights, and

To **fulfill** human rights.

The **obligation to respect human rights** is a 'negative' obligation requiring States to refrain from taking any measures that could prevent individuals from enjoying their rights.

The **obligation to protect human rights** calls on Governments to take positive action to protect their citizens, by adopting appropriate policies and legislation, enforcing it effectively,

including ensuring that the enjoyment of the right is not interfered with by third parties (such as corporations).

Positive actions include preventing, investigating, and punishing abuse, and providing access to redress.

A state cannot always prevent rights violations from taking place but fails its obligation to protect human rights if it does not take action where violations do occur (such as destruction of homes, or pollution that affects food, water and health).

The **obligation to fulfill human rights** requires States fulfill the rights and freedoms it freely undertook under various human rights instruments. It is perhaps the most positive expectation on the part of the State in that it requires the State to move its machinery towards the actual realization of the rights.

Implementers

The implementers of a resource extraction project are the people, groups, or companies actually involved in carrying out the project.

Mining and oil companies

Mining and oil companies are responsible for following the agreement they have with the government and to respect the laws of Afghanistan, as well as any obligations imposed on the company by their home State government.⁶⁹ Some of the mining and oil companies in Afghanistan are (generally sorted by larger companies and the beginning, and smaller companies at the end of the list):

China National Petroleum Corporation (CNPC) – Chinese state-owned oil and gas company, and 5th largest company in the world.⁷⁰ CNPC is the lead investor in Amu Darya Basin.

China Metallurgical Group Corporation (MCC) – Chinese state-owned mining company that is known to have holdings worth only a little over a billion dollars.⁷¹ MCC is an investor, license holder, and operator of Mes Aynak. MCC also operates the Saindak copper-gold mine in Balochistan, Pakistan.

Steel Authority of India Limited (SAIL) – Indian *maharatna* state-owned steel-making company, earning about USD 8.1 billion in revenue in 2013. The government of India owns about 80 per cent of SAIL's equity and retains voting control of the company.⁷² SAIL was selected as a preferred bidder for the Hajigak project.

MCC-JCL Aynak Minerals Company Ltd. (MJAM) – MJAM is the project developer for Mes Aynak. MJAM was founded through joint capital contributions from MCC and JCC through a share ratio of 70 per cent and 25 per cent, respectively.⁷³

Afghan Iron and Steel Consortium (AFISCO) – a consortium of 7 companies, including 3 Indian state-owned companies (SAIL, National Mineral Development Corporation and Rashtriya Ispat Nigam) and 4 private steelmakers (JSW Steel, JSW Ispat, Jindal Steel and Power and Monnet Ispat). SAIL is the largest shareholder in

AFISCO.⁷⁴ AFISCO was nominated as the preferred bidder for three of the four blocks of the Hajigak iron deposit.⁷⁵

Jiangxi Copper Corporation (JCC) – Chinese state-owned copper producer and fabricator (the largest copper producer in China), and investor in Mes Aynak.

Watan Group – Afghan services, logistics and security company for the extractives industry. The company has denied allegations that it is owned by cousins of President Hamid Karzai.⁷⁶ CNPC and Watan Group won a tender of three blocks in the Amu Darya basin.

Bakhtar Oil & Gas Company, LLC – Afghan company. Selected as preferred bidder for two oil and gas exploration blocks in the Afghan-Tajik basin.⁷⁷

Afghan Gold and Minerals Company (AGMC) – Afghan mining and services company. AGMC operates the QaraZaghan project in Baghlan Province, Afghanistan.⁷⁸ AGMC was also selected as a preferred bidder for the Balkhab copper deposit project in Sar I Pul and Balkh provinces. It is 51% owned by Afghan Krystal (owned by an Afghan businessman) and 49% owned by Afghan Gold Holdings (Guernsey).⁷⁹ AGMC is also a 49 per cent shareholder in the Turkish-Afghan Mining Company.⁸⁰

Afghan Minerals Group (AMG) – Exploration contractor. Selected as a preferred bidder for the Shaida copper deposit project in Herat province.⁸¹

Turkish-Afghan Mining Company (TAMC) – Kabul-registered, Turkish-led limited liability corporation that is a partnership between EtiGümüs (51 per cent share) and Afghan Gold and Minerals Company (AGMC) (49 per cent share). Selected as a preferred bidder for the Badakhshan gold deposit project in Badakhshan province. EtiGümüs is the largest Turkish mining company and 16th largest silver producer in the world.⁸²

Kilo Goldmines Ltd (Kilo) – Canadian junior exploration company with a 20 per cent interest in Kilo Iron Ore (BVI), which was nominated as a preferred bidder for a fourth block of the Hajigak iron ore deposit.⁸³

Silk Road Mining – Canadian junior exploration company, selected as a reserve bidder for the Balkhab and Shaida copper deposit projects.⁸⁴

CAPG Ltd. – Selected as a reserve bidder for the Badakhshan gold deposit project.⁸⁵

In addition to these, the Pajhwok News Agency maintains a list of mining companies in Afghanistan.⁸⁶

Investors

Investors are people who put money into a company hoping to receive a positive return on their investment (a profit). The possible sources of money include a government, commercial banks, development banks (such as the World Bank, the International Finance Corporation, the International Bank for Reconstruction and Development, or the Asian Development Bank), export credit agencies and even companies themselves.

EIA and other consultants

Mining and E&P companies often hire specialized companies or consultants to do the environmental impact assessment (EIA), assessing and evaluating the impact of the mine on the environment and people. Such companies are ‘EIA consultants’. Companies can also hire a number of other consultants, such as anthropologists, social performance consultants, resettlement consultants and more.

Green Tech Construction & Engineering – A subsidiary of Omran Holding Group, an Afghan company active in different fields of environmental consultancy, water & wastewater industries, infrastructure construction and more.⁸⁷ This company did the baseline environmental assessments and environmental impact assessments for CNPCI Watan Oil & Gas Afghanistan Ltd. for the Amu Darya Basin.⁸⁸

Contractors and suppliers

Mining and E&P companies very often hire contractors to perform specialized technical work, such as geologists, drilling companies, electrical companies, road builders, and more.

Central Asian Mining Services (CAMS) – Afghan exploration, drilling and mining support company.⁸⁹ Commissioned by Kilo to identify the logistics infrastructure necessary to support an exploration programme at its block in Hajigak.⁹⁰

Afghanite – First Afghan mining and geotechnical service provider in Afghanistan.⁹¹

Security companies

The perimeter of mining sites must by law be guarded by the Mines Protection Unit, yet a mining or E&P company may hire private security companies to operate within the perimeter of the site.

About companies generally

In this section you will learn about the role of companies generally (to generate profit for their shareholders), the many different kinds of companies, and companies’ human rights obligations.

Role of companies

The role of a company is to generate wealth by maximizing profits for its shareholders, who



Local people do not distinguish among mining companies on the basis of size or type (even though the companies may have different resources, capacities and procedures to respond to local population needs).

Figure 3 Zoi Environment Network Cartoon

are the owners of the company (called the ‘shareholder’ theory of the firm, following Milton Friedman). Some companies follow a different theory, called the ‘stakeholder’ theory, whereby they believe shareholders are just one stakeholder among many, and that solely maximizing profits for shareholders is detrimental to stakeholder interests and to shareholders.

Companies may do corporate social responsibility (CSR) activities, which refers to charitable or philanthropic activities. Some companies may also say they want a ‘social license to operate’, which means getting the ongoing approval of the local community and other stakeholders.⁹²

Public, private and state-owned companies

In general, there are three different kinds of companies in terms of how people can own the company. Companies can be owned by the state (a ‘state-owned enterprise’) or by shareholders. For companies owned by shareholders, the shares may be publicly traded on a stock exchange (a ‘public company’), or held privately (a ‘private company’).

Here we briefly describe these three kinds of company ownership structures:

State-owned enterprise – A state-owned enterprise is one whose ultimate owner is the government. The government may own all of the shares of the company, or only enough to have control, with the other shares held by other companies or individuals. Getting information about state-owned companies depends on whether the government is open and transparent.⁹³

Public company – A public company is one whose ownership is divided into ‘shares’, with each share representing partial ownership of the company, and these shares are publicly traded on a stock exchange. The stock exchange is where shareholders trade their shares.⁹⁴ Most stock exchanges require companies listed on the exchange to file a certain amount of information with the body that regulates the stock exchange. This can make it easier to get information about a public company than a private company or a state-owned enterprise.

Private company – A private company can generally be defined as one whose ownership is also divided into ‘shares’, yet those shares are privately held by a small group of people or companies, and the shares are not publicly traded on a stock exchange. This often makes it more difficult, but not impossible, to get information about private companies.⁹⁵

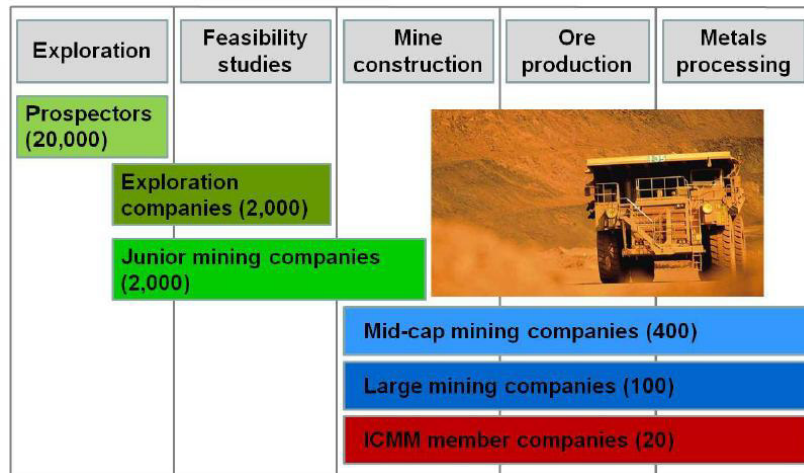
Company ownership structures in practice can be overwhelmingly complex. They are often made up of a large number of entities, each reporting to each other in a hierarchical structure. The controlling company is the ‘parent company’, and the entities reporting to the parent company are ‘subsidiaries.’ In some cases, the parent company is a state-owned enterprise (fully or partially), and one or more of the parent company’s subsidiaries is a public company with shares traded publicly on a stock exchange.

The many companies in extractives

A wide range of companies (or implementers) is involved in extractive industries development. For example, in mining, companies specialize in particular stages of the mining process. The

graphic below from the global International Council on Mining and Metals (ICMM) names the kinds of companies, and shows in which phase they specialize. These companies can be domestic, or foreign; private or state-owned.

Figure 4 Kinds of mining companies globally⁹⁶



Companies' human rights obligations

Prior to 2011, there was a lack of clarity or international consensus on the role and responsibilities of companies in ensuring their activities *and* their business relationships respect human rights.

Based on a proposal developed from six years of research and consultations around the world, the United Nations Human Rights Council in June 2011 unanimously endorsed a set of Guiding Principles on Business and Human Rights to implement the 'Protect, Respect, Remedy' framework (UN Guiding Principles). The UN Guiding Principles establish an authoritative global standard on the respective roles of businesses and governments in helping ensure that companies respect human rights in their own operations and through their business relationships. They apply to *all* businesses in *all* situations.⁹⁷

The UN Guiding Principles have pillars: **the state duty to protect** (against human rights abuses by third parties-including business enterprises-through regulation, policymaking, investigation, and enforcement), **the corporate responsibility to respect** (to act with due diligence to avoid infringing on the rights of others and to address negative impacts with which they are involved), and **the need for greater access to effective remedy** (both judicial and non-judicial, for victims of business-related abuses). Some of the UN Guiding Principles we think are most relevant to Afghanistan's extractive industry include Guiding Principles 4, 5 and 6 on the state-business nexus, and Guiding Principle 7 on supporting business respect for human rights in conflict-affected areas.⁹⁸

Importantly, the UN Guiding Principles have been adopted into a number of other international standards, including those of the Organization for Economic Cooperation and Development (OECD), the Sustainability Framework of the World Bank's private sector lending arm, the

International Finance Corporation (IFC), the UN Global Compact, ISO 26000 and the European Union's Corporate Social Responsibility (CSR) Policy.

Affected Communities

Defining who is a community affected by a resource extraction project can be problematic.

Government and companies may have an interest in a narrow definition, believing this will minimize community opposition and compensation demands. They often use a spatial measurement to define affected communities, such as the people living within a certain distance of the fence of the resource extraction site ('fence-line communities').

A spatial measurement can be very arbitrary, because it does not include people living a further distance away who are affected by the resource extraction project due to environmental impacts, effects on cultural sites of wider significance, or social impacts of job-seekers migrating into nearby towns.⁹⁹

A narrow definition of affected communities also creates problems when fence-line communities receive certain benefits, and other affected communities living further from the site do not receive benefits. Conflicts and clashes occur frequently because affected communities living further away who feel left out retaliate against the fence-line communities, and against the company.

Among affected community members, two groups in particular in Afghanistan can be characterized as highly vulnerable:

- **Women and children** – Only about 30 per cent of adult women with some primary education are literate.¹⁰⁰ Eighty-seven per cent of women and girls have been subjected to some form of abuse, including sexual assault and forced marriage.¹⁰¹ Almost no women own land. Women's labor participation rate is only about one-third.
- **Nomadic groups** – also called Kuchis or *maldar*, who have been migrating with their animals between Afghanistan and Pakistan for generations. More than half of actively migrating Kuchis live in poverty (the highest poverty levels in the country), compared to just over a third of Afghans nationwide. The literacy rate is less than 10 per cent, with just 3 per cent of women being literate.¹⁰²

Civil Society & Media

Civil society

Civil society, as we use the term in this learning guide, refers to a wide range of groups, including non-governmental organizations (NGOs), civil society organizations (CSOs), community-based organizations (CBOs), online groups and social media communities, social movements of collective action and/or identity, religious leaders, faith communities, and faith-based organizations, labor unions, social entrepreneurs, grassroots associations and cooperatives.¹⁰³

Civil society has a number of important roles to play in pursuing the goal of promoting effective, transparent, balanced, sustainable, peaceful utilization of natural resources for economic and social development of Afghanistan, especially mobilizing and empowering local communities, lending technical expertise, creating spaces for dialogue and improved information-sharing, facilitating informed local community participation in decision-making, and supporting a diverse and inclusive resource extraction sector.

In general, civil society can play a number of roles as:

Watchdog, holding government, companies and institutions to account, promoting transparency and accountability, in terms of revenue, tendering and contracts, and also in social justice and accountability, especially important in contributing to peace and inclusive development.

Advocate, raising awareness of societal issues and challenges and advocating for change.

Service provider, delivering services to meet societal needs such as education, health, food and security; implementing disaster management, preparedness and emergency response.

Expert, bringing unique knowledge and experience to shape policy and strategy, and identifying and building solutions.

Capacity builder, providing education, training and other capacity building.

Incubator, developing solutions that may require a long gestation or payback period.

Representative, giving power to the voice of the marginalized or under-represented.

Citizenship champion, encouraging citizen engagement and supporting the rights of citizens.

Solidarity supporter, promoting fundamental and universal values.

Definer of standards, creating norms that shape market and state activity.¹⁰⁴

Media

The local or national media may want to report on the situation of extractives in Afghanistan. The same may be true of media in the companies' home States (especially India and China). In recent years there have been many stories in the national and international media about mining, evictions, land problems and environmental issues around the world, including about actions by the companies operating in Afghanistan. These reports help raise awareness of the problem and may influence the GoIRA's decision whether or not to grant mining licenses in some areas.¹⁰⁵

3

Process, impacts and benefits

This part describes resource extraction processes (which activities take place during the different stages over the project cycle), as well as the changes extraction brings. Importantly, we highlight issues that influence whether these changes will have positive or negative outcomes for peaceful and equitable resource extraction in Afghanistan. These are key issues for civil society to know in order to advocate for more positive outcomes, and avoid negative outcomes.

Process

Mining

Mining can be done with ordinary tools as it has been done in Afghanistan for millennia or industrially at a large-scale with sophisticated machinery and infrastructure. These two kinds of mining can be roughly defined as follows:

Artisanal and small-scale mining (ASM), means people using human strength and rudimentary tools to mine, usually in the informal sector as a livelihoods strategy in rural areas. Artisanal miners usually use shovels, sieves and picks (or in the case of lapis lazuli, explosives) to mine. Small-scale miners typically have more financing, some mechanization (such as dump trucks or excavators), are better organized, more likely to be legal and more likely to have higher productions than artisanal miners.

Industrial mining means mining using sophisticated industrial machinery and geological instruments, trucks two or three times as tall as ordinary people, and sites that produce hundreds of thousands of tons of ore operated by companies with a lot of money (the world's such companies have a value of about USD 10 billion to 40 billion). The world's increasing demand for minerals and metals, driven globally today primarily by China, is met through industrial mining.

Pictures of the difference between ASM and Industrial Mining

Figure 5 Artisanal and Small-Scale Mining in Afghanistan¹⁰⁶



Figure 6 Industrial-scale Copper Mine in Balochistan, Pakistan



Artisanal and small-scale mining

To date, the vast majority of mining in Afghanistan for the past several millennia has been artisanal and small-scale mining. Despite this known fact, there are no reliable sources of information about artisanal and small-scale mining in Afghanistan.¹⁰⁷ It is unknown how many men, women and – most worryingly – children work in ASM of stone quarrying, gold, lapis, precious and semi-precious stones. It is unknown how many dependents these laborers and their traders support. It is unknown the specific dangers and hazards they likely face, such as deaths, forced labor, threats and intimidation. Finally, the actual and potential economic value of the resources they extract is also unknown.

Globally, we know that the vast majority of people working in ASM are very poor, exploiting marginal deposits in harsh and often dangerous conditions as a livelihoods strategy for them and their dependents. For example, in Badakhshan province, small-scale mining of lapis lazuli drives much of the provincial economy, because it involves laborers, businessmen, transport companies, security and militias, mafia actors, equipment suppliers and government officials, as well as all of their dependents.¹⁰⁸ The picture on the right shows mid-grade lapis in a Kabul warehouse, ready for export to India.¹⁰⁹



According to the International Labor Organization (ILO), in recent years artisanal and small-scale mining accounted for 15 to 20 per cent of the world's non-fuel mineral production.¹¹⁰ Globally, about 40 per cent of mine workers are women, but this varies dramatically based on the country, the mineral, and the characteristics of the deposit (women tend to mine in shallow deposits). Production of some minerals, such as emeralds and tungsten, is globally virtually all from ASM.¹¹¹

Industrial mining

To date, no industrial mining has taken place in Afghanistan. The Ministry of Mines has recently put two significant deposits to tender and has been negotiating (and renegotiating) the production contracts for Mes Aynak and Hajigak (see Part 1).

Industrial resource extraction has not occurred historically in Afghanistan, due to war and neglect, as well as unlicensed operations and smuggling. Today, the country still has many challenges to overcome before industrial resource extraction can take place, including significant capital investment and highly skilled labor, power supply, water supply, and transportation infrastructure including access roads and railroads for construction materials, machinery and to get extracted resources to neighboring countries and ports. Unexploded land mines in mineral-producing areas deter development, as well as warlords and elites who have taken control of land and mineral operations.

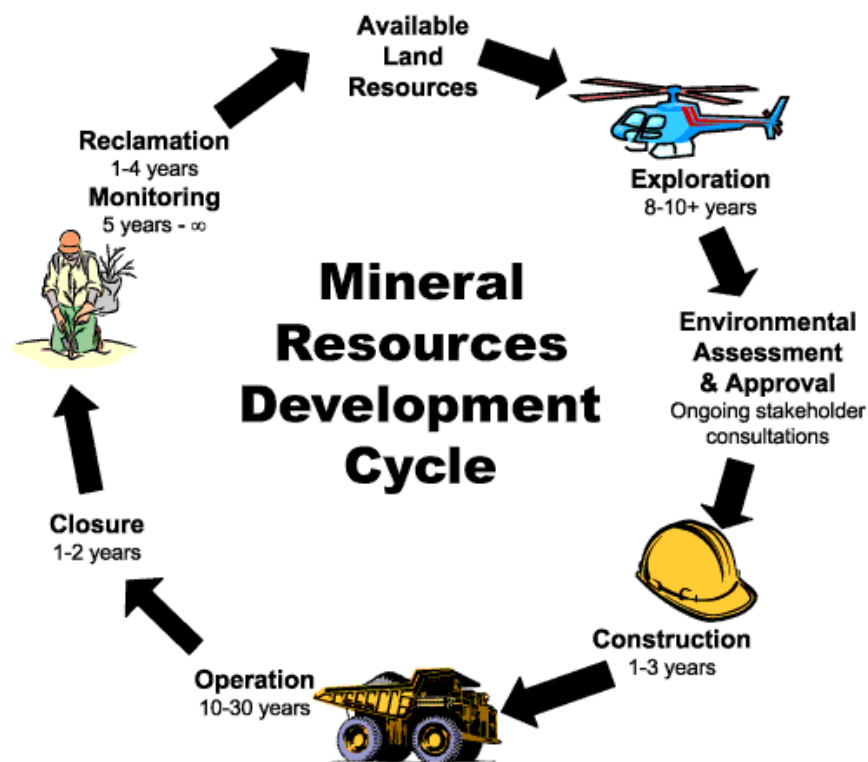
Stages of the “Upstream” Industrial Mining Process

The industrial mining industry can be categorized into two broad segments: the “upstream” industry and the “downstream” industry, as follows:

- The **upstream industry** is about looking for minerals and getting them out of the ground, so it includes exploration and extraction.
- The **downstream industry** is about transforming the raw materials into a use-able form, and selling them, so it includes processing, transforming, trade and export.

In this section we will talk about the four main stages of the “upstream” industrial mining process: exploration, development, operation and closure.

Figure 7 Stages in the upstream industrial mining process¹¹²



1. Mine exploration stage

Satellites, airplanes or helicopters help make geologic maps. Maps of Afghanistan’s geology are available to the public, such as on the United States Geological Survey’s Afghanistan Minerals Information System page.¹¹³ These maps help prospectors and exploration companies do research, staking, sampling, prospecting and high-level exploration.¹¹⁴

When an exploration or junior mining company finds a viable deposit (some estimates say that the chance of bringing a raw mineral prospect into production is 1 in 5,000 to 10,000), they sell this deposit to a larger mining company, which can be mid-cap or a large mining company.

Exploration can last from anywhere from 1 to 10 years.

2. Mine development stage

The new operator of the mining company does activities such as feasibility studies, environmental impact assessments, social baselines, developing a mine closure & reclamation plan, permitting, community engagement and consultation, negotiation of impact-benefit agreements, project financing, and construction.

Development can last from 7 to 10 years: 2 to 3 years for testing, 1 to 3 years for environmental assessment and permitting, and 1 to 5 years to build the mine and supporting infrastructure.¹¹⁵

3. Mine operation stage

The mining company hires and trains employees and contractors, commissions, undertakes production (stripping waste away to expose ore), and does mine expansion or contraction.

An industrial mine generally has 4 work areas: an excavation area, a processing plant, a waste storage area (for waste rock and tailings) and supporting services.

Operation can last anywhere from 2 to 200 years.¹¹⁶

4. Mine closure stage

The mining company will implement the mine closure and reclamation plan, which says how the company will close the site and return the land, as closely as possible, to its pre-mining state. This typically involves shut-down, decommissioning (taking apart, draining), reclamation (returning the surrounding land, as closely as possible, to its pre-mining state), and post-closure.

Mine closure generally lasts to perpetuity.¹¹⁷

Oil and gas

Streams of the petroleum industry

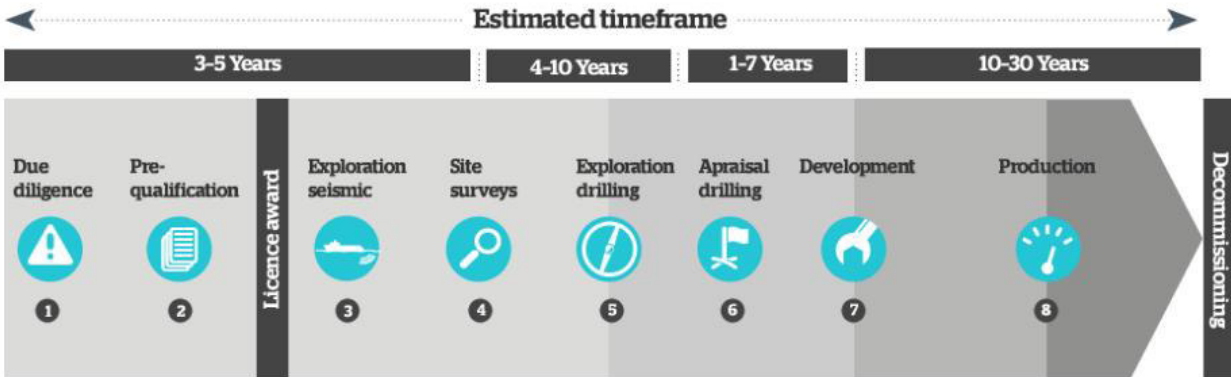
The petroleum industry as a whole is usually talked about in terms of three “streams”: “upstream”, “midstream” and “downstream”:

- The **upstream industry**, also commonly called exploration and production (E&P), finds and produces crude oil and natural gas.¹¹⁸
- The **midstream industry** processes, stores, markets and transports (such as in transmission pipelines) crude oil, natural gas, natural gas liquids (NGLs, mainly ethane, propane and butane) and sulphur.¹¹⁹
- The **downstream industry** includes oil refineries, petrochemical plants, and distributors.¹²⁰ They bring the final products, such as gasoline, diesel, jet fuel, heating oil, asphalt, lubricants, synthetic rubber, plastics, fertilizers, antifreeze, pesticides, pharmaceuticals, natural gas and propane to consumers.¹²¹

Stages in “upstream” oil and gas exploration and production (E&P)

Oil and gas exploration and production (the “upstream” industry) generally has four stages: exploration, well development, production, and site abandonment.

Figure 8 Cairn Energy, Oil and Gas Project Lifecycle¹²²



1. E&P exploration stage

In the exploration stage the E&P company use geophysical prospecting and/or exploratory drilling to search for deposits. Companies then conduct **seismic surveys** to get a better picture of the underground rock formation. Shooting seismic causes explosions or mechanical vibrations, which in turn can cause significant damage to crops.¹²³

This stage can last 3 to 10 years.

2. E&P well development stage

After exploration has located an economically recoverable field with its seismic survey, the E&P company constructs one or more wells from the beginning (called ‘spudding’) to either abandonment if no hydrocarbons are found, or to well completion if hydrocarbons are found in sufficient quantities.¹²⁴ The only way to determine whether a rock formation actually contains oil or gas is to drill a well, using a drilling rig.¹²⁵

This stage can last 1 to 7 years.

3. E&P production stage

In production, the E&P company extracts the hydrocarbons and separates the mixture of liquid hydrocarbons, gas, water, and solids, removing the parts it cannot sell, and selling the remaining liquid hydrocarbons and gas. Oil is nearly always processed at a refinery; natural gas either in the field or at a natural gas processing plant.¹²⁶

This stage can last 10 to 30 years.

4. E&P site abandonment stage

When production is no longer economically viable, the E&P company plugs the well bore(s) with cement and cleans and restores the site. If during the well development stage the tests indicate the well is a dry hole, not capable of producing commercial quantities of oil and gas, the drilling crew plugs the well bore with cement and cleans up the site.¹²⁷

Changes

All resource extraction activities – whether ASM or industrial mining, or oil and gas – bring changes. These changes are experienced differently by everyone, and can have positive or negative outcomes. Afghanistan is unique in many respects, and it will be for you to understand and help anticipate how the impacts and benefits will play out in your unique and beautiful country.

Wherever it takes place, resource extraction disrupts traditional ways of life and systems. We can group the changes of large-scale resource extraction into 3 broad categories:

1. **Environmental impacts** causing socio-environmental changes;
2. An **influx of people** causing socio-economic and cultural changes; and
3. An **influx of cash**, also leading to socio-economic changes.

How these changes are felt – and seen to be felt – as positive or negative outcomes creates potential for tensions and conflicts at the local, provincial and national levels. This can increase tensions and generate violent conflict even in peaceful countries. In conflict-affected states, the risks of large-scale resource extraction triggering existing drivers of conflict and leading to violent conflict is very high.¹²⁸ Although few studies on the intersection between natural resources and conflict in Afghanistan have been done to date, one recent study of seven case studies in Afghanistan shows natural resources (whether land, water, minerals or timber) as a driving or contributing factor to local-level conflict, in concert with political, economic and social forces.¹²⁹

The changes resource extraction brings can be managed to ensure individual projects and the sector as a whole result in more positive than negative outcomes, that it increases rather than decreases insecurity, and that more benefits than additional harms occur.

Managing the changes for positive outcomes takes significant human and financial resources, early preparation, and most of all the persistent and shared determination of all stakeholder groups involved, especially government, companies, affected communities,



Destruction of local roads, limited support from mining companies to improve infrastructure and dust formation by mining trucks and operations are among the leading complaints of the local residents.

Figure 9 Zoi Environment Network Cartoon

civil society and the media. Civil society has a role to play in educating, convening and creating spaces for effective dialogue, and lending technical support and expertise to this long-term process.

Potential Impacts

In this section we describe the impacts of resource extraction on land, water, the environment, security, in-migration, cultural sites, health, women and children, and the economy. In describing these impacts, we highlight issues that influence to what degree an impact will have – and be seen to have – a positive or a negative outcome.

Most impacts of large-scale resource extraction occur at the **local level**, such as environmental degradation, loss of lands, loss of livelihoods and social impacts of in-migration.¹³⁰ It is also at this level where community members have very high expectations of the benefits large-scale resource extraction will bring – especially jobs. In fact, high local community expectations have been acknowledged as possibly the most significant issue for Afghanistan to manage in resource extraction.¹³¹ Too often, instead of seeing their lives improve as they had hoped, resource-rich communities around the world have been sorely disappointed in the few jobs or benefits they see. They are instead burdened by overwhelming negative impacts that make their already difficult lives even worse than before, ultimately leaving them with a sense of resentment and injustice, expressed through violence and contributing to increased insecurity.

Land

Access to land is critical for extractives industry development. Government and companies need to access to land to explore, and then must acquire the land (often using the government's power of expropriation) in order to build the mine and operate oil wells.

The government of Afghanistan has been exercising its power to **expropriate land** (also called compulsory acquisition of land) to develop infrastructure such as roads, schools and channels. (See the section on “Land” in Part 4.) Given that Afghanistan has **weak land tenure** systems and governance, access to land by government and companies raises many significant questions and concerns for local communities, such as:

- Most community members are **not aware of their land rights**, and have not registered their lands in accordance with the most recent laws. While they may believe they are landowners, the government may only recognize them as land holders, giving them fewer rights. There are also concerns about sufficient recognition of **customary lands**.
- Given Afghanistan's recent history, there are many **absentee land owners** who may have legitimate claims to the land, yet are not present or are in a land dispute upon returning.
- The same is true for **artisanal and small-scale miners**: some community miners may have legal rights to the land they work, while others may not.
- Several reports indicate the government has used **force to evict** people from their land at Aynak with armed tanks. It was also reported that local government officials came and smashed a villager's crops in order to force him to vacate the land.¹³²

Compensation for expropriation and damage

When the government expropriates land, it **must pay compensation** in accordance with Afghanistan's land laws and any applicable safeguard policies, which generally have a much higher standard (see the sub-sections on "Land" and "Safeguard policies" in Part 4).¹³³

Companies, too, must pay compensation when they damage lands.

It is not surprising that at Mes Aynak, one of the key problems was compulsory acquisition of agricultural land, and payment of compensation: the government's land records were incomplete, community members did not have legal or customary ownership papers, and the laws on land acquisition were ambiguous.¹³⁴ There are a large number of issues related to payment of compensation that you can anticipate:

- How much compensation the local community member receives depends on **what kind of land tenure** they have under the laws of Afghanistan. Communities may in law have a weaker form of land tenure than they believe themselves to have in practice.
- Almost **no women** in Afghanistan own land, so only men are eligible to receive compensation. This raises issues of women's disempowerment and inequity.
- The most common **forms of compensation** available for land owners or holders are land-for-land (receiving another plot of land and cash value for a house), resettlement (receiving another plot of land with a built house), or land-for-cash (receiving cash value of land and house). At Mes Aynak, communities said they were evicted from their lands before resettlement sites were complete, and farming land at the new site was inferior to their original lands.¹³⁵ They also said the new site had no water supply, mosque or burial ground.¹³⁶ Often, community members see land-for-cash as an attractive option, but it can leave them landless, driving them deeper into poverty as they may not know how to manage such a large sum of money.
- The government's process of **valuing** land to compensate for the expropriation, lost access or damage may not be transparent or reflect local values. At Aynak, communities believed the prices were far below market value.¹³⁷
- To complicate matters, extractive industry development can often increase the **value** of land, which in turn increases the number of transactions, often by politically well-connected **speculators**. This raises the risk of land owners or holders unjustly losing their land rights. At Aynak, concerns have been raised that compensation was only paid to people of power and influence in the area.¹³⁸
- Government can also often significantly **underpay** or **delay** (sometimes forever) payment of the compensation. For example, at Mes Aynak, displace residents only received less than half of the compensation promised.¹³⁹ It is reported that only one-third of the affected communities received proper compensation.¹⁴⁰
- Land owners or holders whose land has been expropriated must know how to **seek redress** and promptly recover due compensation. Such redress can be sought through the national legal system, or any accountability mechanisms of the international entities (whether a multilateral development bank or other financial institution) funding the project.

Loss of livelihoods

Land acquisition by government or companies leads to **reduced access to land and pasture** for local communities. Communities at Mes Aynak, for example, no longer have access to their agricultural lands and livestock within the mine site's security perimeter, resulting in loss of livelihoods, and a much higher cost of accessing the villages near the site.¹⁴¹

Resource extraction sites can pose special risks to vulnerable indigenous **minorities**, such as the Kuchis. The nomadic Kuchis have for centuries been traveling between the south and north as self-sustaining communities, and will also be affected by extraction projects, because they will lose access to extraction project areas.

Seismic surveys in oil and gas exploration cause **damage** to the land, especially crops. Operating oil wells and mine sites can cause erosion and deforestation. Land disturbances can occur as a result of industrial mine site excavations, tailings waste, tailings dams.

Smelting copper and iron ores requires a lot of energy to melt the ore to metal, and it is likely that the government will look to coal to provide this energy. This means that aside from acquiring agricultural land, the government will likely also acquire **coal** land, as it did with Killij and Espheshta for Aynak. This deprived an estimated 5,000 laborers, traders and their dependents of their livelihood.¹⁴²

Figure 10 Cartoon from Chad¹⁴³



Environment

All extractives activities can have significant environmental impacts, whether ASM, industrial mining, or exploration and production of oil and gas.

Artisanal and small-scale mining

ASM activities can have many significant negative impacts on water quality, including direct dumping of tailings and effluents into rivers, threats from improperly constructed tailings dams, river damage in alluvial areas, and river siltation. Gold and silver ASM's impacts can include cyanide and mercury pollution.¹⁴⁴ ASM can also cause water borne diseases (as there are rarely toilet facilities on these sites), plus higher incidence of malaria (in malaria countries) due to stagnant pools of water.

Industrial mining

Industrial mining has severe and permanent environmental impacts. These impacts are not just during the life of the mine; they last forever because industrial mining alters the physical, chemical and biological composition of the land.

Water

Industrial mines **compete with other users** – people, agriculture – for water use. This can have significant effects on an economy such as Afghanistan's, where 95 per cent of all water used in the country is absorbed by agriculture.¹⁴⁵ The high number of people migrating to the site to work (or in search of work) also has significant environmental impacts on the neighboring villages, towns and cities, especially water availability and quality. Security perimeters can also **block access** to water for local people, negatively affecting their livelihoods.



Local people often oppose mining in environmentally sensitive ecosystems such as mountain forests and rivers, where impacts on water quality and biodiversity can be serious.

Figure 11 Zoi Environment Network Cartoon

Industrial mines for copper and gold use much higher quantities of water than mines for coal, salt, or gravel. Total water consumption for the Aynak copper mine, for instance, is estimated to be 584,000 cubic meters per day for the first 16 years and 573,000 cubic meters per day

thereafter.¹⁴⁶ Experts observe that Afghanistan has so far failed to take the availability of fresh water into account in planning industrial mining or oil and gas activities.¹⁴⁷ This is very worrying, when people's right to water is already very much at risk: more than half of those surveyed by the AIHRC reported their water was not healthy and clean, and about one-third reported they had to walk more than 15 minutes to reach the nearest water source.¹⁴⁸

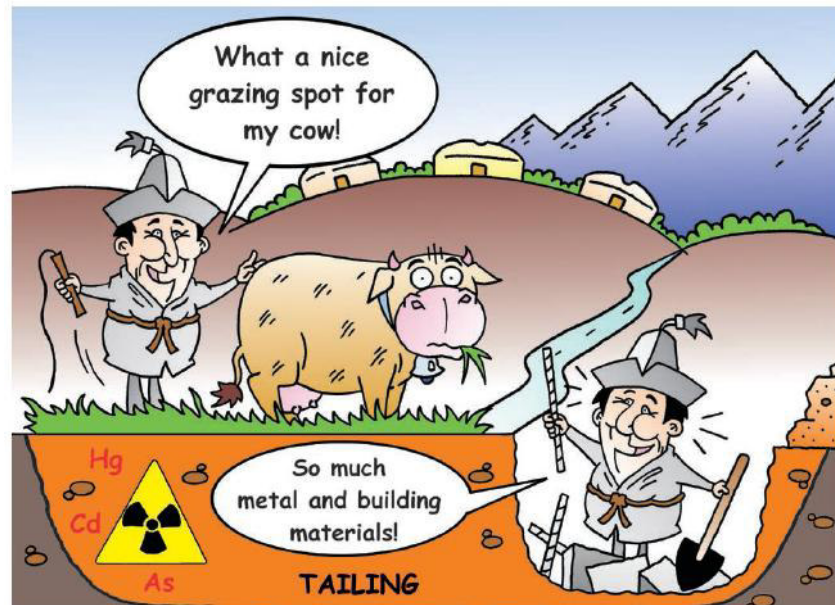
Importantly, even though mines require high *quantities* of water, they **do not require high quality water**. The quality of water mines need (for example to process and recover metals, control dust, wash equipment) is lower than the quality of water for human consumption. This means a mine does not need high quality fresh drinking water for its processes. Instead, mines can use wastewater, hypersaline groundwater, or water from other disposal sources.¹⁴⁹ It is unclear whether such alternative water sources have been considered in Afghanistan.

Industrial mines can affect **groundwater**. Extracting minerals decreases water depth and natural filtration, and contaminated water can enter streams and lakes.¹⁵⁰ Tailings (waste) facilities can fail and local fresh water supply. Access to clean water for residents in Kabul City is already difficult,¹⁵¹ and the water for the Mes Aynak project is drawn from an aquifer shared with Kabul City.¹⁵² Aynak mine's waste water has a high likelihood of polluting the Logar River, which could result in spreading adverse health and livelihood effects to other provinces such as Laghman and Nagarhar.¹⁵³

Finally, impacts on water also have an important **security** dimension: in Afghanistan water is the second most contentious issue at the local level after land. Good governance of water resources – which underpin all aspects of society, whether energy, health, economic growth and food security – is vital to prevent new conflicts from emerging at the local level.¹⁵⁴

Waste and tailings

“No modern, large-scale, open-pit mine can be operated without significant long-term impacts, partly because 99 per cent of all rock moved and processed at modern open-cast mines ends as waste.”¹⁵⁵



Improper use and disposal of chemicals, such as mercury and cyanide, and

The grazing of animals on old tailings sites and the salvaging of materials left there are risky practices that may expose people to radioactive or toxic contamination.

Figure 12 Zoi Environment Network Cartoon

wastes is dangerous and can gravely affect the soil (affecting the quality of crops and the underlying waterbed), water and health of those using them, and their surrounding communities.

The waste from a mine is called '**tailings**', a waste stream consisting of ground rock and the remainders of the processes used to extract the desired product from the run of the mine ore. This waste is discharged, normally as slurry, to a final storage area, commonly known as a tailings management or storage facility¹⁵⁶

Tailings disposal is commonly identified as the single most important source of environmental impact for mining operations. The volume of tailings requiring storage can often exceed the in-situ total volume of the ore being mined and processed.¹⁵⁷ In Afghanistan, high levels of earthquake risk add to the importance of correct siting and design of the tailings dam."¹⁵⁸

Acid mine drainage

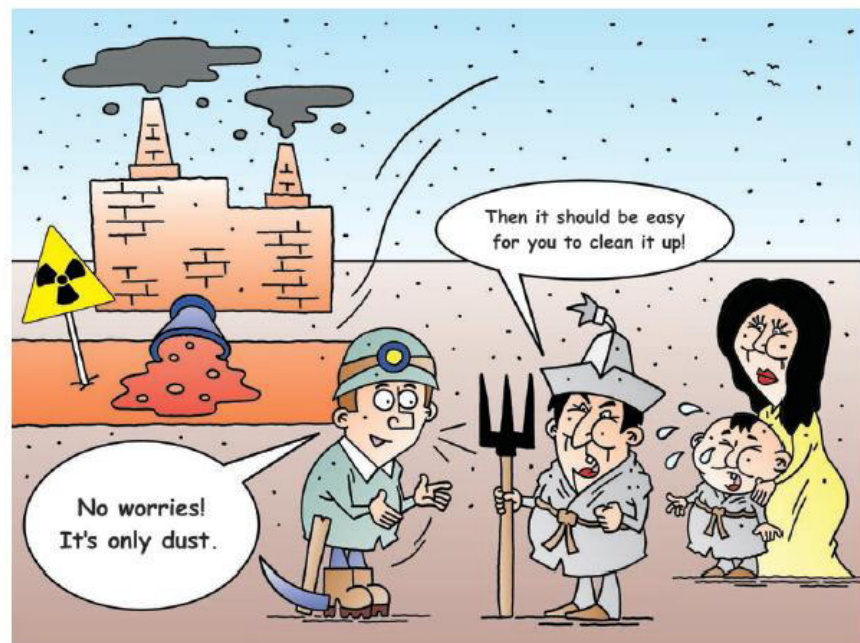
The number one environmental impact of industrial mining is acid mine drainage (AMD). AMD occurs when sulphide-bearing minerals in rock are exposed to air and water, converting sulphide to sulphuric acid. AMD can destroy aquatic habitats, is difficult and very expensive to treat, and, once started, can continue for centuries. Much AMD also contains toxic heavy metals, such as lead, mercury, arsenic, and cadmium.¹⁵⁹

Mine closure

The chemical and physical instability of the land of the mine site are the key remaining impacts whose life continues well after the mine closes. This requires continued monitoring and remediation. Because a mining company may declare bankruptcy or be taken over by another company, companies should provide insurance and performance bonds, and reclamation bonds designed to finance clean-up and restoration.¹⁶⁰

Noise, dust and air pollution

During exploration, drilling can cause excessive noise and air pollution, damage homes, and seismic studies can cause noise, and destroy crops. Dust in particular can reach very high levels.



Industry managers often understate the environmental impacts of their enterprises, while the people remain dissatisfied and demand effective measures.

Figure 13 Zoi Environment Network Cartoon

Oil & Gas

Gas flaring

Gas flaring is when a well operator burns the pockets of natural gas released when drilling. Although technology exists that allows the natural gas to be captured rather than burned, the technology costs more than the value of the small amounts of natural gas that can be recovered.¹⁶¹ Gas flaring is wasteful and environmentally hazardous because it releases greenhouse gases. It also releases sooty ash in the area, emits sulphur compounds that can result in acid rain, and emit cancer-causing compounds.



Figure 14 Oil in Kenya Cartoon (by Gado)

Waste

Oil production waste must be kept in properly lined basins in accordance with industry standards, and be kept at a minimum distance from local dwellings. In the Republic of Congo, at higher altitudes, communities complained that during the rainy season oil waste basins overflow and the chemical contents seep into the wider expanses of earth, streams and rivers ordinarily used for the consumption of water and fish.

By way of example, in August 2013, the Government of Chad suspended all activities of China National Petroleum Corporation (CNPC) for violations of environmental standards while drilling for crude oil. The government found “flagrant violations of environmental standards” by CNPC. They also found CNPC’s behavior unacceptable: there were also intentional spillages in order to reduce costs, and no facilities to clean spilled crude. The minister also said CNPC dug trenches and dumped crude without safeguards, and then later asked local Chadian workers to remove the crude without giving them protective gear.¹⁶²

Security

Resource extraction and natural resource development can negatively affect security from the dynamic two-way interaction between a project and the context in which it takes place:

- the **project can cause conflict** (such as by how security forces behave, resettlement without prior consultation, without prior and adequate compensation, exclusion from project benefits),

- the project can **interact with pre-existing tensions** (such as hiring from one privileged ethnic group, revenue payments destabilizing power distribution), and
- **conflict can impact the project**, such as armed non-state actors targeting the project infrastructure.¹⁶³

There are many examples of these kinds of interactions already in Afghanistan, such as:

- *Deteriorating security* in Logar and Bamiyan provinces since the Aynak contract was awarded, with rocket attacks on the Mes Aynak site, kidnapping of foreigners, beheading aid workers and attacks on police and workers employed by the US military base in Logar province.¹⁶⁴ There are also reports of insecure roads to Hajigak where engineers have been said to have disappeared, and in late 2013 beheadings of several representatives of Bamiyan provincial councils.¹⁶⁵
- Government and the company's *failure to consult* with local people about relocation and compensation before evicting them from their ancestral lands.¹⁶⁶
- *Closure of the Kilij and Eshpeshta coal mines* in Bamiyan province (included in Aynak contract) without prior consultation or compensation. An estimated 5,000 laborers, traders and their dependents lost their livelihoods overnight. This sudden and significant loss of income and investments increases opportunities for recruitment by anti-government fighters, generates hostility towards central government, misperceptions and suspicion, and increased banditry.¹⁶⁷
- Local people in Bamiyan province have also warned of the potential for violent conflict as a result of *in-migration* by laborers from other provinces coming to seek employment.¹⁶⁸

Security force conduct in particular can significantly affect violence related to resource extraction projects. There are so many cases around the world with reports that public or private security forces intimidating local people, injuring or killing local villagers with tear gas and ammunition, of gang raping local women, of extra-judicial executions and torture, detaining people illegally, and looting the extraction site.

There are several examples of such conduct already in Afghanistan. In Kunar province, reports show that the Afghan Local Police (ALP) are both involved in chromite extraction and processing, made possible by the United States Department of Defence's Task Force for Business Stability Operation (TFBSO). In doing so, the ALP have arrested local people without cause, tortured and public harassed people, and kept people in an illegal private jail.¹⁶⁹ The integrity of the Mines Protection Unit tasked with providing security and protection for the country's mine sites has been called into question, as reports indicate they accepted bribes to re-open 10 coal tunnels at Kilij and Eshpeshta.¹⁷⁰

In-migration of people

In-migration (or 'influx') of people is the fast increase in the number of people living in and around the extraction site as people from other parts of the country or abroad relocate to work or look for work at the project site. In-migration creates tensions because people compete for project benefits – especially jobs – from the project. In-migration of people from other provinces has been identified as an issue of particular concern and fear among community members and villagers interviewed around the Hajigak iron ore site.

Because the area's population has quickly increased to 5 or 6 times its original size, existing services and infrastructure (such as water, electricity, roads, toilet facilities, health facilities and accommodation) are under high stress and insufficient. In-migration raises community health and safety concerns, such as rising rates of alcoholism and prostitution. The large number of newcomers combined with increased cash and a growing economy may bring a loss of tradition and cultural identity. Increased work means less time spent on traditional activities.

Cultural sites

Industrial mining and oil and gas exploration and production can also affect cultural sites at all stages, such as burial grounds that are dug up, or sacred wells that dry up.

Aynak is home to ancient Buddhist archaeological sites, including six monasteries and numerous artifacts within or adjacent to the project site. The China Daily reported that the consortium was not aware of local history when it entered into the contract. The cost of conserving the site is estimated to be around USD 14 million.¹⁷¹

Health

Artisanal and small-scale mining

Artisanal and small-scale mining poses significant health risks to mine workers, their families, and the communities in which they live as work and home spaces often overlap. According to the ILO, the five major health risks of ASM are: exposure to dust (silicosis), exposure to chemicals (including mercury used in gold and silver ASM), effects of noise and vibrations, effects of poor ventilation (heat, humidity, lack of oxygen), and effects of overextension, inadequate work space and inappropriate equipment. There are also many accidents, such as rock falls and subsidence, lack of ventilation, misuse of explosives, lack of knowledge and training, and obsolete and poorly maintained equipment.¹⁷²

In Afghanistan, little information is documented about the conditions for workers in ASM and coal mines. Reports say they face very high risks to their health and safety from air and environmental pollution. They also face risks from poor workplace safety, such as rudimentary mines held up with wooden sticks. Gas explosions from a buildup of excess methane gas have caused coal mines to collapse in Samangan and Baghlan provinces, killing at least 55 people in the past two years alone.¹⁷³

Industrial extraction

Residents in areas with industrial mining or oil and gas concessions generally suffer from a range of health issues. In places where industrial mining and oil exploitation is underway, residents complain of respiratory and pulmonary infection, skin rashes, diarrhea, malaria, dizziness, nausea, etc. which they associate with the effects of large scale resource development on their air, water, soil and crops.

Aynak communities are concerned about dangers to public health, including failure to develop a mine closure plan, and that possible release of toxic chemicals into the air, soil and water have not been properly assessed. They are also worried that no siting alternatives were undertaken in the feasibility studies.¹⁷⁴

Women & children

Artisanal and small-scale mining

Children make up a high percentage of the workforce in artisanal and small-scale mining in Afghanistan. Children have been found working for 20 to 24 hours a day in small-scale coal mines in Takhar and Samangan provinces. At a gold mine site in Takhar province, children are one-third of the workforce of 7,000, and work to wash the gold, sifting it by hand; they earn up to USD 3 per day from the sale of gold pieces. More than 1,000 children are estimated to work at a salt mine in Takhar province.¹⁷⁵

Industrial extraction

“Women often bear the brunt of large-scale mining projects yet fail to equitably enjoy the potential benefits” – Oxfam¹⁷⁶

The impacts of industrial extraction are not gender-neutral: men largely capture the benefits, and the environmental and social risks fall on women.

Most often **only men**, and not women, are consulted when companies negotiate access to land, compensation or benefits. This means there is a high risk that women’s interests and needs will be overlooked. Companies or government pay compensation to men “on behalf of” their families.

Employment and income disproportionately accrue to men, rather than women. Men with new riches may also take on additional wives. All of this disempowers women and encourages women’s economic dependence on men, making existing inequalities worse.¹⁷⁷

Domestic and **gender-based violence** can increase as a result of changed family roles, income levels and social stress. When mining damages the environment, it undermines women’s ability to provide food and clean water for their families and can increase their workload as they have to walk greater distances to access water, fuel or wood, forest products and land to plant food crops.¹⁷⁸

For example, at Aynak, women report that since the mine was started, they are no longer able to easily visit their friends and relatives, as access is cut off by the mine. Instead of walking as



Figure 15 Oil in Uganda Cartoon (by Victor Drile)

they used to, they now are now confined to their homes and dependent on men to drive them. Due to worsened security since the mine started operating, men are likely to decide that such travel is a luxury and too dangerous for women. They also suffer problems in getting quality drinking water.¹⁷⁹

Economy

Increased income levels can lead to issues with personal and community cash management, and corruption. When money is received – perhaps a sum the person has never before seen in their life – they spend the money recklessly. For instance, they purchase a motorcycle or car with all of the money, and then they have no money left to purchase gas or maintain the vehicle. Compensation money is given to a man as the head of the household, so he takes on a second wife, but the money will not suffice to support his larger family. Inflation and deflation as a result of land speculation and in-migration can also negatively affect local communities' quality of life.

Potential Benefits

In this section we describe the potential benefits of resource extraction, including more money, jobs, infrastructure and service delivery. We also highlight the obstacles for a *potential* benefit to turn into an *actual* benefit. These benefits mostly come at the national level, while the significant negative impacts overwhelmingly come at the local level. However, there are high expectations at the local level of significant benefits, too. For example, interviews with people living near the Hajigak iron ore site show they believe the presence of the company will lead them to a better life, and they overwhelmingly expect the project to bring them jobs. They also expect more schools and clinics, and better roads in the region.¹⁸⁰

More money

Large-scale resource extraction can bring central government more money: revenues and wealth from export, fees, licenses, land rental, taxes, and royalties. It can also bring in increased investment.¹⁸¹

These royalties and taxes may contribute to regional and national social and economic development, and some possibly to local communities' social and economic development.

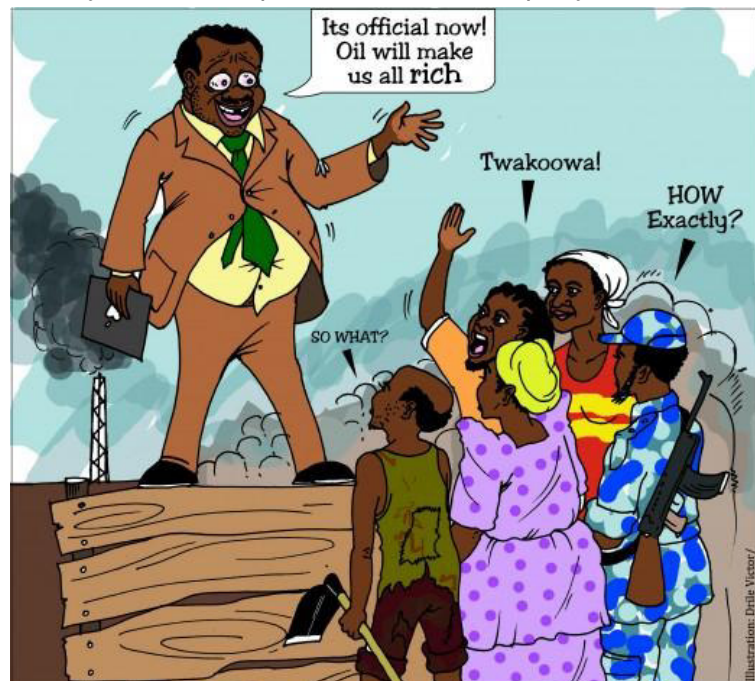


Figure 16 Oil in Uganda Cartoon

The main issue here as to whether this *potential* benefit turns into an *actual* benefit is **corruption**, which, given the pervasiveness of the issue, the readers of this guide need no explanation of. Undoubtedly the revenues central government receives can be significantly reduced through corruption. Initiatives such as the Afghanistan Extractive Industries Transparency Initiative address this risk (see the section on “Mining and petroleum laws” in Part 4).



Mining companies pay national and local taxes, but because the local population does not see the benefits, companies have started making direct contributions to local communities.

Figure 17 Zoi Environment Network Cartoon

There are a number of additional challenges to mention about whether these *potential* money benefits will turn into *actual* benefits, especially the following:

Will there be a significant net benefit? Responsible extraction projects should assess the **net benefit**: benefits of royalties, taxes, fees to the government, and benefits for the company **minus** the costs of controlling the environmental impacts that will last to perpetuity, and managing the social impacts. The environmental costs alone of a mine are significant – managing acid mine drainage forever may cost up to *USD 1 billion*.¹⁸² This

calculation should show whether the proposed extraction project will earn a significant net benefit.

Commodity prices change a lot over the long life-cycle. How much money an operator, investor and country earns from a resource extraction project depends on the price of the commodity. This price changes a lot over the project’s long life-cycle.¹⁸³

Jobs

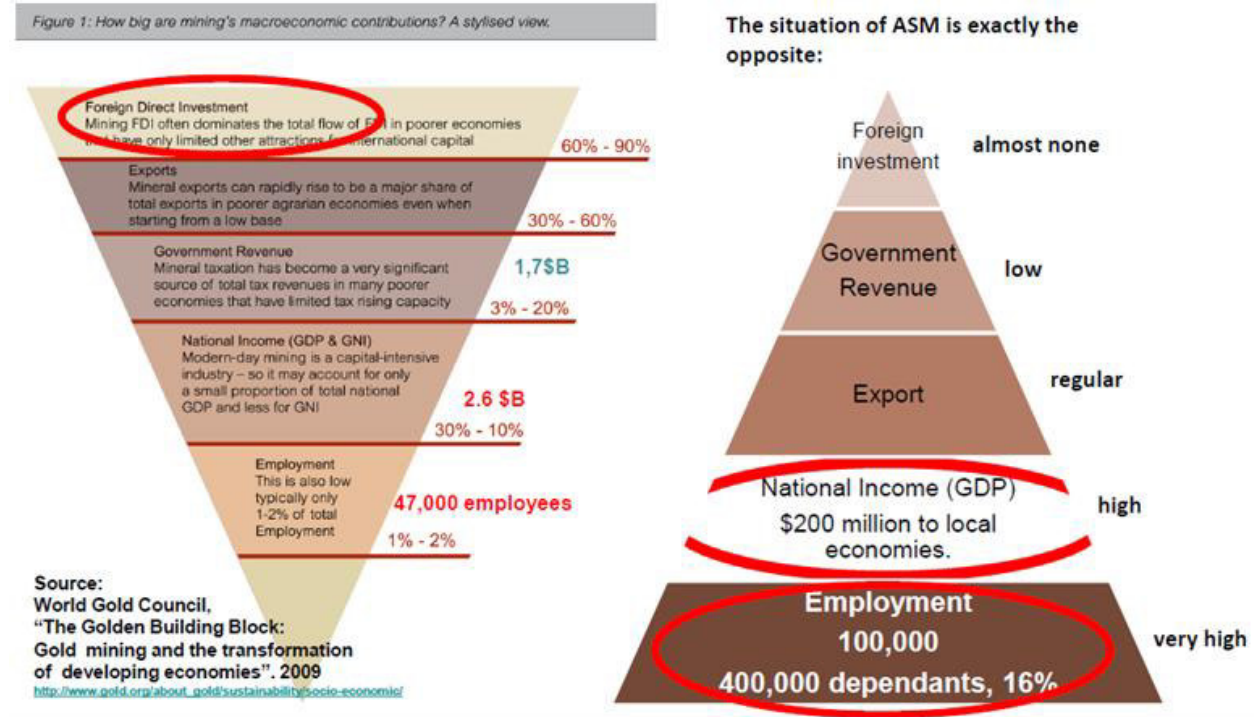
Artisanal and small-scale mining

Artisanal and small-scale mining has the benefit that it can employ large numbers of people – many more than in industrial mining. For instance, an estimated 5,000 people were working at the Killij and Eshpeshta coal mines in Bamiyan province, earning about 4 times more per day than they would as construction workers.¹⁸⁴

ASM requires lower levels of technical skill and more people for a particular economic contribution. Industrial mining requires very high levels of technical skill, and relatively low

numbers of people for the economic contribution it produces. The figure below shows the difference (and complementarity) in terms of how industrial mining and ASM contribute to a country's economy, especially the number of jobs.¹⁸⁵

Figure 18 Comparison of industrial mining and ASM's contribution to the economy¹⁸⁶



Industrial resource extraction

One potential benefit of industrial extractives operations is increased employment related to the extraction project. This can be employment directly for the company, or indirectly in the broader system of the supplies and services (local content) the project requires in order to function. There are many issues that influence whether this potential benefit of jobs has a positive or a negative outcome:

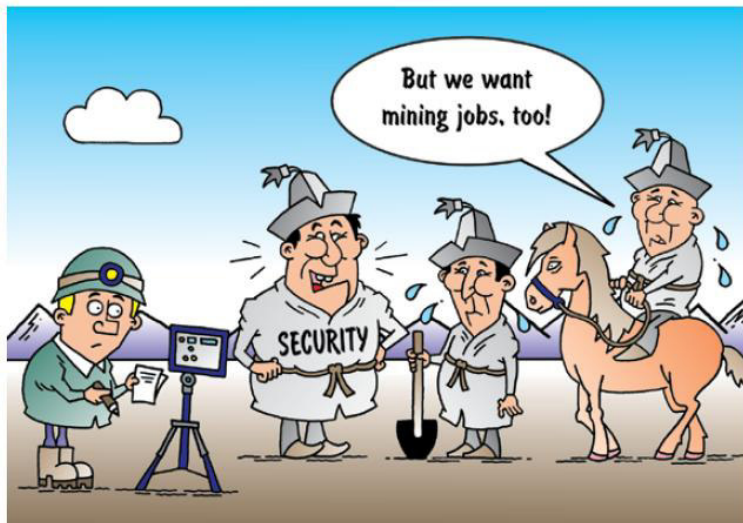
Local community expectations of jobs are not well managed.

Extraction projects require mostly highly skilled labor, and local communities generally do not meet these requirements. Only a select few unskilled jobs (such as cooks or janitors)

TYPICAL JOBS IN A MINE OPERATION		
Miners	Carpenters	Computer technicians
Heavy equipment operators	Geologists	Human resources managers
Pipe fitters	Safety experts	Security officers
Environmental scientists	Clerks	Health and safety coordinators
Accountants	Assayers	Janitors
Administrators	Truck drivers	Construction workers
Laboratory technicians	Electricians	Landscapers
Community relations officers	Welders	Nurses
Drillers and blasters	Surveyors	Lawyers
Mechanics	Engineers and technicians	Marketing personnel
IT specialists	Instrumentation technicians	Cooks and catering staff

Figure 19 Kinds of jobs in an industrial mine during operation

can be filled by local community members. When community expectations of jobs are not managed well, local people resent the company when it arrives and they do not receive a job.



The local population does not always have the relevant qualifications for the mining companies' recruitment needs.

Figure 20 Zoi Environment Network Cartoon

of Mines has said that 30,000 people from Bamiyan province will be employed once construction begins at Hajigak, which seems inflated.

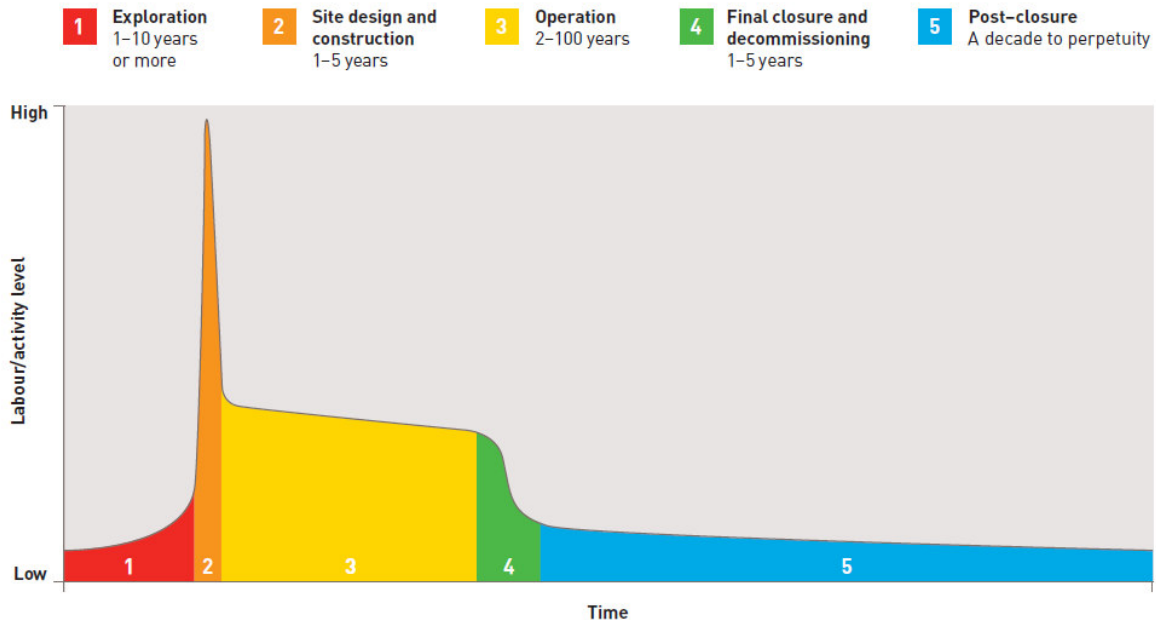
Job distribution characterized by patronage, not transparency. Many resource-rich communities denounce widespread corruption and bribery for access to jobs. There are often many questions around who gets jobs and training opportunities, and how they are selected.¹⁸⁹ Resource-rich communities also observe that even for those jobs which they are qualified to fill, subcontractors often import workers from their own tribe or community, and severely underpay the local workforce.

Increased reliance on extractives jobs. Direct and indirect increased employment from an extraction project can lead to an increased reliance on extractive jobs. However, this poses dangers for the local and national economy to be able to survive after the project ends. There is also a relatively low level of labor required at an industrial mine, except for a short spike during site design and construction.

The figure on the right shows the typical jobs in a mine operation. Similar technically skilled people are needed to fill jobs in oil and gas activities.¹⁸⁷ The nature of these jobs can also have gender impacts, as they are more likely to go to men than women.

Broken promises of employment.

Often government and politicians not only fail to manage local communities' high expectations of employment, but also make the problem worse with unrealistic promises. This has already been felt at Aynak, where it was promised that at least 70 per cent of newly created jobs would be reserved for people from Logar province.¹⁸⁸ Yet only one manager at Aynak comes from Logar. Similarly, the Ministry

Figure 21 Level of labor and activity in industrial mining¹⁹⁰

Putting people out of work at coal mines. The Aynak project caused the sudden closure of two coal mines, leaving 5,000 people (and as a result their families and dependents) without their wages from labor, depriving local militias of their revenues from selling permits and trading, and causing a shortage of fuel for cold winter months. Local people were left with significant debts to lenders for investments made in their tunnels, ranging anywhere from 250,000 AFN (4,300 USD) to 1.2 million AFN (20,000 USD). Despite promises from the Ministry to provide assistance, only about 300 of the estimated 5,000 coal laborers were provided employment in mines in the north.¹⁹¹

Local content

While there may not be many job opportunities directly with the company, there are opportunities for local communities to supply the company, their contractors and sub-contractors with supplies or services, such as uniforms for the employees, steel drums, fruits, vegetables and meats to the catering companies, and jobs in transportation, construction, supplies, business consulting, and geosciences.¹⁹² Hiring local employees and procuring local goods and services is commonly called 'local content'.

Around the world, local content has been very difficult for resource extraction companies, and central and local governments, to manage and implement well. Some key issues are:

What 'local' means.

Governments, companies and local communities have different understandings of what 'local' means. Does it mean a national of the country? A national of the province where the operations are? A resident of the town where the operations are? What if the skills, goods or services the company needs are not available – can the 'local' organization have ties with an international company? This is a question that calls for inclusive debate and transparency about the meaning of 'local', especially because Afghanistan's law is ambiguous on this point.



Figure 22 Oil in Uganda cartoon (Dec 2013)

Informal and variable local suppliers. Local community businesses are often informal, of variable quality and lacking in skills to operate to a standard and scale necessary to supply the extractives company or its contractors. Broad and early support and training is needed to develop a private sector with strong local suppliers. This support is needed both from government to remove financial and administrative barriers, and from the company, in terms of constructive auditing that allows suppliers to progressively gain the necessary skills and capital.

Financial and administrative barriers. In Afghanistan there is a lack of short- and long-term financial access for small and medium-sized enterprises (SMEs), and a lack of clear and transparent administration and regulation. There is also no resource center to facilitate work placement, and a lack of opportunities for practical skills training.¹⁹³

Infrastructure and service delivery

"You saw the plant where we were. The lights are big and bright at night. They run 24 hours a day. They never stop working. Here, we are sitting with candles. It doesn't make any sense." – Worker in Liberia

Another potential benefit of large-scale extractive industries is improved infrastructure, such as roads, piped water, and electrification. Government may also be able to deliver, or enhance its delivery, of basic services such as education, health care and social programs.

Several issues can arise around building infrastructure and service delivery. In many cases, the company delivers the service instead of government, which is unsustainable and often leads to poor quality and lack of local ownership or acceptance. Companies or governments often also

choose which projects to do, rather than leaving this choice to communities or aligning the projects with local and regional development priorities. This can lead communities to resent and reject the projects, making this a negative rather than a positive impact.

People also compete for the benefits, whether they are just for employees, or in which location the school or mosque will be built. Local communities have been frustrated that the electricity or piped water enjoyed by companies is not extended to local communities, whose local economic activities could benefit greatly from a constant source of electrical power and piped water.



Figure 23 Cartoon from Chad¹⁹⁴

4 Legal Framework

In this part we first talk about the context and challenges to resource governance in Afghanistan and then describe the key laws relevant to resource extraction: about land, water, the environment, mining and petroleum, labour, safeguard policies and human rights.

This part is written on the basis of the laws in force at the time of publishing the learning guide. As you use this information, please always *verify which laws are actually in force*, as they are frequently revised.

You should also know the **hierarchy of laws**. The 2004 Constitution is the supreme law of the land, and, similar to *Shari'a*, provides that no law in Afghanistan may contravene the tenets and provisions of the holy religion of Islam. This means, for example, that all other laws are subordinate to the Constitution, and where there is a difference between the rights guaranteed in the Constitution and another law, the Constitution prevails.

Another broad concept to bear in mind is that while **customary law** still largely dominates in Afghanistan, the Constitution is silent on the authority of customary law.¹⁹⁵ Customary law is in large measure consistent with *Shari'a*, and *Shari'a* permits the practice of customary law so long as it does not interfere with tenets of Islam.¹⁹⁶

Context

Today, **non-state actors** rather than government control the overwhelming majority of Afghanistan's resource extraction activities. It is estimated that nearly 80 per cent of Afghanistan's existing mines are controlled by non-state actors.¹⁹⁷ In mid-2013, the Ministry of Mines released a list of 1,400 companies and individuals engaged in illegal mining, including minerals such as coal, chromite, and a variety of precious and semi-precious stones, lead, fluoride, talc, marbles, rocks, sand and more.

More generally, Afghanistan is still **in transition** from a highly decentralized to a centralized state. In some respects, the country remains a place of 25,000 village-states governed by the everyday influence of local and regional power brokers, rather than the rule of law administered by a federal central government with effective authority.

Aside from non-state actors operating outside the bounds of the law, a number of general tensions and challenges in large-scale resource extraction stand in the way of responsible and accountable resource governance, including:

Gross asymmetries of information, knowledge, resources and negotiating power between marginalized communities, companies and governments. This can be complicated by legacies of violence, as well as the absence or mistrust of government.

Inherent tensions in extractives between the local and the national: Minerals sit on or under resource-rich communities' lands, yet belong to the state as a public asset, resulting in tension between competing needs and interests of communities who suffer the brunt of the negative impacts, and of the state who gets the benefits.

The so-called **resource curse**, which holds in its most basic form that resource-dependent countries are bad at harnessing those resources for the benefit of the population, and perform more poorly in terms of human development, governance and long-term economic growth than their resource-poor peers. Windfalls are squandered as easy, unearned money for rulers and elites. A stronger version of the resource curse holds that extraction of resources makes the country worse off than if they had been left in the ground, because the extraction and rent-seeking behavior leads to higher rates of conflict, steeper inequality, deeper absolute poverty, more authoritarian government and lower long-term economic growth.¹⁹⁸

Additional challenges to accountable resource governance include effective regulation, the cyclic nature of mining operations, implementation of laws and regulations, inadequate funding for government capacity-building, turnover in government, a lack of qualified personnel, and competition among government and industry for qualified personnel.

Land

Legal framework

Article 40 of the Constitution of Afghanistan provides for the right to property. In 2007 the Cabinet of Ministers approved a new Land Policy that allows for formalization of land rights in informal settlement.¹⁹⁹ The 2008 Land Management Law (LML) defines various land types and classifications, sets requirements for land deeds, and sets principles governing allocations of state land, land leasing, land expropriation, settlement of land rights, and restoration of lands.²⁰⁰ The LML is currently under review, so *please check to see the law in force*. Analysis shows that the most recent draft of the new proposed LML does not meet the objectives of the 2007 National Land Policy, let alone international best practice.²⁰¹

The LML recognizes Islamic law (*Shari'a*), and in some areas defers to applicable principles of *Shari'a*. In areas where the LML is silent, the issues are governed by the country's Civil Code, which in essence reflects the Hanafi school of *Shari'a*. If the Civil Code is silent on the issue, *Shari'a* governs.²⁰² Customary law still largely dominates in Afghanistan, and the Civil Code recognizes customary law's application to land rights.²⁰³

The laws on land in Afghanistan do not adequately protect the land rights of vulnerable populations, making their rights invisible, open to wrongful classification, and so letting the state allocate the land to whoever it pleases.²⁰⁴ The land laws are also ambiguous, so it will be important for you to understand how Islamic law and customary law protect land rights – especially for the many people who are occupants or possessors of land.

Types of tenure and property

National law

Resource extraction is only allowed on certain kinds of land. For this reason, it is important to understand land tenure and property rights. Land tenure is the relationship, in law or by custom, among people (whether individually or collectively) and land. Property rights are the rights (or authority by law) of an individual or collective to control, use and benefit from a particular property, whether that property is movable (also called ‘personal property’) or immovable (‘real property’, such as land).



The laws and regulations on the use of subsoil, land allocation and environmental protection are sometimes confusing and inconsistent and so are the maps.

Figure 24 Zoi Environment Network Cartoon

Afghanistan’s land can be vested in individuals or private entities, communally (family, clans, and communities), and in the government. These interests may then be expressed as ownership interests, leaseholds, agreed rights of access, occupancy rights, and mortgage rights.²⁰⁵

Ownership is the most common type of land tenure in Afghanistan, and confers exclusive possession of land. Owners may freely use and dispose of land in which they have an ownership interest.²⁰⁶

Leasing is permitted between private parties as well as between government ministries and individuals and entities. Government-granted agricultural leases can be of significant duration. Leases for nonagricultural purposes are typically limited to short terms (years). Leases of private land are primarily governed by customary law and tend to be brief (a season).²⁰⁷

Agreed rights of access usually refer to government-owned pasture land. Pasture land is public property, but customary law permits individuals and communities to obtain a right of access through customary use and deeds.²⁰⁸

Occupancy rights are an informal type of right, drawing on principles of customary law to provide some protection to informal land occupants.²⁰⁹

Both formal and customary law recognize two types of **mortgages** for land: one type operates on a debt secured by the land, and the other uses a mortgage where the lender

is in possession of the land until the borrower fulfills the debt. The second type is the most common mortgage.

Land tenure in Afghanistan is insecure due to a number of factors, such as continuing violence and disorder; multiple unresolved interests in the same land stemming from the return of Afghans to Afghanistan; different governments each vesting land rights in a different entity; internal displacement; a history of inequitable relations within communities regarding land rights; and the fact that there are no accepted principles governing rights in non-agricultural land.²¹⁰

Islamic law

Islamic law typically distinguishes between three kinds of property: public, private, and religious endowment. Only public and private property will be described here.

- 1 **Public property** is owned collectively by the whole of society or a community and intended for the benefit of all or most members of the group. It includes roads, rivers, forests, parks, lakes, and natural springs, land not privately owned or designated for community use, and mineral resources.²¹¹ Government has the authority to administer public property on behalf of the people and in their best interests according to the doctrine of *maslahah* and governed by *siyasa al-shari'a*. Public property can be divided into three groups:²¹²

Public property designated for community use, such as roads, rivers, and mosques. Cannot be sold or disposed of by the government, and cannot be acquired or owned by private persons.²¹³

Unused public land (*mawat* or “dead” in Islamic law) is all non-economically productive lands.²¹⁴

State public property includes all other public properties on the condition that the government is obligated to use it for best interests of the people (*masalah*).²¹⁵

- 2 **Private property** is defined based largely on its use. Under Islamic law one can acquire real property by appropriation, meaning if land is vacant or undeveloped, one may develop it and acquire title to it by doing so. This act creates ownership, even of real property.²¹⁶

Administration

The Department of Amlak (Land) within the Ministry of Agriculture, Irrigation, and Livestock (MAIL) has primary responsibility for the administration of land, but it is also being absorbed into the new Afghanistan Land Authority (ARAZI). In addition to this ministry, municipalities and village councils play a role in land administration. Municipalities remain responsible for land acquisition and allocation, and village councils care for local matters, such as land issues and disputes.

Land disputes are common and frequently violent. Land claims of returning refugees, seizures by elites, ethnic tensions, fraudulent documents, absence of agreements, inheritance rights and population pressures all contribute to these conflicts. The court system has limited capacity to mediate these disputes, especially given that much of the populace considers it corrupt. The Special Land Dispute Court is widely criticized for its failure to perform its mandate. Instead,

Afghans primarily resolve land disputes through informal mechanisms, taking disputes to local leaders, family member, or village councils.²¹⁷

Land acquisition and compensation

National law

Land acquisition in general. Land rights are acquired through purchase, government land allocation, and transfers of ownership, such as inheritance. There is no law of adverse possession.²¹⁸ Under the Constitution, foreign individuals are prohibited from owning immovable property in Afghanistan but can lease property for capital investment.²¹⁹

The draft Minerals Law 2012 states that where land is needed for mineral activities, the landowner may lease the area to the license holder, or government may acquire the land in the public interest in accordance with the law (including the Constitution and the land laws).²²⁰

Afghanistan has a deeds registration system, but the process is cumbersome. Less than 10 per cent of rural property, and less than 30 per cent of urban property is covered by recorded legal deeds. Up to 95 per cent of land transactions are conducted informally without registration.²²¹

Almost all registered land is in the name of the male head of household, even though constitutionally women cannot be precluded from owning or acquiring property. Daughters often to give up land rights to their brothers, and widows typically transfer land to their son's name, leaving less than 2 per cent of Afghan women to own land.²²²

Compulsory acquisition. Article 40 of the Constitution prohibits confiscation of property “without the order of the law and decision of an authoritative court” and permits acquisition of private party “only for the sake of public interests, and in exchange for prior and just compensation.” The Law on Land Expropriation (2005) allows the state to acquire land for the public interest upon paying fair market value. It is ambiguous on public consultation regarding the acquisition and compensation options, and only grants compensation if one has formal ownership rights, not customary ownership or use rights.²²³ Although the Law on Land Expropriation is silent on resettlement issues, the draft Minerals Law requires license holders to prepare a Resettlement Action Plan for affected communities.²²⁴

Compensation for compulsory acquisition. Under the Land Acquisition Law, compensation for land is based on government rates determined by a legally constituted committee. If the state acquires land for a public purpose, the owner shall receive the value of land, residential houses and buildings, and of trees, orchards, and other assets on land. (Compensation rates for natural resources are decided and set by the Ministry of Finance, together with other authorities, per article 25 of the Environment Law.)

The Council of Ministers Value determines the value of land based on the recommendation of a committee consisting of: (1) the landlord, land user, or their representatives; (2) the official representative of agency that needs to acquire the land; (3) a representative of the local municipality; (4) a representative of the Ministry of Finance; and (5) a representative of the Ministry of Justice. The committee serves as the appellate body addressing disputes regarding valuation of property.²²⁵

Islamic law

Classical Islamic law forbids any non-contractual acquisition of the property of others, including by means of theft, swindling, plundering, looting, usurpation, acquisition by coercion, and fraudulent practices, as well as acquisition of unused land without revitalization and exchanges that are intrinsically invalid or prohibited under Islamic law.²²⁶

Islamic law regards property acquired by prohibited means as the property of the original owner, which should be returned to him or her or to their rightful heirs. If the owners or their heirs do not exist, property should be disposed of for charitable purposes on behalf of the true owners.²²⁷

International standards

The laws of Afghanistan on compulsory acquisition and compensation are not as favorable to land owners, land holders or possessors as international policies and standards on land acquisition and involuntary resettlement, such as the safeguard policies of multilateral development banks (see the sub-section on “Safeguard Policies” later in Part 4 to understand when these apply).²²⁸

Safeguard policies and international best practice includes some of the following core concepts:

Scope: ‘Involuntary resettlement’ means not only physical displacement (loss or relocation of land, shelter, other fixed assets), but also economic displacement (loss of assets or access to assets that leads to loss of income sources or means of livelihood), permanently or temporarily. This means involuntary resettlement also includes people who may not be physically displaced by the project, but who suffer a loss of means of livelihood as a result of project impacts, such as downstream flooding or loss of access to forests or fisheries.²²⁹

Objective: Involuntary resettlement should be avoided or minimized wherever feasible by exploring all viable alternative project designs. Affected people must be assisted to improve (not simply restore) their social and economic well-being and standards of living. The objective should be to minimize the disruption of affected peoples’ lives and livelihoods. A rights-based approach should be used, such as by requiring that affected people are informed of their rights and that they are offered choices among feasible options; recognizes customary and other rights of indigenous peoples; highlighting the human rights obligations of states and international development institutions.²³⁰

Lack of land title: Affected people without a formal legal title (especially common among indigenous groups, ethnic minorities, pastoralists, and women) or recognized land rights must be provided with adequate land, infrastructure, and other compensation. The absence of legal title to land by such groups should not be a bar to compensation for involuntary resettlement.²³¹

Compensation: Compensation must be provided prior to displacement, and should be just one part of a broader package of development assistance measures designed to genuinely rehabilitate affected people and that factor in their development needs and priorities. Affected people are compensated for all lost assets through cash or replacement assets. Replacement land should be better or at least equal to the land

from which affected people are being displaced. Rehabilitation measures should focus on enabling affected people to reconstruct a land-based or employment-based productive existence, as a means to permanently improve or at least restore income and standards of living.²³²

Meaningful participation: Displaced persons should be informed about their options and rights pertaining to resettlement. They should be given genuine choices among technically and economically feasible resettlement alternatives. This means paying close attention to the location and scheduling of activities. In order for consultation to be meaningful, information about the proposed project and the plans regarding resettlement and rehabilitation must be made available to local people and national civil society organizations in a timely manner and in a form and manner that is appropriate and understandable to local people. Special measures are required to ensure full and effective participation of disadvantaged groups and women.²³³

Water

Legal framework

National law

In April 2009, Afghanistan's new Water Law came into effect. The Law adopted a river basin approach, meaning 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 allocation of water through the community-based *karez* system.²³⁴

The Water Law reaffirms water is public property and the government holds management authority over it. Individual and communal land ownership in Afghanistan generally includes rights to surface and ground water, and in some areas water rights transfer by separate deed.²³⁵

Women have limited participation in irrigated agriculture and water management. When women have rights to land, they are often restricted to use rights that may not include water rights.²³⁶

Islamic law

The Qur'an recognizes the importance of water, alluding to its fundamental importance in sura 21:30, which states, "We have made every living thing of water." Water is an essential part in ritual purity. Its importance is best reflected in the very concept of *Shari'a* itself, that it is "a path to water."²³⁷

Classical Islamic law treated water as held in the public trust and ownership of water rights was typically forbidden as it was considered a community right central to ritual acts of worship, not to mention sustaining human life altogether. A person could use public water sources for irrigation, provided that he "[did] not infringe upon a third party or damage the community."²³⁸ Islamic law can hold a party liable for the "withholding or misuse of water, including for polluting or degrading clean water."²³⁹

Consistent with the Islamic concept of beneficial use, however, Islamic law creates a qualified right of ownership to water rights provided that the owner adds “value” in the form of retaining water and either distributing it or conserving it.

Administration

The Water Law assigns the Ministry of Energy and Water overall responsibility for planning, management, and development of water resources, and assigns the Ministry of Agriculture, Irrigation and Livestock responsibility for irrigation.²⁴⁰

The Water Law provides for management of water resources through river basin agencies and local water-user associations. It recognizes the existing social water-management system, operated through *mirabs* (water masters), allowing them to serve as members of local associations and water councils.²⁴¹ Each village has a *mirab* who delegates authority to sub-water masters.

The Water Law says that any dispute between water users regarding use of water shall be resolved by the water user association with the assistance of *mirab bashi* and *mirab*.²⁴² The Water Law also identifies Sub-Basin Committees, River Basin Committees and the Ministry of Energy and Water as the bodies to resolve disputes between water users.²⁴³

It is an open question 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.²⁴⁴

Water is distributed according to local tradition and agreements between farmers, the *mirab*, and local government. Village elders customarily handle water disputes, applying customary law; residents are generally reluctant to involve local officials for fear of losing control of the result and the resource. 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.²⁴⁵

Priorities in water use

National law

The 2009 Water Law gives priority for use of water resources to drinking water and livelihood.

International best practice & human rights law

The United Nations Committee on Economic, Social and Cultural Rights affirms that water for personal and domestic uses or to prevent starvation and disease must be a priority over other uses. Water must also be prioritized to comply with the core principles of the International Covenant on Economic, Social and Cultural Rights, ratified by Afghanistan in 1983. Examples of infringement include cutting off river flows, contaminating ground water, and degradation of water resources available to the population.²⁴⁶

According to principles of responsible mining, food production trumps questionable mining. Mining must not decrease resources in areas of scarce land or water as the effects of depleted

water sources are severe.²⁴⁷ In setting priorities for water use, domestic use is first, and mining is last.²⁴⁸

Environment

Legal framework

Article 15 of the 2004 Constitution obliges the GoIRA “to adopt necessary measures to protect and improve forests as well as the living environment.” In 2007, the government gave effect to this obligation by enacting the Environment Law.²⁴⁹

In environmental matters, the Environment Law is supreme and trumps all other laws except the Constitution.²⁵⁰ This means that in case of a difference between the Environment Law and the Minerals Law, the Environment Law is the authoritative law.

The Law provides for the management of issues relating to the “rehabilitation of the environment and the conservation and sustainable use of natural resources, living organisms and non-living organisms.”²⁵¹ The Environment Law sets out certain fundamental principles in Article 5, including:

“Peace, sustainable development, environmental protection, conservation, and respect for human rights and fundamental freedoms are interdependent.”

“Persons who cause adverse effects, especially pollution, must bear the social and environmental costs of avoiding, mitigating and/or remedying those adverse effects.”

The Environment Law sets out provisions on managing activities affecting the environment, including an environmental impact assessment (EIA)²⁵² and mitigation plan approval procedure with an EIA Board of Experts and requirements to prove public participation.

The Environment Law addresses mineral exploitation and exploration, stating that “holders of permits and authorizations and related documents authorizing mineral exploitation and exploration that may affect the environment, shall not initiate activities prior to receiving written authorization from the National Environmental Protection Agency.”²⁵³ It also addresses integrated pollution control and hazardous waste management, water resource conservation and management, and biodiversity.

Administration

The Environment Law authorizes the implementing agency, the National Environmental Protection Agency (NEPA) to set environmental regulations and compliance procedures, to appoint inspectors, ensure compliance with the Law and its regulations, and make abatement and compliance orders.²⁵⁴

The Environment Law also authorizes “any person affected by damage or threatened by potential harm to natural resources or the environment” to initiate legal action.²⁵⁵ If those acts are committed by a corporation, the corporation and every director or officer of the corporation shall be liable.²⁵⁶

Environmental impact assessment & management

According to the Environmental Law, NEPA must first approve a project's environmental impact statement and mitigation plans *before* a ministry or national authority may authorize a person or company to do an "activity or implement a project, plan or policy that is likely to have a significant adverse effect on the environment."²⁵⁷ People and companies are also prohibited from carrying out these activities until after they have received NEPA's approval.²⁵⁸

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.²⁵⁹

Which projects require NEPA to approve an environmental impact assessment?

There are a number of different activities undertaken by people or companies that have significant adverse impacts on the environment and which require NEPA's approval. The Environmental Impact Assessment Regulations (EIA Regulations) passed in 2008 classify these activities into four categories:

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.²⁶⁰
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 USD 1.5 million, small dams, and domestic waste or limited quantities of industrial waste.²⁶¹
3. Activities in **environmentally sensitive areas**.²⁶²
4. Activities **determined by NEPA** as likely to have a significant adverse impact on the environment.²⁶³

Under Section 13.2 of the National Mining Policy, "All mining in Afghanistan shall be undertaken in accordance with the principles of sustainable development. 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 MoM, respectively. 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."

At Mes Aynak, an environmental impact assessment was carried out in 2009, but was not approved by NEPA due to some problems with the mitigation measures and the environmental management plan.²⁶⁴ Local Aynak community members themselves also expressed concern in a complaint to the World Bank's Inspection Panel about MCC's failure to provide a basic environmental assessment.²⁶⁵

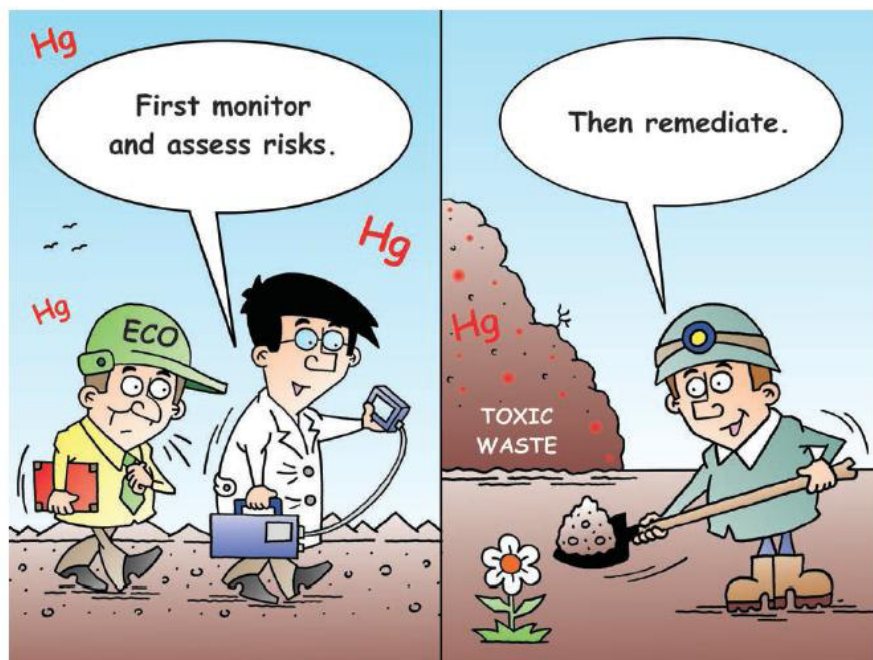
What is an environmental and social impact assessment?

An environmental and social impact assessment (ESIA) is a report outlining all of the positive and negative impacts of the mining project, explains what plans are in place to minimize any negative impact, and explores what alternative plans are available.²⁶⁶

The EIA Regulations require the following subjects to be included in the ESIA:²⁶⁷

1. **Which activity?** A full description of the activity, its need and desirability.
2. **On which property?** A description of the property and the 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. **What are the 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.

Figure 25 Zoi Environment Network Cartoon



Monitoring and risk assessment provide the information necessary to prioritize and implement risk management and remediation measures.

Attention! Be careful not to confuse an Environmental and Social Impact Assessment (ESIA) on the one hand, with the Ministry of Mine's Strategic Environmental and Social Assessment of the Extractive Industry Sector (SESA-EI), on the other hand.

An **ESIA** is a company's project-specific report required by law in order for the company to carry out extraction activities.

The **SESA-EI** is a government policy document produced by and for the Ministry of Mines to identify the cumulative impacts of the extractive industry sector and identify policy recommendations that may (or may not) be implemented.

Who conducts an environmental and social impact assessment?

Companies usually hire a consultant to conduct and write an ESIA. The consultant should first do “scoping” by meeting with local community members to discuss the mining operation and record the community's views, and combine this with other investigations. The consultant then provides the ESIA report to the mining company (the project proponent). The mining company then submits the ESIA report to the agencies provided for in law (NEPA and MoM).

Public participation & information

National law

The Environment Law states that: “local communities should be involved in decision-making processes regarding sustainable natural resource management.”²⁶⁸ The Law also states that 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,”²⁶⁹ and affirms the right of every person to access such information and participate in ESIA processes.²⁷⁰ (Remember that in environmental matters, the Environment Law is supreme and prevails in case of inconsistencies with any other laws, such as the Minerals Law.²⁷¹) The draft Minerals Law obligates the MoMP to facilitate public access to the register of licenses, applications, non-confidential reports (including environmental and social impact assessment annual reports).²⁷²

Article 7 of the Environment Law recognizes 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 sustainable use of natural resources.²⁷³ Article 38 obligates the GoIRA to involve local communities in all activities related to national protected areas.

Article 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.²⁷⁴ The Environment Law also allows “any person” to appeal to the Director-General of NEPA the decision of the granting or refusal of a permit.²⁷⁵

Participating in the ESIA process is an opportunity for local communities to have their concerns officially recorded in the ESIA, requiring them to be addressed in the mitigation plan, and increasing the chance that your concerns will in fact be addressed by the company and government.

Principles and best practice for ESIA public participation

Transparency: Effective public participation means that the ESIA process and report must be public: no social or environmental assessment report should be kept secret from potentially impacted stakeholders.²⁷⁶

Consultation: More often than not, the ways in which a consultant or government “consults” with local communities does not match local communities’ definition of what consultation means to them. It can be very important for local communities to openly discuss how they wish to be consulted and to document this in a community or consultation protocol.²⁷⁷

Participating in collecting and interpreting the data: Potentially impacted people must fully and openly participate in or be meaningfully involved throughout the two years it can take to conduct an ESIA. What does that mean? 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.²⁷⁸

Facilitating interpretation of the data: Interpreting the data collected in an ESIA can be challenging and very technical for local communities and their advocates. Companies and governments should pay to make meaningful participation possible.²⁷⁹ The Government of Canada, for instance, makes “intervener funds” available to allow affected persons to obtain technical assistance to participate in collecting data, translating documents into local language(s) and explaining technical terms, or hiring a technical EIA consultant to perform an independent review of the ESIA or make the ESIA understandable to local communities.

Environmental Law Alliance Worldwide published a *Guidebook for Evaluating Mining EIAs* to help communities and their advocates understand mining EIAs, identify flaws in mining project plans, convince decision-makers to reject ill-conceived mining projects, and explore ways that proposed mining projects could be made socially and environmentally acceptable.²⁸⁰ Several organizations provide technical EIA assistance to communities and NGOs, including E-Tech International, Center for Science in Public Participation, and Environmental Law Alliance Worldwide.²⁸¹

Monitoring implementation. The ESIA process is only useful if the results are acted upon and monitored. Soon after the stakeholder identification, as one of the earliest best-practice steps in the ESIA process, all mines should establish legitimate, independent, and representative citizens’ advisory councils (CACs).²⁸²

Mining and Petroleum

Legal framework

Article 9 of the 2004 Constitution states that: “Mines and other subterranean resources as well as historical relics shall be the property of the state. Protection, management and proper utilization of public properties as well as natural resources shall be regulated by law.” In 2010, the government enacted a Minerals Law to give effect to this provision.

Today, a new draft Minerals Law has been drafted and waiting to be approved by Parliament. This section of the learning guide has been written based on the Minerals Law 2010 and on an unofficial English translation of the draft Minerals Law 1391 (2012) submitted to Parliament.²⁸³ (We simply say “Minerals Law” where the provisions of the Minerals Law 2010 and draft Minerals Law 2012 are about the same.) *Please consult the most recent version of the Minerals Law.*

The Minerals Law governs the reconnaissance, exploration, development, exploitation and ancillary activities of resources, excluding water and petroleum.²⁸⁴ The law provides that all deposits of minerals on or under Afghanistan or in its water courses are the “property of the State.”²⁸⁵ A surface land interest does not include right to minerals. The Ministry of Mines is authorized to grant mineral rights in accordance with the provisions of the law.²⁸⁶

The Hydrocarbons Law of 2009, Extraordinary Issue No. 972, was enacted in February 2009.²⁸⁷ The law regulates exploration and development of gas and oil fields, and establishes the legal framework governing the preservation, utilization, development, and production of oil and gas.²⁸⁸

Regulations have been developed for both the Mining and Hydrocarbons laws, as well as a number of policy instruments concerning resource extraction, including a National Mining Policy²⁸⁹ with policies covering many sub-topics including industrial minerals, rare earth elements, and artisanal and small-scale mining, as well as a Strategic Environmental and Social Assessment of the Extractives Industry Sector (SESA-EI).²⁹⁰

Hierarchy of laws. The Minerals Law intrudes on several other areas of law, especially land, water, and the environment. When that happens, always look to the specific law first, such as the Environment Law, the Water Law, the various land laws, and of course the Constitution. If the Minerals Law is silent on an issue, or if it is inconsistent with the specific law, then the specific law applies and prevails.²⁹¹

Mineral rights

Under the Minerals Law, the Ministry of Mines can grant mineral rights to individuals and entities who are Afghanistan citizens or citizens of foreign countries legally entitled to reside or do business in Afghanistan. High-ranking state officials, magistrates, lawyers, members of the armed forces, police, and other public employees cannot hold mineral rights.²⁹² Parties can lose their rights under the Minerals Law if they fail to pay license fees, fail to abide by the terms of the mineral right granted, or fail to conduct exploration or extraction activities as contracted.²⁹³

The Hydrocarbons Law 2009 provides that all hydrocarbons are the exclusive property of the State. As the responsible authority, the Ministry of Mines can issue Exploration and Production Sharing Contracts or Service and Production Sharing Contracts that grant the contractor title to a share of extracted hydrocarbons. The state retains rights to the residual share of extracted hydrocarbons. The contractor may take, sell or export his share of produced hydrocarbons, in accordance with the contractual terms.²⁹⁴

Administration

The Ministry of Mines is responsible for functions relating to mineral exploration, licensing, development, and mining as well as hydrocarbons. The Ministry of Mines is obliged to regulate

mineral and petroleum activities in accordance with the Minerals Law and Hydrocarbons Law. The Ministry of Mine's duties include: formulating and implementing policies (including promoting private-sector investment); proposing to the Council of Ministers the classification, declassification, or reclassification of an area as prohibited for mineral activities; granting, transferring, canceling mineral rights; supervising mineral activities of public entities; and assessing and ensuring the collection of royalties.²⁹⁵

The Minerals Law provides for the establishment of an Inter-Ministerial Commission to monitor bidding processes, approve mining contracts, grant exemptions from surface rent, and approve the royalty rate. Members of the Inter-Ministerial Commission are from the Minister of Mines, Minister of Finance, Minister of Economy, Minister of Commerce, Minister of Foreign Affairs, National Security Advisor and the National Environmental Protection Agency.²⁹⁶

Licensing process

Types of licenses

The draft Minerals Law 2012 allows several different kinds of mining licenses and authorizations, including a reconnaissance license, exploration license, exploitation license, small-scale mining license, and artisanal mining license.²⁹⁷

The Hydrocarbons Law allows several different kinds of oil and gas licenses, including an exploration license and a production license.

Mining exploration license

Under the Minerals Law, private entities can apply for licenses for exploration for 3-year terms, which can be renewed twice.²⁹⁸ Under the 2010 Minerals Law, holders of an exploration license were required to comply with "all applicable laws and regulations regarding health, safety of labor, human rights, use of water, and protection of the environment and protection of affected communities."²⁹⁹

Mining exploitation license

Licenses for exploitation under the Minerals Law are granted for periods up to 30 years and can be renewed for consecutive 15-year periods until the deposit is exhausted.³⁰⁰

To be awarded an exploitation license, project proponents must submit and the Ministry of Mines must endorse the following studies and plans in addition to proof of the proponent's financial capability: (1) a feasibility study, (2) an environmental and social impact assessment and mitigation plan and (3) community development agreement, and if necessary compensation and resettlement agreements. Exploitation license holders are required to exploit the deposits in accordance with these studies and plans.³⁰¹ Under the 2010 Minerals Law, exploitation license holders must also comply with "all applicable laws and regulations regarding health, safety of work, human rights, use of water, protection of the environment and protection of affected communities."³⁰²

We next briefly describe what a feasibility study and a community development agreement are. (We explained environmental and social impact assessments and mitigation plans in the previous section on "Environmental Protection".)

Feasibility study

A feasibility study assesses the technical and financial feasibility of the mine – that is, under what conditions and by what design the mine can produce enough to make it profitable for the investor to invest and the government to be assured of revenue. The feasibility study includes a number of things, such as:

Numbers. The feasibility study has hard numbers of the expected cost of building the mine so it is ready for day one of production (called the ‘capital expenses’) and the cost of operating the mine from day 1 to closure (called the ‘operating expenses’), along with the expected output of the mine.

Schedule. The feasibility study includes a time schedule of the mine’s construction, operation, and closure.

Maps and land values. The feasibility study includes maps showing exactly where the different components of the mine (such as the tailings pond, the trucks, the pumps, etc.) will be located on the land. This is the ‘real estate market’ of the mine, because the study includes formulas that can be used to determine the exact value of a local community member’s plot of land to the company and government over the life of the mine.

Activities. The feasibility study also includes information on managing environmental concerns, how it will address safety in the working area, and information about future employment (such as the availability of skilled workers or an organizational chart) and a community development plan.³⁰³

Community development agreement

A community development agreement (CDA), also sometimes called an impact-benefit agreement (IBA), is a negotiated agreement between a company (private or public) and representatives of local communities in the area of the company’s operations. The agreement seeks to avoid and minimize identified negative project impacts, compensate local communities for the impacts that cannot be avoided, and ensure local communities share in benefits of the project that they would otherwise not receive. (We describe CDAs in detail in Part 5, in the sub-section on “Advise on Community Development Agreements”.)

The draft Minerals Law 2012 does not define a CDA as a negotiated agreement, but rather as an agreement prepared by the license holder “in consultation with” affected community members.³⁰⁴

Mining license register

The Minerals Law establishes a Mining Cadastre within the Ministry of Mines. The cadastre is responsible for assessing fees for the processing of applications for mineral rights, reviewing and processing applications for mineral rights, executing the technical and environmental evaluation of applications for mineral rights, registering mineral rights granted and refused, registering rights terminated, extended, or transferred, registering security interests, and developing Cadastral Survey Maps.³⁰⁵

Revoking a license

Under the 2010 Minerals Law, mineral rights can be withdrawn for a number of reasons including delay or suspension of exploration or exploitation, non-payment of required fees, bankruptcy, and violations of communities' human rights and public order.³⁰⁶

Mine closure

The draft Minerals Law 2012 requires license holders to provide financial security for the license holder to comply with its environmental and social protection obligations, including rehabilitation of the site, resettlement, mine closure and compensation of affected communities.³⁰⁷

Figure 26 Zoi Environment Network Cartoon

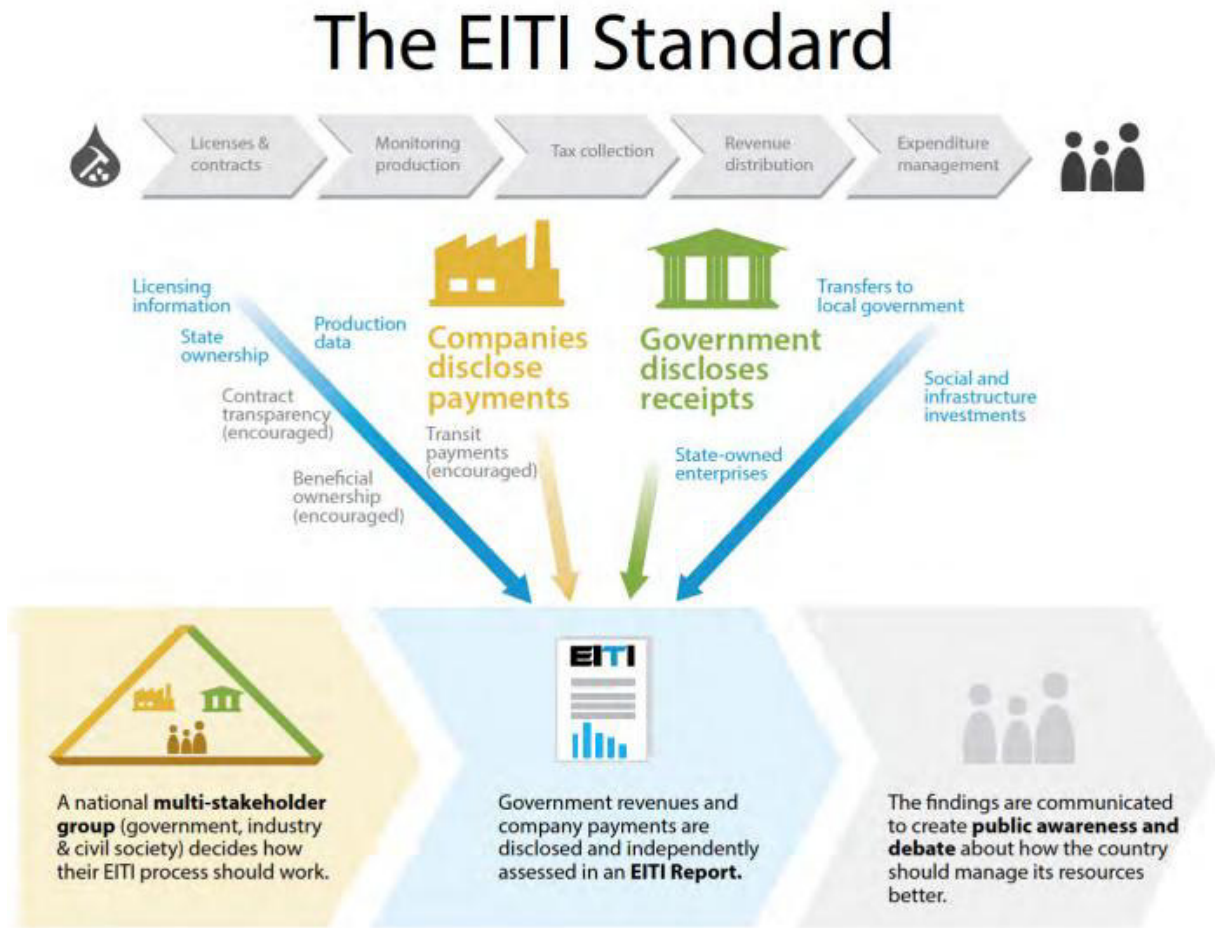


Polluting industries often have no plans or funds for ongoing or future clean-up. As a result, when a company stops production or when its profile or owner changes, all pollution is a legacy "gift" to the local authorities and populations, who have limited resources and capacities to respond to the task.

Extractives revenue

The Extractive Industries Transparency Initiative (EITI) is a global coalition of governments and civil society that work to encourage openness and accountability in the management of revenues from natural resources.³⁰⁸

Figure 27 EITI Fact Sheet



EITI maintains the EITI international standard, which ensures transparency around countries' oil, gas, and mineral resources.³⁰⁹ Countries comply with the EITI Standard by ensuring full disclosure of payments made by oil, gas, and mining companies to governments. Companies must publish what they pay to governments, and governments must publish what they receive from companies.³¹⁰ An independent administrator must reconcile these payment disclosures, which are then disclosed in an annual EITI report specifically intended to be comprehensible and accessible to the public.³¹¹

Afghanistan announced its endorsement of EITI in March of 2009, and submitted itself for candidacy in February 2010.³¹² The GoIRA has announced its commitment to fully implementing the EITI Standard through ensuring that all payments and receipts regarding extractive industries are made in a transparent manner. Afghanistan has established a multi-stakeholder group consisting of representatives of government, industry, and civil society and promoted their role in overseeing EITI processes.³¹³

The GoIRA's Secretariat for the Afghanistan Extractive Industries Transparency Initiative, which sits in the Ministry of Finance, has produced the first and second national reconciliation reports which audited and accounted for all material payments made by extractive companies as well

as revenues received by the government. These reports used an independent audit firm, and drew on disclosures from government entities above a set annual payment threshold.³¹⁴ The Secretariat subsequently discussed disseminated each report.³¹⁵ The EITI Board agreed that Afghanistan has made meaningful progress in implementing the EITI, and renewed the nation's EITI candidacy for 18 months.³¹⁶ Afghanistan's candidacy extends until October 2014, by which time the state must complete its EITI Validation.³¹⁷

Labour

Legal framework

Article 48 of Afghanistan's Constitution declares that work is the right of every person in Afghanistan, and everyone is free to choose their own occupation. It further specifies that rights of workers will be regulated by law. Article 49 prohibits forced labour, including forced labour of children.

In 2007 in accordance with Article 48, Afghanistan enacted a Labour Law setting requirements for wages, hours, paid and unpaid leave, labor disputes, and health and safety conditions.³¹⁸ The Labour Law is being reviewed and amended, so *please be sure to consult the law that is in force*.³¹⁹ The Labour Law lays down a minimum age of 14 years for trainees, 15 years for "light industries" and 18 years for all other kinds of employment. Workers may not be required to work more than 40 hours per week. Work hours are reduced to 35 hours for those between 15 and 18 or are pregnant. All employees are entitled to breaks for prayers and meals, time off on public holidays (including Fridays), and should receive annual leave. Women are entitled to 90 days of paid maternity leave.

Certain industries have greater protections under the Labour Law. Workers in underground industries or who work in other conditions "injurious to health" are limited to 30 hours per week. Women and youth are entirely forbidden from working underground or in other industries that are physically arduous or harmful to health. Night workers must receive higher pay, and the length of their work shift should be reduced by one hour.

Chapter 10 of the Labour Law also lays down health and safety requirements, mandating that workplaces are obliged to provide healthy and safe work environments, although little information is provided as to how these standards are determined or enforced. Employees in relevant industries must receive safety equipment and training, and those in dangerous industries are required to have a medical check clearing them for employment.

International standards also apply. Afghanistan ratified the Convention on the Rights of the Child in 1994, which sets standards for children's participation in wage labour. Afghanistan has ratified 5 the International Labour Organization (ILO) Core Conventions, including C100 Equal Remuneration, C105 Abolition of Forced Labour, C111 Discrimination, C138 Minimum Age (set at 14 years), and C182 Worst Forms of Child Labour, which categorizes employing children in mines as one of the worst forms of child labor.

Administration

Labour laws in Afghanistan are enforced by the Ministry of Labor, Social Affairs, Martyrs, & Disabled (MoLSAMD). The Ministry employs 20 labour inspectors to investigate labour

conditions throughout the country. These inspectors only work in an advisory capacity and business owners have the right to refuse them entrance. The Ministry of the Interior also investigates and enforces laws related to hazardous and forced child labour. Beyond the ability to send advisors, both Ministries are severely lacking in their ability to enforce labour laws.

The ILO also enforcement mechanisms. Afghanistan is obliged to periodically report on its adherence to ratified treaties, and organizations may comment on such reports. Based on these comments the ILO may make recommendations to the government. An individual or organization may also file a written complaint with the International Labour Office, which may result in a report from the Commission of Inquiry recommending changes. However, the ILO has no police force or labour inspectorate, which can order a state to comply with its treaties or recommendations.

Safeguard Policies

Legal framework

Projects in Afghanistan – whether run by an agency of the GoIRA or by a company – which receive grants, loans or financing from the following financiers:

- a **development bank**, such as the World Bank Group, the Asian Development Bank, the European Bank for Reconstruction and Development, and others,
- one of the 78 **commercial banks** adhering to the Equator Principles,³²⁰ or
- an **export credit agency** (meaning an agency either within government or working on behalf of a state that offers its private companies financial support for high-risk projects abroad),

are contractually bound to comply with the financiers' **safeguard policies**. Safeguard policies are meant to protect – or 'safeguard' – the communities affected by the project. The rules in each of the financiers' safeguard policies can vary, but common topics include environmental impact assessment, involuntary resettlement and indigenous peoples.³²¹

We already described the content of some safeguard policies above in the section on "Land" and its sub-section on "Compulsory acquisition and compensation."³²² When development banks fund projects, such as the many World Bank projects in Afghanistan, the Asian Development Bank's projects (including the TAPI pipeline and Sheberghan gas fields), all activities related to those projects must comply with the safeguard policies. This means that, for example, any resettlement associated with the TAPI pipeline will have to comply with the Asian Development Bank's involuntary resettlement policy, which is more favorable than national law.

Administration

In general, development banks, commercial banks and export credit agencies have a poor track record of having in place and implementing effective safeguard policies. Supervision and monitoring is often weak or non-existent.

However, a number of development banks and a few export credit agencies have made some progress on this front by establishing **independent accountability mechanisms** to receive complaints from individuals who believe they have been negatively affected by a project

financed by the bank or agency.³²³ Some of these independent accountability mechanisms are the Inspection Panel for the World Bank's public sector work,³²⁴ the Accountability Mechanism for the Asian Development Bank,³²⁵ and more.³²⁶

Independent accountability mechanisms usually provide one or several of the following functions:

- **Compliance review**, meaning an investigation, based on the complaint, of whether the bank or agency complied with its social and environmental policies,
- **Problem-solving/dispute resolution**, meaning the establishment, design and support of mediation to address the issues raised in the complaint with the necessary parties, and
- **Institutional advisor**, meaning advice to the bank's President or management on social and environmental issues, based on the complaints received.

Some of these independent accountability mechanisms are more effective than others in ensuring adequate policies and procedures are in place and effectively implemented on the ground. A number of international NGOs monitor this and advocate for improvement.³²⁷

Community members in Afghanistan have already used these accountability mechanisms – Mes Aynak communities submitted a complaint to the World Bank's Inspection Panel.

Commercial banks adhering to the Equator Principles do not yet uniformly have accountability mechanisms accessible to project-affected individuals; it depends on the bank in question. The Equator Principles Association is not mandated to receive or address such complaints. However, some banks conduct audits for compliance with these safeguard policies, and if these auditors go to the project site and speak with affected individuals, they may document grievances in their audit reports.

Human Rights

Legal framework

Afghanistan's 2004 Constitution establishes 38 articles providing protections for numerous human rights. Some of the most important include: right to equality for men and women, the rights to life and liberty, prohibitions against torture and extrajudicial punishment, the right to freedom of speech and assembly, the rights to vote and stand for election, the right to education, the right to work, and the rights to freely and securely hold property.

Afghanistan has also ratified many international treaties concerning human rights, many of which concern rights not established in the 2004 Constitution. The following international human rights treaties apply in Afghanistan:

Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) (01 Apr 1987)*

International Covenant on Civil and Political Rights (ICCPR) (24 Jan 1983)*

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (05 Mar 2003)*

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (06 Jul 1983)*

International Covenant on Economic, Social and Cultural Rights (ICESCR) (24 Jan 1983)*

Convention on the Rights of the Child (CRC) (28 Mar 1994)

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (24 Sep 2003)

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (19 Sep 2002)

Convention on the Rights of Persons with Disabilities (CRPD) (18 Sep 2012)*

Administration

These Constitutional guarantees can be enforced by the **Afghanistan Independent Human Right Commission (AIHRC)**, Afghanistan's national human rights institution (NHRI), which is an independent body established under the Constitution to monitor and investigate human rights violations, and refer violations to legal authorities.

As a national human rights institution, the AIHRC has a clear and internationally recognized role to play on extractive industries in Afghanistan. The International Coordinating Committee (ICC) of national human rights institutions adopted the **Edinburgh Declaration** recognizing the role of NHRIs in business and human rights, such as on monitoring situations of business misconduct, advising entities of violations, and educating and informing the public. Representatives of the AIHRC attended a workshop in Seoul, Korea in October 2011 in implementation of the Edinburgh Declaration in the Asia-Pacific region.

The AIHRC is not limited to addressing violations of domestic law; its domain includes the Constitution and any international treaties or covenants (including the above international human rights treaties). Therefore, even if a right is not enshrined in the Constitution, if it is enumerated in one of these instruments an individual may still bring a complaint to the AIHRC, which has greater enforcement mechanisms than Committees at the United Nations level.

Some of the international treaties listed here have individual complaint mechanisms at the United Nations. For six of the listed treaties (those marked with an asterisk), if the State has accepted the jurisdiction of the body, anyone can lodge a complaint with the relevant **United Nations 'treaty body'** or Committee, which may in turn investigate the complaint and issue an advisory decision.³²⁸ While these decisions are non-binding, they could be persuasive to domestic institutions in Afghanistan.

Rights-based development

Rights-based development is development that promotes people's well-being, which is not the same as development that promotes the national economy. Rights-based development means people increasingly know and have the capacity to demand their human rights, government is better able to protect and fulfill those human rights, and companies respect people's human rights. Some of the most relevant rights include the right to information, the right to a healthy environment, the right to participation, the right to food, the right to water, the right to adequate housing, women's rights, and indigenous peoples' rights.

Right to free, prior and informed consent

In 2007, Afghanistan voted in favor of the **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)**. Although this is a non-binding declaration, the UNDRIP sets out fundamental principles of land ownership and recognition from Articles 26 to 32. In section 32(2), UNDRIP imposes an obligation on Afghanistan to obtain the free, prior and informed consent (FPIC) of indigenous peoples when affected by projects, especially those in the extractive industries.

It is unclear whether any law or judgments in Afghanistan give support to FPIC (or a process similar to it), and if so, whether this support is for all affected communities or limited to certain groups. Article 4 of the 2004 Constitution recognizes 14 ethnic groups, including small minorities, in Afghanistan.

While there is no individual complaint mechanism associated with UNDRIP, the United Nations has a Special Rapporteur on the Rights of Indigenous Peoples, who has investigated and presented a study on extractive industries on indigenous peoples.³²⁹ The UN also holds an annual summit addressing indigenous issues, and NGO representatives or individuals active in indigenous issues may attend.

5

Tools for Civil Society

This part begins with challenges for civil society to anticipate and manage, and a chart to help you time your activities on industrial mining. Then we describe tools to:

Empower local communities, including through mobilization, building local information centers, strengthening community land rights, supporting community cohesion, facilitating a community-led impact assessment, and advising on community development agreements.

Document and monitor, including whether to do this alone or jointly with others, how to conduct a baseline study, ways you can monitor, the kinds of impacts to monitor, and against which standards to do so.

Inform policy and practice of governments and companies on key issues of transparency, security, artisanal and small-scale mining, and local content.

Seek accountability, by planning your advocacy and mapping stakeholders, researching the project and company, and pressuring companies and government authorities.

Challenges to Manage

As you do this important work supporting local communities and fellow citizens, and engaging in advocacy with all levels of government and the many companies involved in resource extraction, you will undoubtedly face a number of challenges. By anticipating these challenges, you can better proactively manage them, such as by discussing and strategizing within your organization, talking to your peers working with other civil society groups, and talking to more subject-matter experts and others to strategize and overcome them.

The primary challenges and obstacles we have seen civil society groups struggle with in their advocacy for more just and equitable resource extraction are:

Proving causality and responsibility: It can be very challenging to prove that particular impacts felt by communities are caused by the company, whether solely or jointly with others. If the company, then which entity in the corporate structure or network of relationships?

Obstacles to access information: Difficult to access information, such as impact assessments, the company's practices and internal policies, technical analyses of air and water quality.

Weak participation processes: Company and government processes for meaningful consultation and dialogue are often weak.

Funding: It can be challenging to find funds to build community capacity to understand the mining process and to negotiate before any agreement exists. Revenues from the project will only come many years after the project has had dramatic impacts on the ground. When revenues do come, they can vary a great deal because of changing commodity prices, which makes planning very difficult.³³⁰

Scenario

The following scenario³³¹ can help you understand these challenges and the need to use the tools:

The Republic of Kaiso is exploiting the minerals in its country to meet its desperate need for government revenues. Kaiso has many minerals including copper, gold, iron ore and petroleum. MaCopper International, a mid-tier copper mining company, received a license in accordance with the provisions of the Petroleum and Mining Act.

The company acquired a concession in Tonya District, and in 2005, the company prepared a resettlement plan and convened several meetings. Three men from Tonya District's traditional elders council attended the meetings. The company promised to relocate the 50 community members together in a new place where they could continue to practice their traditional way of life, including artisanal mining. In 2006, the community members were resettled separately in two locations, among different ethnic groups hostile to the newcomers' arrival. The communities believe they didn't get a fair price for their land, and they cannot practice their traditional ways of life in the new location.

Several of the community members have continued to return to MaCopper's concession (their former lands) to access their grazing lands and continue mining. MaCopper responded by putting in place stringent measures to keep the "trespassers" out. Security forces interrogate anyone found loitering in the area; suspects are beaten.

MaCopper also built a slurry pipeline to transport the copper ore to a port 200 km away and a new water treatment system. The company says the water is being treated according to international standards before being re-used for local agriculture. But community members think the treated water smells and tastes bad. They feel they have no choice but to buy bottled water for their domestic use, which is a considerable expense. They also think the treated water has had a negative impact on the quality and volume of their crops, especially the wheat they grow that makes up a large part of communities' diet.

Just this year, a doctor observed a depletion of several essential vitamins among the community, especially children, and he wrote a report on how mercury in mine effluents are negatively affecting the community's health. MaCopper and the Ministry of Petroleum and Mining responded to the report by questioning the doctor's credibility and petitioned the Medical Board for him to lose his medical license.

Timing for Activities on Industrial Mining

	Preparation	Reconnaissance 1 to 5 years	Exploration 1 to 10 years	Exploitation <i>Construction</i> 7 to 200 years <i>Operation</i>	Closure Forever
Government duties	Ministerial & local government capacity-building	Licensing Supervising ESMP Inspection & supervision	Licensing Supervising ESMP, RAP Inspection & supervision	Licensing Supervising ESMP Inspection & supervision	Inspection & supervision Supervising closure plan Inspection & supervision
National laws	Legal & regulatory reform	Land, Environment & Minerals laws	Land, Water, Environment, Labour, Procurement & Minerals laws	Water, Environment, Labour, Procurement & Minerals laws	Water, Environment & Minerals laws
On-site activities	First local contacts	Prospecting, geological survey & mapping Negotiate land access Consultant for ESIA	Drilling & infrastructure Negotiate land access & resettlement Consultant for ESIA Security	Operational infrastructure, transmission lines Detonations, plants, pumping systems Local content	Emissions control, water management Flora & biodiversity management Local content Remediation, stabilization Treatment & revegetation
Communities & civil society	Information centers Rights training Community protocols Local content, security & sustainability strategy	Information centers Baseline Public participation Local content training Security	Information centers Public participation Community-led impact assessment CDA negotiation Local content delivery Security	CDA implementation Joint impact monitoring Local content delivery Security	CDA implementation Joint impact monitoring Security Monitor closure plan Implement sustainability plan

Empower Local Communities

One of the best ways to avoid future conflict and improve oversight of resource extraction activities is the informed participation – including two-way dialogue and mutually beneficial partnerships – of local communities and civil society organizations in decision-making processes.³³² Meaningful participation by local communities in decision-making on natural resources is also a recognized right of local communities under the Environment Law. However, this is not one that they can easily exercise.

Mobilize local communities

“When a company comes to exploit, they give the impression that they have negotiated with the customary chief, that they made good promises. When they begin to exploit, we quickly realize that they have no intention of keeping their promises. That’s what happened with Ségamines.” – Civil society advocate in the Democratic Republic of Congo

You can help mobilize local communities by working with community representatives to listen to community members and help organize and build cohesion in the community, and articulate their vision. It is also very important to have regular community meetings to share information and discuss strategies or call emergency meetings if a situation develops.³³³ Communities will inevitably have divisions and disagreements in the process of internal consultation, so be prepared as a supporting civil society group to help the different community factions find common ground.

Other communities affected by mining have found that it is very important to first have good **internal consultations** to know what communities want from resource extraction and what their vision is. They also found that given the complexity of the subject and the different kinds of expertise communities need, it is helpful to **establish community committees to address specific issues**. Some potential committees include the following topics: to review the environmental impact statement, environmental and socio-economic monitoring, community wellness, women’s committee, business development opportunities, security, corruption, training and hiring, and community sustainability upon mine closure.

Another lesson is building alliances to help communities avoid mistakes.³³⁴ In Afghanistan, affected communities have already been doing this: sharing the experiences and lessons of Logar with community leaders and civil society advocates in Bamiyan and Maidan Wardak through the NRMN.

Strengthen community land rights

Access to land is very important for natural resource development during advanced exploration. Land access by the government or a license holder requires community members to understand their land rights under the law. This is an issue in Afghanistan, where close to 95 per cent of land transactions are informal, and very little property is covered by recorded legal deeds. It is estimated that fewer than 2 per cent of women own land. Another issue is displaced persons

returning to claim their lands. Agricultural and grazing land and water has been a flashpoint issue at Mes Aynak, and such disputes will likely repeat themselves wherever resource extraction takes place.³³⁵

To benefit from fair and prior compensation for land acquisition or disturbances to land, it is vital that communities understand and document their land rights as soon as possible in the exploration stage of the project life cycle. You can help local communities navigate the complexity of land registration and administration by working together with specialized agencies and community members. You can help them collect information and documents about their land, how long they have lived there, and what rights they have to it.³³⁶ This can include documents proving that a community member owns the land, how long they have lived on the land, any collective rights, or other documents showing the boundaries of the land.³³⁷

Establish local information centers

An information center can be particularly helpful to prepare communities for short- and long-term impacts, and help **manage community's high expectations**. Afghanistan's population has little experience with large resource development projects. Interviews with communities around the Aynak and Hajigak mining sites show the communities may only think short-term, and not about the more long-term impacts. This is quite understandable: after three decades of war and displacement, their sense of safety and security has been severely eroded.³³⁸

Figure 28 O Trade, Expectations Management³³⁹



In these and other places in the country, communities may not have the ability to make quick and binding decisions about their future. They need time to understand the extractives process, understand their options and consult with experts. Employees, consultants and contractors working with resource extraction companies, in contrast, are often working in a hurry or under significant time pressure from institutional or legal deadlines that don't mean anything to the community.³⁴⁰ Local resource centers can help ease this divide.

Civil society can set up local community **resource centers** to share and create information and training about the stages of the extraction process, years between impacts and revenues, the potential benefits and impacts of the process on local communities, and the legal duties and rights of communities and the players involved. These centers should ideally be established in those provinces where large-scale extraction is set to take place, such as Logar, Bamiyan, Maidan Wardak and Mazar. The center should be accessible to the villages who will be affected, in particular its women and youth.



Mining companies often speak and present data in language that is too technical for the local population.

Figure 29 Zoi Environment Network Cartoon

Support community cohesion, representation and decision-making

There are a number of ways for civil society to help communities build their cohesion, strengthen internal community governance and legitimate representatives, and improve communities' bargaining position vis-à-vis the company and local and central government, ultimately helping to level the playing field between marginalized communities and domestic or international resource extraction companies. It is important to start building community cohesion as early as possible during the exploration stage of the project life cycle.

In this section we first talk about the need for community cohesion, and then describe two tools to support cohesion, demonstrably legitimate representation, and decision-making: a community consultation protocol, and a more holistic community protocol.

Need for community cohesion

Community cohesion is very important to protect and defend community interests and rights against company and government conduct and interests:

Divisions make communities more vulnerable. Without cohesion, communities are even more vulnerable to harms and manipulation, intentional or perceived, by government and companies. Communities are not monolithic, and they need time and space to work out these differences internally, without interference from local or central government, or companies.³⁴¹

Companies set the agenda. Usually the company (not the communities) designs the agenda for the development program, and government makes politically motivated development

promises. During negotiations or dialogues, companies tend to give priority to their own proposals of how to ‘benefit’ the community.³⁴²

Companies and government use the politics of disinformation. Communities and members of the public often complain about companies’ power point presentations that emphasize the benefits of the project, but do not disclose information about the direct and indirect environmental, financial and human rights impacts of the project. Questions from the public are not answered, and critiques and discussion are not tolerated.³⁴³

Companies generate power imbalances. Companies often worsen power imbalances in a number of ways, such as by choosing the venue for negotiation, the language, the agenda, the timing, who distributes information and materials, who brings in expert consultants and lawyers, and who takes speaking time.³⁴⁴

Communities lack capacity and mobilization to use their negotiation leverage at the start of the project. A company or government’s disposition to negotiate and compensate is higher at the beginning of a project, but local community capacity to negotiate and exercise demand is low. Ten or 20 years later, when significant impacts really hit, local people have increasing demands and are frustrated by broken promises – and they’re ready to negotiate – by then the company and government’s disposition to negotiate and compensate has significantly decreased.³⁴⁵

About community consultation protocols

A community consultation protocol is a framework communities develop themselves to articulate their internal and external decision-making processes. All communities generally have some form of governance in place already, whether customary, documented or otherwise. Oftentimes such governance systems are not robust enough to support decision-making and cohesion in the face of a change as massive as large-scale resource extraction. The suggestions below are not meant to replace any existing systems (such as *shuras* or Community Development Councils), but rather strengthen them so they are robust enough to manage the complex and sensitive issues of large-scale resource extraction.

Communities can use their consultation protocol to negotiate the terms of reference of a negotiation process with other parties, such as a resource extraction company. Civil society can advise communities on some relevant elements of the terms of the negotiation process that they can address in their consultation protocol:³⁴⁶

Community priorities. Set out the community’s priorities and interests for the resource development as they see them (such as mitigating negative impacts, contributing to peace, and ensuring training, jobs and inclusive development benefiting men and women).

External consultation. Define the venue for meetings between community members and visitors, as well as the language, who sets the agenda, how much notice communities need prior to a meeting, as well as funding for any translation, and costs to prepare for and attend meetings.

Internal decision-making processes. Set out the community's internal decision-making, such as how it will consult with all groups within the community, the time required to disseminate information received and obtain feedback, and the composition of a demonstrably credible and legitimate body representing the interests of all community groups and members, including women, youth and vulnerable groups.

Terms of reference. Set out that the terms of reference for company-community meetings should be mutually agreed and set in writing.³⁴⁷

Time frames. The terms of reference should set out reasonable time frames for the community representatives to consult with their communities. This will help avoid parties to the negotiation unfairly using time pressure at decisive moments in the negotiation.³⁴⁸

Document, document, document. Negotiations should be documented in detail in writing, such as through mutually agreed and signed minutes. Disagreements should also be documented.

Confidentiality. Companies often require confidentiality. While this might allow some parties to speak more openly, it can also be counterproductive because it blocks transparency and accountability to the broader public. One way to address this is using third-party observers. Also, while the negotiation process may be confidential, the outcome of the negotiation should be open to public scrutiny.³⁴⁹

Waivers. Companies often also require waiver of certain rights, especially the right to seek judicial remedies. There are four elements to address the adequacy of waivers:³⁵⁰

1. They should be mutual.
2. They may only extend to the issues that are concretely addressed in negotiations.
3. They should bind parties during negotiations and after, solely when an agreement has been reached. When negotiations fail and are ended, the waiver no longer has any reasonable justification.
4. Waivers may not extend to criminal actions. The persecution of criminal offences is not subject to private negotiations and is a legal duty of the state in the public interest.

Negotiated agreement. When the parties have reached a negotiated agreement, such as a CDA, the agreement must be documented in detail and include.³⁵¹

- The terms and timelines of implementation,
- Resources and responsibilities to monitor the implementation,
- Mechanisms to resolve disputes, address delays, non-compliance or irregularities.

About community protocols

A **community protocol** is a charter of rules and responsibilities in which communities set out their customary rights, values and worldviews relating to their natural resources and land, and

their cultural and biological resources, as recognized in customary, national and international laws.³⁵² (A consultation protocol is just one piece of this more holistic community protocol.) A community protocol is a community-led and developed instrument – taking different forms, depending on the needs and desires of the community – by which a community affirms its rights to self-determination.

A community protocol articulates the community's values, customary laws, traditional institutions, relationship to natural resources, and development priorities. This holistic community protocol can address a wide range of issues, such as:

- the community's mapping of its **institutions** and governance,
- a mapping of the community's **natural resources**, including its obligations and duties towards these,
- an assessment of the community's **capacities**,
- the communities' **rights** under national, regional and international law,
- a formal articulation of what constitutes **consultation** (just as in the consultation protocol, described above) or what constitutes free, prior and informed consent,
- the communities' **development priorities**,
- what **compensation** and **benefit-sharing** is most appropriate for the community.³⁵³

Value of community protocols

Other communities who have experience with resource extraction have spoken about the importance of knowing the communities' rights and the laws of the country, gathering the communities' traditional knowledge, and mapping its land use and cultural sites.³⁵⁴

The very **process** of developing the community protocol, as well as the end-product of the protocol itself, helps local communities regain a sense of agency and gives them the space to assess potential impacts of a resource extraction project in light of customary laws, and spiritual and cultural links to lands, territories, waters and natural resources. While this process is unique to each community, the community protocol's meaning and usefulness depend on a robust process incorporating the thoughts, efforts and participation of all community members, from the most influential to the marginalized.³⁵⁵ Typically under-represented community members include elders, women, children, people with disabilities (including physical, learning and developmental).³⁵⁶

Using a community protocol

A community protocol can be used to engage in dialogue and negotiate with resource extraction companies, to articulate and raise awareness of their needs and development priorities, to build capacity around the community's rights under national and international laws, to strengthen the community's governance and representation, and to engage in an impact assessment process.³⁵⁷ In this manner, community protocols can help balance the often gross asymmetries of information and resources between communities and companies.³⁵⁸

Such community protocols have been developed by communities in countries neighboring Afghanistan (indigenous nomadic pastoralist tribes in Iran; camel breeders, livestock keepers, and traditional healers in India and Pakistan) and in Africa and South and Central America. Communities in Ghana have used their community protocol to engage with an Australian mining company.³⁵⁹

Challenges

A sole focus on customary laws (without considering national or international law) may exclude women from openly articulating their needs and challenges. Communities must be driven to develop it and engage with participatory methodologies for it to have meaning and be useful. The process may create divisions and conflicts within communities, which should be anticipated, prevented and proactively addressed. The process of developing the protocol cannot be rushed or manipulated by elites or outside parties. The potential of the protocol also depends on the openness and willingness of government and the implementing companies to engage with communities about and in accordance with the community protocol.³⁶⁰

Facilitate a community-led impact assessment

Weaknesses of regulatory impact assessments

Environmental and social impact assessments are a regulatory requirement during advanced exploration in order for a proponent to be granted an exploitation license (see Part 4). These regulatory environmental and social impact assessments completed by consultants on behalf of companies have a number of significant weaknesses:

There can be issues with the **company's integrity**: EIA consultants submit their report to the mining company, not to NEPA. This gives the company an opportunity to edit and alter the contents of the EIA report in their favor before submitting it to NEPA. A related issue is that the company sees the EIA as just an **administrative formality** (a “checkbox” on their list to apply for a license), meaning they may not intend to effectively implement or monitor the proposed remediation measures in the ESMP.

While consultants for EIA reports are expected to be independent, high-quality professionals, there are issues of **conflicts of interest** because the company wants the extraction project to go forward with as few obstacles as possible, and the company is paying the EIA consultant. This means there is pressure on EIA consultants to downplay the negative environmental impacts of a project in order to keep the duration and cost of the investigation to a minimum.³⁶¹

There are also issues of **local knowledge** and **vested interests**: while EIA consultants may be highly credentialed and specialized, an outside consultant can never know the land or local communities as well as local people themselves. Consultants frequently fail to understand issues of importance to the community, and the process is embedded in a value system that devalues local knowledge and understanding of a project's effects. Only local communities know the full details about local conditions, local needs and local values.³⁶² Local people also have more vested interests in the outcome of the EIA than an outside consultant.

The regulatory impact assessment often also lacks institutional mechanisms and resources to ensure the findings and recommendations of the impact assessment – especially concerning social impacts – are **implemented** and monitored over time.³⁶³

Community-led impact assessments

A community-led (or community-controlled) impact assessment is a process designed and led by communities producing information and knowledge identifying the likely impacts of a project as understood by the community, the diverse community attitudes about the project, and appropriate strategies for mitigating and managing these impacts and maximizing benefits. The scope of the impacts can include community health or well-being, culture, environment, human rights, economy, or any combination of these.³⁶⁴ They have been used by local communities, indigenous and aboriginal groups in Australia, Canada, Ghana, Colombia and the Philippines as a means to ensure that their participation is as informed as possible.

Value of a community-led impact assessment

A community-led impact assessment affords a central place to community issues and concerns. It values community understandings of project impacts and their insights into how they can be effectively managed, and it recognizes the legitimacy and power of local knowledge and authority to manage resources affecting their livelihoods. It also uses appropriate methodologies and channels to communicate information and establish community attitudes towards proposed projects, and helps to develop the research and communication skills of local people.³⁶⁵

Similar to consultation and community protocols, community-led impact assessments can play a critical role in resolving or managing conflicts within communities about development. This is because it identifies the range of groups and interests within a community in relation to a project, and provides a forum within which these can be discussed and accommodated.³⁶⁶ A community-led impact assessment also provides communities with sufficient and understandable information that they trust about the resource extraction project, which enables them to effectively participate in decision-making in fulfillment of their rights to public participation under the Environment Law.

How to do a community-led impact assessment

Community-led impact assessments can be done in a number of ways, including:

1. **By the community itself.** A representative community body or a local NGO trusted by that body can facilitate a process for community members to learn about the project through visuals and story-telling, to identify indicators of their well-being, and compile and validate the results of their impact assessment. The human rights impact assessment tool is one example of a community-led process (see the section on “Document and Monitor” and its sub-section, “Kinds of Impacts”).
2. **By a consultant hired by the community.** A representative community body can also hire an impact assessment consultant based on terms of reference developed and endorsed by the community. The consultant’s role is to advise the community on relevant approaches and methodologies for the impact assessment, train local people, help secure and manage funding for the process,

advise on the technical requirements of regulatory impact assessments, and help draft the impact assessment reports.³⁶⁷

Regardless of which method used, information-sharing and consultation in this process are dramatically different from a regulatory impact assessment. Information-sharing is not a one-way process from consultant to community, but rather a repeated process that can be visual with story-telling in local languages. The consultations are not merely a forum to gather and document community views, but also to build awareness within communities of the diversity of their views and build consensus on the community position.³⁶⁸

Using the community-led impact assessment

A community-led impact assessment can be used in a number of different ways, including as input to the regulatory impact assessment process, evidence for suggested improvements to mitigation plans, and a basis for subsequent community-based monitoring over the life of the resource extraction project.³⁶⁹ For example, you can most effectively use the results of the community-led impact assessment as input during the public participation phase of the regulatory ESIA, allowing you to compare and identify what the consultant missed. More generally, you can also evaluate the consultant's regulatory environmental and social impact assessment using a guide³⁷⁰ prepared by ELAW and with the help of technical advisors.³⁷¹

Advise on community development agreements

About negotiated agreements

A number of different kinds of agreements can be negotiated and entered into between local communities, resource extraction companies, and government (local or central) at each stage of the mining process. These can range from a memorandum of understanding (MoU), to a letter of intent (LoI), to a consultation agreement, to a community development agreement (CDA) or impact-benefit agreement (IBA).

Generally speaking, a **community development agreement** (CDA), also called an **impact-benefit agreement** (IBA) is a negotiated agreement between a company (private or public) and representatives of local communities in the area of the company's operations, agreed to during advanced exploration and prior to construction or operation. In this learning guide we use the term CDA to refer to the entire range of negotiated agreements, whether an MoU, LoI, CDA or IBA.

CDAs seek to avoid and minimize identified negative project impacts, compensate local communities for the impacts that cannot be avoided, and ensure local communities share in benefits of the project that they would otherwise not receive. Such benefits may be greater access to jobs or business opportunities, investments in the community's human capital through education and training, funding community services or infrastructure, and obtaining a share of the project's revenues.³⁷²

Importantly, CDAs are a way to anticipate and avoid conflicts among communities and companies, establish lines of communication, early warning systems, and mechanisms to address and resolve tensions and emerging problems.

Figure 30 Cartoon on Oil in Chad³⁷³

The subjects of a CDA can vary, depending on the stage of the mining process. The subjects can include:³⁷⁴

- Recognition of customary rights in land, and conditions for continued access to land;
- Consent to project activities;
- Local employment, education, training and business development;
- Revenue sharing or equity grants;
- Cultural heritage management and impact minimization;
- Environmental management and mitigation;
- Security agreements;
- Implementation mechanisms with community participation;
- Ongoing monitoring, adjustment and review.

Issues with a CDA

Experience shows that CDAs can only create equitable and sustainable outcomes if there is **fundamental equality in bargaining power** between communities and investors, and if **care and expertise** is applied to their negotiation.³⁷⁵ Without such equality in bargaining power, the

CDA only becomes another instrument that leaves community members feeling cheated and wronged by the resource extraction project.

Equality in bargaining power and care in negotiation in this context is **incredibly challenging**. This challenge is an opportunity for civil society to provide technical support and resources to empower local communities and help level the playing field. Here we list a number of issues and challenges that you can anticipate, and help local communities to address in the negotiation process:

Time. Negotiating a CDA is a long process for communities requiring much time to prepare themselves *before* negotiations, as well as time, resources, and technical expertise *during* negotiations. A CDA can often take two to three years to negotiate, and should be concluded before mine construction starts. CDAs should also contain provisions for a participatory evaluation after three to five years, which can lead to re-negotiation of the terms of the CDA. You can support communities by raising awareness of the need to begin early to determine their bargaining strengths and weaknesses, in order to know whether and how to negotiate a CDA.

Based on impact assessment. For a CDA to address community needs and interests, it should be based on a full and holistic assessment of potential impacts on the local communities, including environmental, social, economic and human rights impacts.³⁷⁶ EIAs done by consultants generally do not fully capture these diverse community interests and impacts, and are an insufficient basis to start CDA negotiations. You can address this concern by facilitating a community-led or community-controlled impact assessment.

Unequal bargaining power. The outcome of the CDA (the scale of the benefits and the efficacy of compensation and mitigation measures) depends largely on the relative bargaining power of communities and landowners on one hand, and the company on the other. This relative bargaining power is determined by the degree of community cohesion, the strength or weakness of local political organizations, human, financial and information resources available to local communities, and a community's prior experience with mining, to name just a few.³⁷⁷ You can address these challenges by supporting mechanisms for community organization and cohesion such as a community protocol, providing financial and technical support, and sharing information about experiences with resource extraction that you have learned about.

Representation and legitimacy. It is almost always impossible for an entire community to negotiate a CDA. The success of a CDA depends on the representatives being demonstrably legitimate and able to articulate and promote the full range of community interests.³⁷⁸ If some interests or communities are excluded, this can seriously undermine communities' bargaining power, and undermine the agreement.³⁷⁹ You can address this by supporting mechanisms for identifying the diverse interests within communities, and supporting demonstrable legitimacy of community representatives and community cohesion, such as a community protocol.

Defining ‘affected communities’. Who is defined as an affected community is a contentious issue. Government and companies may have an interest in a narrow definition, to minimize opposition and compensation demands. Sometimes a spatial measurement is used of people living within a certain distance of the mine site. This can be arbitrary as it excludes people affected by environmental impacts, effects on cultural sites of wider significance, or by social impacts of job-seekers migrating into nearby towns.³⁸⁰ A widely reported source of conflict in negotiations is including some communities or groups, and excluding others.³⁸¹ Address this issue by facilitating a social mapping process or community-controlled impact assessment.³⁸²

Equity and distribution of financial benefits. Distribution of financial benefits that accrue under an agreement is a central issue. Failing to include all affected people in the allocation of benefits, a belief on the part of affected people that benefits are distributed inequitably, misappropriated or wasted, can cause serious social conflict. Equity here can be understood in two ways: (i) inter-generational equity among today’s and future generations, and (ii) the degree to which benefits are allocated to those experiencing the severe negative impacts. You can address this concern by promoting transparency in the negotiation process around allocation and distribution of benefits. The decision-making processes should also be clear, simple and accessible to community members.³⁸³

Implementation and enforceability. CDAs involve a commitment by the parties to deliver certain outcomes. The implementation of the CDA and delivering those outcomes requires actions, which can be subject to delay or fail to occur. Some actions can also be easier to measure (making payments into a community bank account) than others (achieving an agreed level of local employment on a project). This question of implementation is related to enforceability: what options are open to the local community if the company fails to deliver on an expected benefit? These concerns can be addressed by using clear and unequivocal language and specific goals and commitments; allocating resources to the task of implementing the CDA’s commitments; systematic and on-going monitoring and reporting of outcomes; scheduled reviews and amending of agreements to ensure their relevance to changing circumstances.³⁸⁴

Support to communities

To manage and address these issues in community development agreements, communities require resources, which civil society organizations may be able to provide.

Resources are required to establish local community needs and priorities in relation to negotiated agreements; for community participation in preparing for and undertaking negotiations; for community negotiators to meet with project proponents; and for local communities to have access to the technical and professional expertise required to conduct complex negotiations in relation to major projects.³⁸⁵

Essential expertise includes the ability to adopt a strategic approach to negotiations, in part by developing an appreciation of the needs and priorities of the other parties to a negotiation; to understand the economics of proposed projects; to design revenue sharing and compensation

provisions that will meet community needs and at the same time recognize commercial realities; to design effective impact mitigation and implementation measures; and to draft agreements that are sufficiently specific and binding to be capable of enforcement, yet flexible enough to adjust to changing circumstances. Given the specialist nature of the skills required, access to this expertise will almost inevitably require recruitment of external employees or consultants, requiring local communities to develop and apply expertise in identifying, selecting and managing technical staff.³⁸⁶

To summarize, the ways civil society can address these concerns include:

- Providing financial and legal support to local communities.
- Providing training in negotiation skills to community negotiators.
- Advising and mentoring community negotiators to avoid the pitfalls in negotiating CDAs, and connecting them with outside experts.
- Sharing information with local communities about other communities' experiences with resource extraction.
- Facilitating a community-led or community-controlled impact assessment.
- Facilitating a community protocol to support community cohesion and representation.

Finally, while civil society can advise community members, other mine-affected communities have reiterated the importance that a proud and strong community person sits at the negotiating table, and not a consultant or lawyer.³⁸⁷

Document and Monitor

One of the most powerful tools to manage the changes brought by resource extraction – especially socio-environmental changes – is for civil society to help document and monitor those changes by gathering baseline data before the resource extraction project begins and continue to document changes from that baseline, especially during the construction and operation stages. This gives local communities and civil society groups evidence needed to demonstrate the severity, scale and scope of harms from that baseline, and help show that the harm was caused by the resource extraction project. In this section we describe (1) whether to monitor alone or together with other stakeholders, (2) conducting a baseline study, (3) ways to document and monitor, and (4) the different kinds of impacts that you can document and monitor.

Monitor alone or together?

The decisions you make about what to monitor (which impacts, against which standard) and how to monitor (by traditional methods, scientific methods, observation) will affect how people accept – or deny – the validity of the monitoring results. When you are monitoring something concrete and indisputable, such as the height of a bridge or the width of a highway, the monitoring can be done by one party and easily independently verified by another. But when you are monitoring impacts that are less concrete, highly sensitive and with multiple influencing factors – such as water, the environment, social or cultural impacts – it is highly likely that the

monitoring results will be cast aside as invalid by the people you are trying to influence, and that disputes will arise about what should be measured and how, and according to which standard.

Remember we said at the beginning that one of your biggest challenges is causation to establish responsibility. For example, why did the availability of water go down? Did the water level really go down and how do you know? Is it because of the mine? The drought? Poor farming practices? Quadrupled water demand from all the new people who have moved to the area? And if it is because of all these things, then who is responsible, and to what degree?

This is where it is important to consider using what is called **joint participatory monitoring** or joint fact-finding. First, you talk to the government authorities (local and central), and the implementing companies (especially contractors and suppliers, extraction company manager and workers, consultants), demonstrably legitimate community representatives, influential religious leaders if need be, and other relevant stakeholders to talk and find agreement on who will be paid by whom to monitor what impacts by what method, against what standard, and how to remediate.

It will of course take many meetings and discussions to find agreement. You might need a mediator or other third-party to help, because government or the company may not trust or believe you. But the value of the discussions can be tremendous: if you can find agreement before you start about who will measure what and how, according to what standard, and who will pay for it, then it will be very difficult for any of the people involved to dispute the validity of the results monitored by those agreed principles. The many discussions can also help build trust and a better relationship to raise concerns early, and demonstrate a collaborative and constructive approach by civil society.

Conduct a baseline study

A **baseline study** (also called a community profile) shows through photos, videos, maps and testimonies how the situation in a given community or area is today, before resource extraction operations start. The baseline study can include the community's history, the number of people living in an area, how the community lives and generates a livelihood (recording the kinds and quantity of food and water sources, access to basic services, impacts on culture), as well as the land ownership and possession situation of community members.³⁸⁸ Ideally, the baseline study results should be disaggregated by gender, ethnicity and socio-economic status.

This baseline study is important to help communities and civil society demonstrate the **severity, scale and scope** of the negative impacts that will come: it allows you to measure and have evidence of the difference between the pre-mining and post-extraction situation.³⁸⁹

For example, let's say the community believes their water tastes funny or has changed colors as a result of mining or oil activities. When communities approach government or a company with this information, often the government or company will tell the community member that the water was just as dirty before the mining started, or that their activities did not cause the dirty water. Baseline data can be useful evidence in this situation, to show documentation about the quality of the water before mining, possibly even using official statistics communities obtained from the environmental protection agency *before* the harm occurred, that government might not release at a later point in time when tensions are running high.

Ways to document and monitor

Ideally, the collection of both baseline and monitoring data should be guided by the same evidential standards applicable in court cases. This will strengthen the position of communities to adopt alternative strategies, such as domestic or international litigation, in cases where negotiations fail or do not progress over lengthy periods of time during which the resource extraction project will continue and increasingly create problems.³⁹⁰

Kinds of information

A number of different types of information can be collected for a baseline or for other activities, including:

Interviews and meetings – Individual interviews or group meetings, both requiring adequate advance preparation to prepare questions and research the person and situation.³⁹¹

Note-taking – Write down detailed and regular notes in a notebook about all important information you gather about the mining operation learned during casual conversations, news reports, or more formal interviews, including any serious incidents that occur. Make sure you record as much detail as possible. For each note, write down the date, the time, where the event happened, and the names and the positions of the people involved.³⁹²

Document analysis – Analyzing documents, such as company and government policies, newspapers and NGO reports.³⁹³ You can obtain these online or in-person.

Experts – In some cases, seeking an expert opinion on a topic (such as testing water samples, interpreting a mining contract, independently evaluating the company's EIA) or where to find more information.³⁹⁴

Surveys – Develop a standard questionnaire and obtain responses from a representative selection of people in order to develop community-based statistics. The survey can be administered in writing, a face-to-face meeting, or by telephone.³⁹⁵

Official statistics – Obtain official statistics, such as the profile of people in a particular area, disease, sanitation, education, payment of taxes, etc. Some places to look include: your government's website, reports submitted to the United Nations Treaty Monitoring Bodies, or the websites of various UN agencies, such as the World Health Organization, UNICEF, or the Treaty Monitoring Bodies. It is often very effective to combine statistics with personal stories.³⁹⁶

Visual evidence – You may want to take photographs or film videos of the people you interview or the area of the investment project. Before using a picture, you must obtain permission from the person who took it and if someone is in the picture, also seek his or her permission to use it. For example, you could insert a photograph of housing conditions.

Video – Video can be a particularly effective tool to capture the current situation, and put a human face to the changes. WITNESS has a video advocacy planning toolkit that may be particularly useful for you to learn about this medium.³⁹⁷

Maps – Maps are useful and can be drawn by hand, can be official maps from government or a company, and many online maps have been developed to show the social conflicts around extractives sites. You may for instance want to have a map of indigenous land to provide visual illustration of how this territory has been affected by the investment project.³⁹⁸

Audio material – You may want to consider recording interviews or any consultations. It is important that you discuss the use of recorded material at the beginning of the interview and seek the participant's consent. A word of warning: It is useful to take some notes during an interview because recorders can sometimes fail.³⁹⁹

Participatory techniques

Now we turn to some more specific ways to collect information with and about local communities. Here we list just a few, and we encourage you to consult a guide such as the excellent “80 Tools for Participatory Development” that has simple and easy-to-understand descriptions.⁴⁰⁰ These participatory techniques can also be used and led by communities themselves.

Participatory rapid appraisal – This method uses group animation and exercises to facilitate information sharing, analysis, and action among stakeholders. The main principles of this approach are: participation, teamwork, learning from and with people, triangulation (gathering at least three sources for the same piece of information), flexibility and optimal ignorance (gathering just enough information to make appropriate decisions).⁴⁰¹

Mapping and modeling – Through this method, people are asked to map, draw or color with different materials some aspects of their reality. Farmers can represent their field and harvest and explain the changes they face; indigenous peoples can represent their ancestral land and the different locations for their medicinal plants, or the sites where they conduct their rituals. Mapping and modeling stimulates discussion and facilitates dialogue about the main problems experienced by community members, as well as their fears and expectations.⁴⁰²

Focus group discussions – A focus group is a discussion usually involving six to twelve persons, guided by a facilitator, during which group members talk freely and spontaneously about a certain topic. It is a qualitative method and its purpose is to obtain in-depth information on a group's concepts, perceptions and ideas. A focus group discussion aims to be more than a question and answer session.⁴⁰³

Semi-structured interviews – This technique collects information through open-ended questions, such as “Tell me about the working conditions in the area.” The objective of this type of interview is to understand the participant's point of view, rather than to make general assumptions about the situation. If the person conducting the interview is

curious about some elements or wants to explore a precise subject, he may ask further questions, such as: “You mentioned earlier that...can you tell me more about this?” Semi-structured interviews are more like discussions than formal interviews.⁴⁰⁴

Timelines – By listing the main events of their lives, community members can identify the major impacts an investment project may have had. The linkage of events with approximate dates will help the assessment team associate changes to a cause (i.e. the use of chemicals by the company and the decrease of water quality; or arrival of the company and the change in indigenous peoples’ land use).⁴⁰⁵

Venn diagramming – Through this method, participants are asked to identify individuals and institutions that are important to a community or group and use symbols and lines to show the relationship between each group, institution or individual they name. This exercise may also help inform your stakeholder mapping.⁴⁰⁶

Storytelling – When using this method, you may simply ask people to talk about their lives, including the good moments and significant events. Important facts can be extracted from these stories. This method is very informal and helps paint a broad portrait of a situation.⁴⁰⁷

Images – This method consists in showing images, photos or other types of illustrations to people and asking them what they represent for them. Some people will feel inspired by images and will link them to personal experiences. The use of an image may help in addressing sensitive issues and will certainly allow for free discussion on a specific topic.⁴⁰⁸

Role playing – Through this method, participants are asked to play a role that is not necessarily theirs or perform a task in a given situation. You can provide a situation and allocate different roles to each participant (such as the company manager, the local government representative, a farmer, or a migrant worker employed by the company). During the game, participants are not allowed to exit from their role. This enables participants to express their perception of the situation without stating it directly. It requires you to pay attention to non-verbal communication and different attitudes. You can ask participants to change roles after a certain period of time. This method works well with younger people and could be very useful in a case where children work for the company.⁴⁰⁹

Participatory water monitoring – A collaborative process that is not only scientific, but also social, cultural and political, to collect and analyze credible data, build trust, and communicate the results, in an attempt to identify and jointly solve problems flowing from perceived or actual impacts. A range of different approaches can be used, such as a community stream watch, community observers of company monitoring, a multi-stakeholder monitoring committee (a kind of joint fact-finding), or contracting an independent technical expert.⁴¹⁰

Kinds of impacts

There are a number of different kinds of impacts that can be monitored, and many tools and worksheets have been developed by civil society and communities in other countries that can get you started. In the endnotes we give you the names of these monitoring guides and where you can find them, including for monitoring impacts from artisanal and small-scale mining,⁴¹¹ on community health and well-being,⁴¹² on women,⁴¹³ on human rights,⁴¹⁴ and on the environment.⁴¹⁵

Also don't forget to monitor the Environmental and Social Management Plan (ESMP) that the company filed with the MoMP to obtain its license. Too

often the ESIA and the ESMP are just done by the company to get the license (a “check-the-box” exercise), and then left sitting on a shelf without being implemented. Here, too, civil society can play a role in creating tools with teeth to enforce the ESMP, such as using participatory networks to monitor performance and issuing stop-work orders if needed.



Figure 31 Rights & Democracy Human Rights Impact Assessment

Against what standards

When a government decides that a company will provide public services or build infrastructure, (water system, bridges or highways), or when a government is selling public assets to a company, a contract will be signed that sets out what each party will do. The contract will contain details of what is being purchased, the time frame, and the price. It may also contain conditions on such things as job creation, community investment by the company, or protection of human rights or the environment. This can be used to compare the actual performance of the company with its promises. If the company has failed to achieve these goals, there may be legal or financial penalties set out in the contract.⁴¹⁶

Aside from the contract between the company and the government, you can also monitor the contractual agreement with the government, bank or organization that is funding the investment. Lenders impose conditions when they put money into a project. These may be limited to financial conditions, such as when the money should be repaid. Or, they may involve broader areas, such as the environment or labor standards. If the government is providing funds for the project, it might include conditions, such as the number of jobs to be created. This information can be used to compare the actual performance of the company with what it promised to do.⁴¹⁷

You can monitor these **contracts** with the help of advisors, guides on reading and understanding extractive industry contracts,⁴¹⁸ and tools such as the World Bank Institute's Extractive Industry Contract Monitoring Roadmap.⁴¹⁹ You can also monitor **compliance with safeguard policies**, such as the IFC Performance Standards, with the help of existing community-based guides to safeguard policies.⁴²⁰

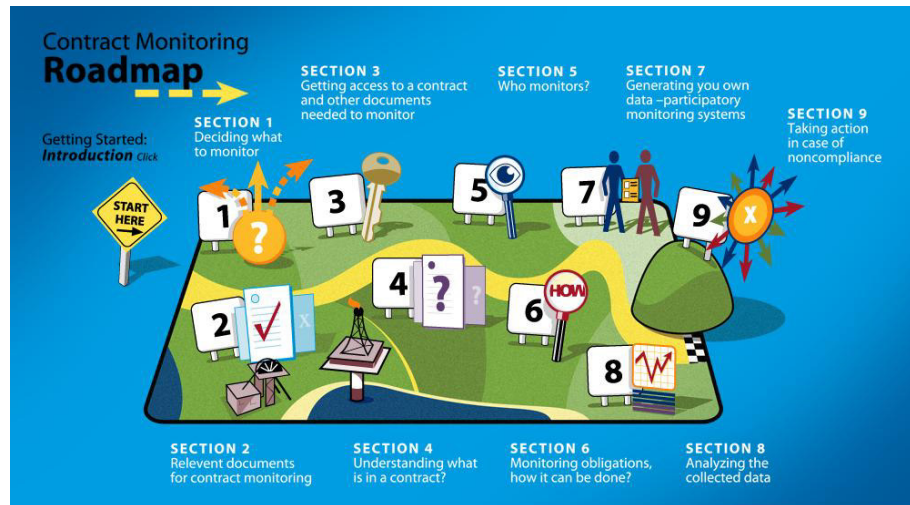


Figure 32 World Bank Institute Extractives Contract Monitoring Roadmap

Inform Policy and Practice of Governments and Companies

Civil society has an important role to play in informing and improving the policy and practices of governments at the central, provincial and local levels, as well as of the many companies involved in implementing resource extraction projects. Here we suggest a few key areas where you can do this, including transparency, security, artisanal and small-scale mining, and local content.

Transparency

There is already significant mobilization and attention on the issue of transparency in bidding, contracting, and revenue management in Afghanistan. Here we suggest two additional measures to enhance transparency and the availability of information.

Build a national online information center

The NRMN can build a national (likely online) information center, that documents the latest developments in natural resources, and gathers the various sources of available information, especially all available translations of relevant documents into Dari or Pashto, such as from the Ministry of Mines, the Afghanistan Extractive Industries Transparency Initiative, the Environmental and Social Advisory Board for the Extractive Industries, the Afghanistan Research and Evaluation Union, Pajwok news agency; relevant reports from Integrity Watch Afghanistan, Afghanistan Watch and Global Witness; and the various international sites, such as the World Bank's EI Sourcebook, GOXI, and more. An example of such a national site is the Oil in Uganda website that aims to capture the conversation on oil in Uganda.⁴²¹

Civil society, especially the NRMN, can help improve availability of information on natural resources in the national information center, such as by publishing (and regularly updating) a short, 4-page **policy brief on natural resources** in Afghanistan, describing the basics of who-is-doing-what-where, with maps and graphs, and a balanced presentation of the issues, such as the policy briefs published by Cordaid & OpenOil.⁴²²



Transparency, inclusiveness and trust all depend on stakeholder identification and dialogue.

Figure 33 Zoi Environment Network Cartoon

Launch a national dialogue process

The NRMN may be well placed to launch a national dialogue process on mining, democracy and sustainable development. These kinds of dialogues can be in-person meetings, bringing together people from different groups (government, companies, civil society, academia, etc.) to talk about the country's economic and mining development strategy and concerns, or they can be part of an information campaign through TV or radio or other media to launch a broad debate about the impact of mining not only on local communities, but on the future of the country as a whole (given the infrastructure, revenues, etc.). These kinds of dialogue processes have, for instance, been launched in many states in Latin America where there are very high levels of mining and polarized debates.⁴²³

Security

Security is without question one of the main issues of concern to everyone in Afghanistan, and resource extraction has been no exception to this (see the section on "Security" in Part 3). Here we describe two ways to address this critical issue.

Support implementation of the VPs

To address the poor record of human rights abuses by security forces around resource extraction projects (see Part 3), in 2000 a group of governments, extraction companies and NGOs developed a multi-stakeholder initiative called the Voluntary Principles on Security and Human Rights (the VPs).⁴²⁴ Members of the VPs include governments, NGOs and extraction companies. The VPs are non-binding principles that offer guidance to oil, gas, and mining companies in maintaining the safety and security of their operations while ensuring respect for human rights and humanitarian law. The VPs apply to public and private security forces.

A company can agree to implement the VPs for a particular project, a national government can agree to implement the VPs at the national level, and parties can also work on implementation of the VPs at the international level. It is reported that at Mes Aynak, the company and government have committed to applying the Voluntary Principles on Security and Human Rights,⁴²⁵ though it is unclear if this commitment is being upheld.

Civil society groups play a key role in raising awareness of the VPs, reporting and oversight, disseminating tools and guidance, facilitating training, organizing dialogues with communities and government to discuss implementation, building alliances with VPs member NGOs and sharing lessons learned, supporting company risk assessments, advocating for their government to adopt the VPs nationally (and using embassies of VPs member governments in the process).

Foster conflict-sensitive practices

Practices so far

Neither the MoMP or the larger resource extraction companies in Afghanistan have undertaken any meaningful stakeholder engagement, which is the cornerstone of conflict-sensitive practices. **Stakeholder engagement** is when an entity, such as government or a company, enters in two-way dialogue (not one-way information dissemination) with the people whose lives their activities can affect, in order to allow affected stakeholders to influence decision-making and improve accountability.

The central government's practices so far at Aynak have not demonstrated sensitivity to avoid exacerbating conflict. (See the section on "Security" in Part 3.) In terms of company practice, it does not appear that MCC at Aynak had any significant stakeholder engagement (aside from a number of meetings organized by the central government with local stakeholders and MCC representatives) or otherwise adopted conflict-sensitive practices in exploration and development at Aynak.

Stakeholder engagement is a relatively new concept for the MoMP and the central Afghan government. And the kinds of companies investing in Afghanistan are not the ones with sophisticated stakeholder engagement practices or strong social and environmental performance.⁴²⁶ In fact, the majority of Chinese and other state-owned enterprises investing abroad prefer to only speak with foreign central government. They traditionally adopt a policy of non-interference and rely on central government to handle all social, environmental and resettlement issues. For example, the consortium of Indian private and state-owned companies has used the central government in Kabul as its sole interface, refuses to engage on issues such as security, and says it is not their role to do so.⁴²⁷

State-owned enterprises may assume (usually incorrectly) that in the host countries where they invest, local and regional governments have a good relationship with central government, and that local power brokers agree and follow central government's lead. Chinese state-owned enterprises also have a reputation for preferring to bring in their own Chinese workers, rather than hiring locally.

Costs of conflict

Practical field experience in conflict-affected and high-risk countries has repeatedly shown that a narrow approach to stakeholder engagement can lead to conflict and negative outcomes. Chinese companies in particular have suffered significant negative outcomes and losses as a result of company-community conflict, and interactions with the existing conflict dynamics. While there is a long list of examples, a few include a hydropower project of China Power Investment Corporation in Myanmar halted suddenly in 2011. In January 2012, Sinohydro Group's road project crews in Sudan were attacked, leaving 20 Chinese workers missing; a few days later, 25 Chinese workers were detained in Egypt.⁴²⁸

Recent academic research has confirmed that such negative outcomes from interactions between a project and conflict carry significant direct and indirect **financial costs**, including first and foremost lost

productivity due to delays and disruptions. Other costs include staff time spent on security management, increased security costs, costs of project modification, higher insurance premiums, reduced mobility and higher transit costs, material damage to property or infrastructure, increased cost of raising capital, increased personnel costs (loss of

life, hostage-taking, arrests, higher salaries for retention), costs to reputation and share price, litigation costs, fines and redress payments.⁴²⁹



What are conflict-sensitive practices?

A conflict-sensitive approach to a resource extraction project is grounded in early, meaningful and continuous stakeholder engagement processes. Conflict-sensitive practices seek to avoid violent conflict from the interactions between the project and the conflict context by developing informed conflict-management strategies.⁴³⁰

Develop guidelines and training materials

Civil society can develop a set of guidelines and training materials on conflict-sensitive practices for both government and companies to ensure resource extraction does not exacerbate drivers of conflict and contributes to peace in Afghanistan. It can be helpful to do this in a broad civil society coalition, and together with business associations and government representatives. Although the context is quite different, the European Coalition on Oil in Sudan developed such a set of business principles for companies, including Chinese companies, operating in Sudan.

The business principles are based on international law, voluntary standards for business behavior and Sudan's peace agreement, the Comprehensive Peace Agreement.⁴³¹

You can develop this guidance and training materials – perhaps not only for companies but also for government ministries – based on a number of sources, including:

- your **own conflict analysis**, ideally developed in a participatory manner, and knowledge of the impacts and benefits of natural resource development projects, in combination with international law and best practice;
- **existing analysis** on the interaction between natural resources and conflict in Afghanistan, such as a recent report by Afghanistan Watch, which included policy recommendations such as engaging with local and regional power brokers, managing competition over coal supply between industrial and household users, and inclusive sharing of the benefits with a broad definition of the area of patronage;⁴³² and
- more **general guidance on conflict-sensitive practices** for resource extraction, such as the guidance from International Alert (analyzing the issues of stakeholder engagement, resettlement, compensation, indigenous peoples, human rights, security arrangements, and corruption and transparency),⁴³³ the “Preventing Conflict in Exploration” toolkit, also available in Chinese;⁴³⁴ or the rapid project-level peace and conflict assessment prepared by the United Nations Environment Programme.⁴³⁵

Artisanal and small-scale mining

First, it is important to collect reliable information about the scale and significance of ASM, and raise awareness about how many men, women and children work in stone quarrying, and ASM of gold, lapis, precious and semi-precious stones; how many dependents these laborers and their traders support; the specific dangers and hazards they face (such as deaths, forced labor, threats and intimidation); and the actual and potential economic value of the resources they extract and related illicit flows or armed groups they support.

History has proven that a ban on ‘illegal’ mining is not effective and may compound the problem. Instead, civil society groups can support **formalization** of artisanal and small-scale mining (ASM), which is a process bringing ASM into the formal economy, with legalization being just one dimension of that process, as shown in the diagram.⁴³⁶ The MoMP has taken some steps towards formalization of ASM, but civil society can play a much larger role in this process.

Figure 34 Formalization and legalization of ASM



With a better understanding in hand, the next step is formalization. Formalizing the sector is challenging, and successful approaches require a mix of command and control measures with economic incentives and institutional and organizational measures.⁴³⁷ Civil society can develop a process for formalizing ASM in Afghanistan characterized by continuity, stability, multiple dimensions, multiple stakeholders, using a mix of public policy approaches and instruments, generating access to information about ASM and the chain of custody, and developing an ASM vision.⁴³⁸ A number of resources are available to assist with this process, such as from the Alliance for Responsible Mining, the International Labour Organization, the final report of the Mining, Minerals and Sustainable Development Initiative, and more.⁴³⁹

Local content

As you learned in Part 3, very few jobs are available at industrial mining or oil and gas sites for local unskilled labor. Instead, local content is the most promising path for socio-economic benefits both during the extraction project and beyond. Maximizing local content makes commercial sense for both government and the project operator, and has significant benefits for citizens and affected communities. For government, the output of the extractive industry sector generates benefits to the economy beyond the direct contribution of the extractive project. Local content can significantly reduce costs of long logistics chains and administrative red tape for the project operator if they can reliably procure goods and services that meet requisite industry standards. For citizens of resource-rich countries and communities affected by a resource development project, local content can be an opportunity that creates jobs and a domestic private sector if the jobs last beyond the life of the resource extraction project.⁴⁴⁰

Local content

Civil society has an important role to play in advocating for an enhanced local content policy or regulation from both government and companies, monitoring implementation of local content (especially anticipating and proposing solutions to address the issues in Part 3), and disseminating information and tools for implementation. Maximizing local content needs much more than just a policy or regulation of either government or the company – it requires knowledge transfer and innovation, and enabling training and skills development.⁴⁴¹ It also takes a very long time to develop these skills, so any initiative to enhance local content must begin early and have a wide reach.

The USAID MIDAS project is one example of an initiative with a component to support private sector development. They have a number of recommendations, such as integrating local community level businesses in the mining value chain to support community development. They also point to the need for technical assistance and tailored policies, because so far local SMEs cannot succeed in extractive industries on their own. They see public-private partnerships between government, national business, local communities and investors as key to achieve the goal of improving the overall living and working conditions in the Afghan mining areas.⁴⁴²

Seek Accountability

The focus of the learning guide has been on forward-looking tools for prevention and constructive engagement. You will at the same time need to be prepared to seek accountability and remedy for harms that can and likely will occur.

Plan your advocacy & map stakeholders

As time and resources are limited for civil society, you will benefit from being well-informed and planning ahead in order to exercise influence on the policies and practices for more just and peaceful resource extraction. Using this learning guide is already one way of staying informed. Please remember that when using information in this learning guide (especially about the laws), you will always need to verify whether the information is up-to-date and accurate.

The NRMN set its goal as promoting effective, transparent, balanced, sustainable, peaceful utilization of natural resources for Afghanistan's economic and social development. Individual organizations may have more specific goals. To make progress towards this goal or those of an organization, an advocacy strategy can be very useful to make the most of your limited time and resources. **Advocacy** is a strategic process to influence policies and practices affecting people's lives.⁴⁴³ It first involves assessing the situation and establishing goals.

A key element of this is **mapping stakeholders**: identifying the people (stakeholders) who matter to a system and the scale of their influence. In the context of resource extraction, the system can be a number of things, such as a certain resource, a community's way of life, or extraction as a national issue.⁴⁴⁴ By mapping the people involved and their influence, you can better address and re-balance power dynamics, identify potential partners and allies, and be more focused and strategic in your advocacy and using your limited time and resources.

Here is one tool you can use to map the stakeholders involved:⁴⁴⁵

1. **Setting up.** Gather a group together for a stakeholder mapping discussion, and designate one person as the facilitator of the discussion. Start by drawing a large bull's eye diagram with concentric circles. The ring closest to the center is the ring with the most influence, and the outermost ring is the least influence.

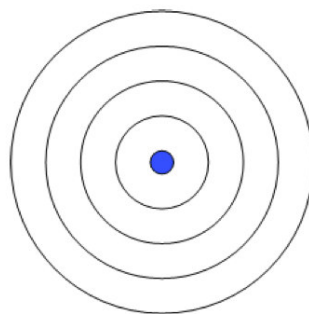


Figure 35 Example of a bull's eye diagram⁴⁴⁶

2. **What's the focus?** Find agreement on what the system or the focus of analysis (the center of the bull's eye) is, such as resource extraction nationally, ASM, a particular

resource, a particular community, etc. You can choose one or more of the goals identified in Step 1.

3. **Who are the people?** Have a discussion to identify key actors (including institutions, groups and individuals) who affect the issue, resource or area you chose to focus on. You could start by identifying members of the community, and go outward from there.
4. **What's their power?** For each actor identified, discuss what their power or degree of influence is, and rank them according to it. Use a symbol, number, or other notation next to their name to help you record their power.
5. **Map the people on the bull's eye.** Now label the people on the bull's eye diagram, placing the people with the most power on the innermost ring, and those with the least power on the outermost ring, and the others on the rings in between according to their level of influence.
6. **Reflect.** Discuss the results, and ask what would happen if, for example, the role or influence of one of the key actors were to change a lot and how this would affect the system and the ability of those with less power to cope. You can also do this exercise for a different time period in the past, in order to understand how key actors and their roles have changed over time.
7. **Relationships between people.** With the results of this mapping, you can also next have a discussion to better understand the relationships between each of the people. You can ask questions such as whether the relationship is more positive or negative, who exerts influence in the relationship, and which relationships are more important.

Research the project and company

A key step in planning and determining your advocacy strategy is to research the resource extraction project and company. Collect information about the resource extraction project, the company (its profile, owners, the investors, its policies and codes of conduct, and its past social, environmental and human rights performance). In this section we guide you through each of these elements.⁴⁴⁷

There are a number of different ways to do this research. If you have internet access, start with an online search. See the section below on “Conduct a Baseline Study” and sub-section “Ways to Collect Information” for a more complete list of research methods. Always be sure to keep a copy of the information you found, and document where you found it.

What can you find out about the project?

Research and identify the name of the project developer, and obtain as many of the project documents as you can, such as copies of the EIA, the licenses (whether for exploration or extraction), the feasibility study, the development plan, or any other documents.

What is the company's profile?

Research and identify the company's full legal name, year it was formed, industry sector(s) in which it is active, annual revenue, and where the headquarters are. The headquarters location can be important to get information about a company. For example, if the headquarters are in a country where laws allow a company to keep information secret, it may be harder to find details concerning the investment. Some countries, such as Canada, require companies to publish a lot

of information, making it easier to find out about corporate activities.⁴⁴⁸ Prioritize getting this information from the company's annual report, its regulatory filings, or its website, rather than from secondary sources (news articles or other reports).

Who are the company's owners?

Research and identify the company's ownership, meaning whether it is public, private or state-owned. Is it publicly listed and traded on any exchanges? Can you access the company's regulatory filings with the stock exchange online or in-person? Who are the major or primary shareholders (the ones who own the largest number of shares)? Are any of the owners politically connected? These owners have a great deal of influence on what the company does.⁴⁴⁹ The same is true for investors – whoever pays for an investment has a say in how the project will be done, and may put conditions on it (such as those of Equator Principles banks or development banks).

If it is a state-owned enterprise (SOE), then which government ministry is responsible for overseeing it? This will allow you to know which ministry to approach for information,⁴⁵⁰ and under what requirements or constraints the company is operating. Again, prioritize getting this information from the company's annual report, its regulatory filings if it is a public company, or its website.

Who are the company's investors?

Research and identify the company's investors, such as government, commercial banks or development banks. This is important to know, because some investors set conditions for environmental and social performance on their loans. These investors are also increasingly aware of the financial costs of conflict. (See the sub-section on "Safeguard Policies" in Part 4.)

What are the company's policies or codes of conduct?

Research and identify the company's applicable social, environmental and human rights policies and codes of conduct. A code of conduct usually sets out the company's values and ethics, identifies the main issues faced by the company and how it plans to tackle them, establishes a framework for its workers, defines acceptable behavior, and more. The code is helpful to determine the types of measures in place and the company's compliance with its own rules and regulations. Codes of conduct may simply be aspirational statements, rather than binding regulations.⁴⁵¹

If the company's structure is complex, research the policies and codes of both the parent company and the active subsidiary. Also research and identify any relevant ethical and anti-corruption codes. Look at their annual reports, their CSR or sustainability reports, their websites. If it is not available on the website, you may request a copy directly.

A company may also be subject to codes or guidelines of the industry associations to which it belongs, such as the International Council on Mining and Metals (ICMM), the global mining industry association addressing mining and sustainable development, or IPIECA, the global oil and gas industry association for environmental and social issues.

The company may also be a member of voluntary associations such as the United Nations Global Compact or the Voluntary Principles on Security and Human Rights. The Voluntary Principles on Security and Human Rights were developed in 2000 by a tripartite multi-stakeholder initiative comprised of governments, companies in the extractive and energy sector, and NGOs. They are non-binding principles that offer guidance to oil, gas, and mining companies in maintaining the safety and security of their operations while ensuring respect for human rights and humanitarian law.

What kinds of obligations flow from the company's home State?

If the company is foreign, it may be subject to comply with obligations imposed by its home State, such as the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, or the guidelines issued by various ministries of the People's Republic of China.

For example, Chinese state-owned enterprises (SOEs) are subject to a number of environmental and social policies, including the State-Owned Assets Supervision and Administration Commission (SASAC) *Guidelines to the State-owned Enterprises Directly under the Control of Central Government on Fulfilling Corporate Social Responsibilities*,⁴⁵² the *Guidelines for Environmental Protection in Foreign Investment and Cooperation* issued by the Ministry of Commerce (MOFCOM) and Ministry of Environmental Protection,⁴⁵³ the *Opinions on Development of a Culture by Chinese Enterprises Overseas* issued by seven Chinese state and industry entities,⁴⁵⁴ and many more.⁴⁵⁵

What is the company's past social, environmental and human rights performance?

Research the company's past social, environmental and human rights performance. What is the company's history with regard to human rights in its other projects? Can you tell which safeguard policies the company was committed to applying or obligated to apply?

For this research, some good places to start, if you have access to the internet, include searching for the company name(s) or project name(s) on the following websites:

- The Business and Human Rights Resource Center; the Centre for Research on Multinational Corporations (SOMO); Transnationale; Human Rights Watch; Amnesty International; Greenpeace.
- Major international news companies with professional and strong coverage of the region, such as Al-Jazeera, Reuters and BBC. National news sites of a foreign company's home State.

Pressure companies and authorities

Tactics

Protect yourself

Those who advocate to protect land, environmental and human rights are very often the subject of attack, harassment, intimidation, threats and violence. This guide has tried to give you as

many constructive and collaborative approaches as possible. However, you may also have to use more confrontational approaches if the concerns are not resolved. Here are some tips:

- Be conscious of potential dangers. Respect existing laws in order not to put yourself in a more difficult situation. You are obligated to always conduct your activities peacefully.⁴⁵⁶
- Work with one or many networks. It is not recommended to remain isolated in this process. Networks can be very useful. Bring in trusted and known allies (journalists, lawyers, organizations, trusted local government representatives). You can also contact activists from other countries. They may have good advice to share with you.⁴⁵⁷
- Bring in an outside partner organization that is well known and that can monitor your situation regularly. Experience has shown that having an outside organization watching out for the safety and well-being of human rights defenders can be very helpful in minimizing intimidation and abuses. In choosing your partner organization, make sure that it has the means of taking action in case there is a problem.
- Assess on a regular basis what actions can lead to the escalation of tensions and what actions can minimize them. While in most cases the involvement of outside organizations can enhance your safety, in some cases it may not and, even worse, provide a false sense of security.
- When making contact by telephone, email, fax or letter, give some thought in advance to the personal safety of the person speaking, and how much personal information to reveal. For example, whether it is safer to use always use your work contact information rather than your home information.

Quiet advocacy

If local communities or civil society feels threatened or has concerns about the project's impacts, a first step is to raise these concerns directly with the project implementers and authorities. This can be done in-person through meetings and without public attention. It may be that the company or authorities are not aware of the impacts or your concerns. Beginning with an informal and less confrontational approach gives you an opportunity to demonstrate a constructive and collaborative approach, and where possible, build trust and a better relationship to address your concerns.

Write a complaint letter or a petition

A letter of complaint is a letter community members or civil society groups can send to those they believe are responsible for their concerns. A petition is a letter that has the signatures or thumbprints of many people within the community who support the letter's contents. In the letter, it is helpful to include: names of the people involved, an explanation of the situation, a description of the affected area, who lives in the area and how long they have been there, references to the applicable law, actions taken by authorities and communities, and a statement of what you want the authorities or company to do (or not to do).⁴⁵⁸

Asking for a meeting at the end of the letter can be a good idea. If you do, it is helpful to say by when you expect a response and by when you would like the meeting held. Also make sure you have the person receiving the letter or petition sign a piece of paper saying on what date they received it and including their phone number.

Meet and negotiate

Personal meetings with government authorities and company representatives can be very useful to raise your concerns directly with people who may not be aware of what is happening in the community. You must prepare for the meeting. First, consult internally with community members about what will be said in the meeting and what the goals are. Then make sure the people attending the meeting (best to go with several people) can clearly describe the situation, the community's concerns, and – importantly – what you want the person you are meeting to do about it. You can start with meetings at the local level, then escalate to the provincial level and then to Kabul. When you have meetings in Kabul, be prepared to show documents about all the prior meetings you have requested or held at lower levels.⁴⁵⁹

You may also wish to negotiate. If so, see the discussion on community development agreements in this part for advice on a more level playing field.

Demonstrate peacefully in public

The Constitution protects the right to un-armed demonstrations for legitimate peaceful purposes.⁴⁶⁰ The Environment Law also protects the right of people to participate in meetings, demonstrations, protests, marches and referenda relating to sustainable use of natural resources.⁴⁶¹ At the same time, public demonstrations can make people angry and pose significant security risks. Some advice on staying safe at demonstrations:

- **Plan & communicate.** Make sure everyone knows the planned route. Organizers should have a list of participants and know who is joining. Organizers should also have the contact details of a lawyer on hand in case anyone is arrested and needs legal assistance.
- **Document.** Take pictures as evidence to show the peaceful nature of the demonstration. Ask an NGO to observe the demonstration and record any violations.
- **Be accountable to each other.** Form small groups so that it is easier for everyone to keep track of the others and more easily report to the organizer if someone is lost, detained or injured. Organizers should identify and resolve any problems early.
- **Safety & security.** Try to have people participating with some first aid training. Have a back-up plan in case of bad weather or other events. Leave any valuable possessions at home, and be careful not to carry items that may be seen as being a weapon. Make a plan for the security and safety of any children or youth participating.⁴⁶²

Use the media

The Constitution protects your right to freedom of expression.⁴⁶³ You can organize a press conference to share your well-documented concerns, and use radio, newspapers, TV and social media. You can consider using both national media, as well as media of the company's home State. Always ask for people's permission if you will be sharing personal information about them with the media. And be aware that the media may (on purpose or by accident) misrepresent your story. Also be clear that you are not looking to incite conflict, but that you want to find a way to resolve the problems.⁴⁶⁴

It is helpful to develop a **case summary** for the media. This can include: the name of the community, district, province; the name and nationality of the company; when the company

arrived, what they have done and plan to do; how many people are or will be affected by the activities; the main impacts so far and fears about future impacts; the relevant laws; one or more case studies telling the specific story of one family's situation.⁴⁶⁵

Seek remedy through accountability mechanisms

An online Prezi gives a short overview of the many possible avenues for remedy, whether through the courts of Afghanistan, courts of foreign countries, accountability mechanisms of development banks, the UN system or the ILO.⁴⁶⁶ An excellent guide published by the International Federal for Human Rights (FIDH) describes in detail the scope of each of these mechanisms, how to file a complaint, and what the range of possible outcomes can be.⁴⁶⁷



Pressuring a company

It is a good idea to start with quiet advocacy and informal private meetings. If your concerns are not being heard, you can write letters of complaint and petitions, then hold meetings and negotiations. It can be helpful to find allies to strengthen your position, such as employees, international organizations and others. You can bring your complaints to the company's investors, creditors and shareholders, the embassy of the company's home country, and the company's suppliers and consumers.

If your concerns are still not being addressed, you can take more public actions, such as by using the media in Afghanistan and abroad, and by organizing a peaceful public demonstration. Public actions can be effective because companies do not want to be accused of doing things that are in violation of national laws, their own company policies, the rules of the bank giving them money, applicable international standards, or generally harming local people. If concerns like these are raised publicly, companies can lose their license and investment, and their reputation can be damaged, which affects how much money they make.

Finally, you can use more formal channels such as filing a complaint in court (in Afghanistan or abroad) or with another established accountability mechanism. There are many resources and guides with more advice on corporate campaigning.⁴⁶⁸

Pressuring government authorities

Similar to pressuring a company, you can begin pressuring government with quiet advocacy. If your concerns are not being heard, you can direct your letters of complaint and petitions to members of parliament, Ministries and the President, and seek to hold meetings and negotiations. Media monitoring may encourage the government to monitor mining operations

more strictly.⁴⁶⁹ You can lobby public officials by understanding how the body works you are trying to change, collecting allies together, knowing as much as you can about the issue, and then organizing visits, letters and phone calls from their constituents.⁴⁷⁰ You can use the media to increase publicity and also organize peaceful public demonstrations.

Appendix

Definitions

Arbitration: A form of resolving disputes where the two parties agree to be bound by an independent third party's assessment of the situation.

Acid mine drainage: Occurs when sulphide-bearing minerals in rock are exposed to air and water, converting sulphide to sulphuric acid. It can devastate aquatic habitats, is difficult and very expensive to treat, and, once started, can continue for hundreds of years.

Adverse effect: 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.⁴⁷¹

Advocacy: A strategic process to influence the policies and practices that affect people's lives. Advocacy involves planning (setting goals and influencing strategies) and activity (implementing the plans).⁴⁷²

Artisanal mining: Small-scale mining that is usually done by hand, using basic instruments and by individuals or small groups of people. Millions of people across the world make a living as artisanal miners.

Authorities: The Government institutions that control whether or not mining operations are allowed to operate.

Case file: A case file is a collection of information about a project, its impacts and any other important background information.

Case Studies: A specific story about one family in the community that will make the information in your case file more personal, rather than just documentation, and therefore more attractive for the media, and the media's audience.

Civil society: A wide range of groups, including non-profit organizations (NGOs), civil society organizations (CSOs), community-based organizations (CBOs), online groups and social media communities, social movements of collective action and/or identity, religious leaders, faith communities, and faith-based organizations, labor unions, social entrepreneurs, grassroots associations and cooperatives.

Code of Conduct: Internal rules that a company has promised to follow.

Collective property: If land is collectively owned, it belongs to a group of people instead of one person.

Community networks: A group of different communities that are organized around similar issues. For example, fishing communities may organize together to try and support each other and take action to solve issues and problems that they all share.

Community profile: A community profile is all the information that you can find about your community, its history and its current situation.

Community protocol: A charter of rules and responsibilities in which communities set out their customary rights, values and worldviews relating to their natural resources and land, and their cultural and biological resources, as recognized in customary, national and international laws.

Community representatives: Individuals who represent the views, concerns and wishes of their community, including a community's women, children and vulnerable groups. Community representatives should be honest, trusted and strong. They should be elected and replaced from time to time.

Company profile: This is all the information that you can find on a company and its activities.

Consumers: The people that buy a product that a company is producing.

Consultant: A company or individual hired to do a specific job for a company, organization or institution. Companies often hire consultants to conduct EIA reports for their proposed projects.

Contractor: Often a mining company will hire other companies to do work for the project. For example, a mining company may hire a local construction company to help build roads. This company is called a contractor.

Cyanide: A very toxic chemical often used in the mining process.

Decommissioning: Decommissioning means closing the mine and cleaning up the surrounding area so it is safe. Before a company receives approval from the Government to mine, there should be a plan for decommissioning. Decommissioning can include removing chemicals and other waste products, replacing soil and earth, filling in pits, planting vegetation and cleaning water.

Dredging: Taking sand or sediment from the beds of rivers, lakes or the sea.

EIA consultants: A company or individual hired to do an EIA. Companies often hire consultants to conduct EIA reports for their proposed projects.

Environmental and Social Impact Assessment (ESIA): A document that shows all possible impacts of a proposed project on the environment and on people and communities. If negative impacts are identified, the EIA should have a plan on how to minimize these impacts on people and on the environment.

Environmental and Social Management Plan (ESMP): Contained within an ESIA, the ESMP is a detailed plan for: avoiding or minimizing harm to the environment; dealing with any resettlement and compensation issues; restoring the livelihoods of affected people; and, for how to restore the environment after the mine closes, during the decommissioning phase.

Equator Principles: A framework adopted by certain financial institutions for dealing with environmental and social risks.

Evidence: Evidence is information, including pictures, documents, video, letters, medical reports, EIAs, etc. that is used to prove that something is true. For example, evidence, such as a legal land title, is used to show that a person's claim to their land is legal. Similarly, an official doctor's report can be used as evidence to show that a mining operation is having health impacts on people.

Exploitation: The process of taking minerals from the ground to sell.

Exploration: The process of taking samples from the ground to test for signs of minerals.

Expropriation: When the State takes privately held land in the public interest.

Extractive industry: Any process or operation that involves extracting raw materials, such as metals and minerals, from the earth to be used by consumers. Such processes include oil and gas extraction, mining, dredging and quarrying.

Feasibility study: A study of whether or not a mining project is practical and likely to make a good profit. A feasibility study will consider the economic value of the mineral deposits as well as how much it will cost to mine the minerals, and how stable the country is politically and economically.

Implementers: The people, groups or companies who are actually involved in developing a project.

Influx / in-migration: The rapid changes in population, as people from other parts of the country or from abroad relocate in communities to work or look for work at the mine or oil site. The terms in-migration and influx can be used interchangeably.

International Covenant on Economic, Social and Cultural Rights: One of the most important international human rights law instruments. It protects human rights, such as people's right to education, health care and adequate housing.

Investors: People or companies that put money into a project and hope to make a profit from their investment. For example, an investor may give some money to help a mining company start work, and have an agreement that when the company starts to make a profit, a percentage is given back to them.

Land tenure: The relationship, whether in law or by custom, among people (whether individually or collectively) and land.

Leaching: When pieces of rock are broken into small pieces and then a chemical is sprayed over them. The chemical dissolves the precious minerals, such as silver or gold, which can then be collected as the chemicals run off.

License: Before undertaking certain activities such as mining, a person or company must first get official government approval. This approval is called a license.

Mediation: A form of resolving disputes where a third party helps the interested parties negotiate a solution.

Mercury: A very toxic chemical often used in the mining process.

Mining: The process where people and companies take minerals, rocks and precious stones out of the ground, or from underwater.

Ministry of Mines: The ministry in the Afghan government in charge of decisions involving mineral natural resources.

Mobilize: When people become active and work together to deal with their common problems.

Mountain-top removal: Using explosives to blast away the tops of mountains to get to the mineral or rock underneath.

National Environmental Protection Agency: An agency in the Afghan government in charge of protecting the environment and implementing the country's environmental laws and regulations.

National interest: When the government needs to use the land in order to protect the security and territory of the country.

Network: A group of people, groups, or NGOs that are coordinated and organized on a common issue.

NGO networks: A group of different NGOs that are organized around similar issues. For example, there are NGO networks in Afghanistan that focus on land rights, housing and natural resource issues.

Non-lawful occupants: People who live on or use a piece of land but have no legal rights to that land.

Open-pit mining: This method is used when minerals are found close to the surface. It involves cutting into the earth from the surface, and open pit mines can often cover a very big area.

Owner: Someone with a legal title for his or her land.

Ownership: Ownership gives a person full rights to a piece of property. Ownership is the strongest right anyone can have over land. It allows the owner to use their land in any way they want, as long they do not break any laws.

Petition: A petition is a request, usually made to the government, that it does something or stops doing something. A petition is often signed by a number of affected or concerned people.

Plan of action: If a community is affected by a mining operation, or fears that it may be in the future, it should create a plan for what action to take. The plan should be agreed by the community, and if necessary, different people should have responsibilities for different actions.

Private property: Property that is owned or legally possessed by a private individual or company.

Proactive: Being proactive means that you act before something happens. This is the opposite of being reactive.

Property rights: The rights (or authority by law) of an individual or collective to control, use and benefit from a particular property, whether that property is movable (also called 'personal property', such as your personal possessions) or immovable ('real property', such as land).

Prospecting: This involves taking samples from the ground by digging small pits or trenches and taking soil and water from the surface. These samples are then tested for signs of minerals. This requires an agreement with the Government, but no license.

Public interest: Something that will benefit the people by helping them to improve their standard of living, providing an important service, or keeping them safe.

Public participation: Public participation is when the public is actually and meaningfully involved in making the decisions that affect them.

Reactive: Being reactive means that you act after the harm has already happened. This is the opposite of being proactive.

Resource extraction: Any process or activity that withdraws resources from nature.

Right to assembly: The right for people to meet peacefully without others stopping them.

Right to freedom of expression: The right to speak freely and to receive information. Freedom of expression is very important for a society to function fairly and properly. People must be able to say what they think or believe, without being scared that they will be punished, even if other people, or the government, do not share their opinion.

Social Impact Assessment (SIA): A document that shows all the possible positive and negative impacts a project would have on the social landscape, including population, housing, education, jobs, and culture.

Social License: A project has social license when it earns the approval of the people in the community to operate. This is an ongoing process throughout the life of the project.

Stakeholder Engagement: When an entity, such as government or a company, enters in two-way dialogue (not one-way information dissemination) with the people whose lives their activities can affect, in order to allow affected stakeholders to influence decision-making and improve accountability.

Strategic Environmental Assessment (SEA): A decision-making system that aims to keep environmental concerns in the forefront. An SEA may include making use of EIAs.

Supplier: Companies that sell equipment and supplies to the mining company.

Tailings: Mechanical and chemical processes are used to extract the desired product from the run of the mine ore and produce a waste stream known as tailings, consisting of ground rock and process effluents.

Transparency: Transparency in government and business means that things are done in a way that is open, and free from corruption. For example, for mining to be transparent, it must be clear how much a company must pay for a mining license, and clear how much tax a company has to pay. It must also be clear where the money goes. Access to information is an important part of transparency. People need access to information in order to see that the law is being followed and that companies and Government are respecting their obligations.

Underground mining: Digging into the ground and making tunnels and shafts for taking out minerals. Sometimes underground mining can happen very deep under the ground.

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP): The Declaration recognizes the right of all indigenous peoples to be free from discrimination, to practice their religious traditions, manage their land according to their customs, and to be involved in the decisions that affect their lives. Although the Declaration is not a law, it is an important international document, agreed upon by most nations, that recognizes the rights of indigenous peoples'.

Acronyms

AEITI	Afghanistan Extractive Industries Transparency Initiative
AIHRC	Afghan Independent Human Rights Commission
ALA	Afghanistan Land Authority
ALP	Afghan Local Police
AMD	Acid Mine Drainage
ARAZI	Afghanistan Land Authority
AREU	Afghanistan Research and Evaluation Unit
ASM	Artisanal and Small-Scale Mining
CAC	Citizens' Advisory Council
CBO	Community-Based Organization
CDA	Community Development Agreement
CDC	Community Development Council
CNPC	China National Petroleum Corporation
CSO	Civil Society Organization
CSR	Corporate Social Responsibility
ESAB	Environmental and Social Advisory Board
EIA	Environmental Impact Assessment
EITI	Extractive Industries Transparency Initiative
EMP	Environmental Management Plan
ESIA	Environmental and Social Impact Assessment
ESMP	Environmental and Social Mitigation Plan
E&P	Exploration and Production
FPIC	Free, Prior and Informed Consent
GoIRA	Government of the Islamic Republic of Afghanistan
IBA	Impact-Benefit Agreements
ICC	International Coordinating Committee
ICMM	International Council on Mining and Metals

IFC	International Finance Corporation
IFI	International Financial Institution
ILO	International Labour Organization
IPIECA	International Petroleum Industry Environmental Conservation Association
IWA	Integrity Watch Afghanistan
LML	Land Management Law
MAIL	Ministry of Agriculture, Irrigation, and Livestock
MCC	China Metallurgical Group Corporation
MEW	Ministry of Energy and Water
MFA	Ministry of Foreign Affairs
MIDAS	Mining Investment and Development for Afghan Sustainability, funded by USAID
MoCI	Ministry of Commerce and Industry
MoE	Ministry of Economy
MoF	Ministry of Finance
MoLSAMD	Ministry of Labour, Social Affairs, Martyrs and the Disabled
Mol	Ministry of the Interior
MRRD	Ministry of Rural Rehabilitation and Development
NEPA	National Environmental Protection Agency
NGO	Non-Governmental Organization
NHRI	National Human Rights Institution
NLP	National Land Policy
NRMN	Natural Resources Monitoring Network
OECD	Organization for Economic Cooperation and Development
OPIC	Overseas Private Investment Corporation
RAP	Resettlement Action Plan
SESA	Strategic Environmental and Social Assessment
SIA	Social Impact Assessment
SLO	Social License to Operate

SME	Small- and Medium Enterprises
SOE	State-Owned Enterprise
TAPI	Turkmenistan-Afghanistan-Pakistan-India natural gas pipeline
TFBSO	Task Force for Business and Stability Operations, of the United States Defense Department
TMF	Tailings Management Facility
TSF	Tailings Storage Facility
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNICEF	United Nations Children's Fund
USAID	United States Agency for International Development
USD	United States Dollar

Endnotes

-
- ¹ Down to Earth, “Treasure in Troubled Land” (Oct 2013).
- ² Saleem H. Ali and John F. Shroder, “Afghanistan’s Mineral Fortune: Multinational influence and development in a post-war economy” Institute for Environmental Diplomacy and Security (2011).
- ³ Down to Earth, “Treasure in Troubled Land” (Oct 2013).
- ⁴ Ministry of Mines, “Mineral Resources of Afghanistan – Driver for Regional Economic Development” (Jun 2011).
- ⁵ Heinrich Böll Foundation, “Facts and Figures about the Aynak Copper Mine” (Jul 2013).
- ⁶ Sadaf Lakhani, “Extractive Industries and Peacebuilding in Afghanistan: The Role of Social Accountability” United States Institute of Peace, Special Report (Nov 2013); United Nations Environment Programme (UNEP), “Natural Resource Management and Peacebuilding in Afghanistan” (2013).
- ⁷ Zoi Environment Network, “Cartoon Summary of the Toolkit Companion, Mining, Development and Environment in Central Asia” (2013); United Nations Environment Programme & Zoi Environment Network, “Mercury and Other Toxic Chemicals and Waste: A Cartoon Summary” (2013).
- ⁸ United Nations Environment Programme (UNEP), “Natural Resource Management and Peacebuilding in Afghanistan” (2013) and GoIRA, “Agriculture and Rural Development Cluster: National Priority Program Two” (2010).
- ⁹ USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).
- ¹⁰ Afghanistan Watch, “Natural Resources and Conflict in Afghanistan: Seven Case Studies, Major Trends and Implications for the Transition” (Jul 2012).
- ¹¹ Adam Smith International, “The Strategic Environmental and Social Assessment for the Extractives Industry Sector in Afghanistan (SESA-EI)” Second Draft (Sep 2013).
- ¹² USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).
- ¹³ USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).
- ¹⁴ Joanna M. Foster, “Years of Drought Exacerbate Deadly Floods in Afghanistan” Think Progress Blog (29 Apr 2014).
- ¹⁵ Joanna M. Foster, “Years of Drought Exacerbate Deadly Floods in Afghanistan” Think Progress Blog (29 Apr 2014).
- ¹⁶ United Nations Environment Programme (UNEP), “Natural Resource Management and Peacebuilding in Afghanistan” (2013).
- ¹⁷ United States Geological Survey (USGS) and Department of Defense (DOD) Task Force for Business and Stability Operations (TFBSO), “About the Mineral Resource Information Packages”, Map of Areas of Interest (Sep 2011), available at <http://afghanistan.cr.usgs.gov/information-packages>.
- ¹⁸ Heinrich Böll Foundation, “Facts and Figures about the Aynak Copper Mine” (Jul 2013).
- ¹⁹ South China Morning Post, “Next Afghan President will face a battle for control of nation’s mineral wealth” (4 Apr 2014).
- ²⁰ Saleem H. Ali and John F. Shroder, “Afghanistan’s Mineral Fortune: Multinational influence and development in a post-war economy” Institute for Environmental Diplomacy and Security (2011).
- ²¹ South China Morning Post, “Next Afghan President will face a battle for control of nation’s mineral wealth” (4 Apr 2014); Saleem H. Ali and John F. Shroder, “Afghanistan’s Mineral Fortune: Multinational influence and development in a post-war economy” Institute for Environmental Diplomacy and Security (2011).
- ²² IPCS, “Chinese Energy Explorations in Afghanistan – A Case Study” (14 Mar 2014); The Atlantic, “China’s Strategy in Afghanistan” (May 2013).
- ²³ IPCS, “Chinese Energy Explorations in Afghanistan – A Case Study” (14 Mar 2014).
- ²⁴ Ministry of Mines, “Currently there is no security problem in Aynak Copper Project” News Release (28 Dec 2013).
- ²⁵ Benish, Abdul Jalil. “Dawa Ya Bala? Implications of Kilij Coal Mine Closure for Bamiyan’s Security Situation” Afghanistan Watch: Kabul (Mar 2014).
- ²⁶ Dr. Atiq Sediqi, Presentation on “Mineral Wealth of Afghanistan”, CSNRM Training (Nov 2013).
- ²⁷ Motley Fool, “Eyes on Afghanistan as Next Lithium Motherlode” (25 Mar 2014).
- ²⁸ Saleem H. Ali and John F. Shroder, “Afghanistan’s Mineral Fortune: Multinational influence and development in a post-war economy” Institute for Environmental Diplomacy and Security (2011).
- ²⁹ Motley Fool, “Eyes on Afghanistan as Next Lithium Motherlode” (25 Mar 2014).

- ³⁰ Saleem H. Ali and John F. Shroder, “Afghanistan’s Mineral Fortune: Multinational influence and development in a post-war economy” Institute for Environmental Diplomacy and Security (2011); Motley Fool, “Eyes on Afghanistan as Next Lithium Motherlode” (25 Mar 2014).
- ³¹ Adam Smith International, “The Strategic Environmental and Social Assessment for the Extractives Industry Sector in Afghanistan (SESA-EI)” Second Draft (Sep 2013).
- ³² Dr. Atiq Sediqi, Presentation on “Mineral Wealth of Afghanistan”, CSNRM Training (Nov 2013).
- ³³ Dr. Atiq Sediqi, Presentation on “Mineral Wealth of Afghanistan”, CSNRM Training (Nov 2013).
- ³⁴ Adam Smith International, “The Strategic Environmental and Social Assessment for the Extractives Industry Sector in Afghanistan (SESA-EI)” Second Draft (Sep 2013).
- ³⁵ Dr. Atiq Sediqi, Presentation on “Mineral Wealth of Afghanistan”, CSNRM Training (Nov 2013).
- ³⁶ Dr. Atiq Sediqi, Presentation on “Mineral Wealth of Afghanistan”, CSNRM Training (Nov 2013).
- ³⁷ Dr. Atiq Sediqi, Presentation on “Mineral Wealth of Afghanistan”, CSNRM Training (Nov 2013).
- ³⁸ Dr. Atiq Sediqi, Presentation on “Mineral Wealth of Afghanistan”, CSNRM Training (Nov 2013).
- ³⁹ Afghanistan Mineral Tenders, “Mineral Tenders”, <http://www.afghanmineraltenders.com>.
- ⁴⁰ Dr. Atiq Sediqi, Presentation on “Mineral Wealth of Afghanistan”, CSNRM Training (Nov 2013).
- ⁴¹ Dr. Atiq Sediqi, Presentation on “Mineral Wealth of Afghanistan”, CSNRM Training (Nov 2013).
- ⁴² Dr. Atiq Sediqi, Presentation on “Mineral Wealth of Afghanistan”, CSNRM Training (Nov 2013).
- ⁴³ Dr. Ibrahim Jafari, Presentation on “General Overview of Mining in Afghanistan”, CSNRM Training (Nov 2013); Afghanistan Geological Survey, “Precious Stones”, <http://www.bgs.ac.uk/AfghanMinerals/preciousStone.htm>.
- ⁴⁴ Dr. Atiq Sediqi, Presentation on “Mineral Wealth of Afghanistan”, CSNRM Training (Nov 2013).
- ⁴⁵ MoMP, “Mineral Resources of Afghanistan – Driver for Regional Economic Development”, London presentation (Jun 2011).
- ⁴⁶ South China Morning Post, “Next Afghan President will face a battle for control of nation’s mineral wealth” (4 Apr 2014).
- ⁴⁷ Adam Smith International, “The Strategic Environmental and Social Assessment for the Extractives Industry Sector in Afghanistan (SESA-EI)” Second Draft (Sep 2013).
- ⁴⁸ Adam Smith International, “The Strategic Environmental and Social Assessment for the Extractives Industry Sector in Afghanistan (SESA-EI)” Second Draft (Sep 2013).
- ⁴⁹ Tolo News, “Amu Darya Basin Oil Extraction Operation Halted” (20 Aug 2013).
- ⁵⁰ The Atlantic, “China’s Strategy in Afghanistan” (May 2013).
- ⁵¹ Adam Smith International, “The Strategic Environmental and Social Assessment for the Extractives Industry Sector in Afghanistan (SESA-EI)” Second Draft (Sep 2013).
- ⁵² Adam Smith International, “The Strategic Environmental and Social Assessment for the Extractives Industry Sector in Afghanistan (SESA-EI)” Second Draft (Sep 2013).
- ⁵³ Engr. Khondkar Abdus Saleque, “Dream week at Sheberghan Gas Fields”, Energy Bangla (18 May 2013); MoMP, “Rehabilitation of Eight Sheberghan Gas Wells Underway” (May 2013), <http://mom.gov.af/en/news/20121>.
- ⁵⁴ United Nations Environment Programme (UNEP), “Natural Resource Management and Peacebuilding in Afghanistan” (2013).
- ⁵⁵ Presentation by Asian Development Bank at Centre for Strategic and International Studies in Washington, DC (Jun 2014).
- ⁵⁶ Bridges Across Borders Cambodia & Development and Partnership in Action, “A Community Guide to Mining: Impacts, Rights and Action” (2012).
- ⁵⁷ GoIRA, Constitution (2004), art. 75.
- ⁵⁸ GoIRA, National Mining Policy.
- ⁵⁹ MoMP, “Mineral Resources of Afghanistan – Driver for Regional Economic Development”, London presentation (Jun 2011).
- ⁶⁰ GoIRA, National Mining Policy.
- ⁶¹ GoIRA, Constitution (2004), art. 81.
- ⁶² United States Institute of Peace, “Extractive Industries and Peacebuilding in Afghanistan: The Role of Social Accountability” (2013).
- ⁶³ USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).

-
- ⁶⁴ United Nations Security Council, “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” (Jun 2014).
- ⁶⁵ South China Morning Post, “Next Afghan President will face a battle for control of nation’s mineral wealth” (4 Apr 2014).
- ⁶⁶ CSNRM, Press Release, “Civil Society Urges Afghan Government to Stop Looting of Mineral Resources” (21 Dec 2013).
- ⁶⁷ CSNRM, Press Release, “Civil Society Urges Afghan Government to Stop Looting of Mineral Resources” (21 Dec 2013).
- ⁶⁸ Rights & Democracy, “Getting it Right”, Step 11, <http://hria.equalit.ie/en/phases/index.html#/phase/b/etape/11/>.
- ⁶⁹ Bridges Across Borders Cambodia & Development and Partnership in Action, “A Community Guide to Mining: Impacts, Rights and Action” (2012).
- ⁷⁰ CNN, “Global 500” (2013).
- ⁷¹ Saleem H. Ali and John F. Shroder, “Afghanistan’s Mineral Fortune: Multinational influence and development in a post-war economy” Institute for Environmental Diplomacy and Security (2011).
- ⁷² SAIL, “About Us”, <http://www.sail.co.in/company/about-us>.
- ⁷³ Heinrich Böll Foundation, “Facts and Figures about the Aynak Copper Mine” (Jul 2013).
- ⁷⁴ Economic Times, “SAIL-led consortium AFISCO bags ore mining rights in Hajigak, Afghanistan” (29 Nov 2011).
- ⁷⁵ Kilo Goldmines, “Afghanistan Hajigak”, <http://www.kilogoldmines.com/?s=afghanistan>.
- ⁷⁶ Watan Group, Letter to Congressman Rohrabacher (27 Sep 2012).
- ⁷⁷ MoM, “Afghan Firm Selected in Second Afghan-Tajik Oil and Gas Tender” News Release (22 Apr 2014).
- ⁷⁸ MoM, “Preferred Bidder for Current Mineral Tenders” News Release (8 Dec 2012).
- ⁷⁹ MoM, “Preferred Bidder for Current Mineral Tenders” News Release (8 Dec 2012).
- ⁸⁰ MoM, “Preferred Bidder for Current Mineral Tenders” News Release (8 Dec 2012).
- ⁸¹ MoM, “Preferred Bidder for Current Mineral Tenders” News Release (8 Dec 2012).
- ⁸² MoM, “Preferred Bidder for Current Mineral Tenders” News Release (8 Dec 2012).
- ⁸³ Kilo Goldmines, “Afghanistan Hajigak”, <http://www.kilogoldmines.com/?s=afghanistan>.
- ⁸⁴ MoM, “Preferred Bidder for Current Mineral Tenders” News Release (8 Dec 2012).
- ⁸⁵ MoM, “Preferred Bidder for Current Mineral Tenders” News Release (8 Dec 2012).
- ⁸⁶ Pajhwok Afghan News, Special Mines Page, <http://mines.pajhwok.com/>.
- ⁸⁷ Green Tech Construction & Engineering, <http://greentech.af/>.
- ⁸⁸ Green Tech Construction & Engineering, <http://greentech.af/environmental-studies-of-amu-darya-basin-oil-tender-3/>.
- ⁸⁹ Central Asian Mining Services, <http://cams-mining.com/>.
- ⁹⁰ Kilo Goldmines, “Afghanistan Hajigak”, <http://www.kilogoldmines.com/?s=afghanistan>.
- ⁹¹ Afghanite, <http://afghanite.net/>.
- ⁹² Sociallicense.com.
- ⁹³ Rights & Democracy, “Getting it Right”, Step 11, <http://hria.equalit.ie/en/phases/index.html#/phase/b/etape/11/>.
- ⁹⁴ Rights & Democracy, “Getting it Right”, Step 11, <http://hria.equalit.ie/en/phases/index.html#/phase/b/etape/11/>.
- ⁹⁵ Rights & Democracy, “Getting it Right”, Step 11, <http://hria.equalit.ie/en/phases/index.html#/phase/b/etape/11/>.
- ⁹⁶ ICMM, “Community Development Agreements and Mining – An industry perspective” (Jun 2011), <http://www.sds.org/wp-content/uploads/2011/06/presentation-MCDA-Aidan-Davy.pdf>.
- ⁹⁷ Shift Project, Shiftproject.org.
- ⁹⁸ Danish Institute for Human Rights.
- ⁹⁹ Ciaran O’Faircheallaigh, “Compensation and benefit-sharing in the mining industry: The role of community development agreements” in Bread for the World & BICC, “Compensation Matters: Securing community interests in large-scale investments” (Mar 2014).
- ¹⁰⁰ Lauryn Oates, “The mother of all problems: female literacy in Afghanistan”, The Guardian (Jun 2013).

-
- ¹⁰¹ Institute of Development Studies, “From the Group Up: Women’s roles in local peacebuilding in Afghanistan, Liberia, Nepal, Pakistan and Sierra Leone.” September 2012; Michelle Barsa, “Determining if Progress Will Prevail or Peril: The Role for Women in Defining Afghanistan’s Future.” The Fletcher Forum of World Affairs, Vol. 38, Winter 2014.
- ¹⁰² Afghanistan Watch, “Natural Resources and Conflict in Afghanistan: Seven Case Studies, Major Trends and Implications for the Transition” (2013).
- ¹⁰³ World Economic Forum, “Future Role of Civil Society Report” (2013).
- ¹⁰⁴ World Economic Forum, “Future Role of Civil Society Report” (2013).
- ¹⁰⁵ Bridges Across Borders Cambodia & Development and Partnership in Action, “A Community Guide to Mining: Impacts, Rights and Action” (2012).
- ¹⁰⁶ Sohaila Weda Khamosh, “No childhood for most children” Killid Magazine (Nov 2013).
- ¹⁰⁷ Adam Smith International, “The Strategic Environmental and Social Assessment for the Extractives Industry Sector in Afghanistan (SESA-EI)” Second Draft (Sep 2013).
- ¹⁰⁸ Afghanistan Watch, “Natural Resources and Conflict in Afghanistan: Seven Case Studies, Major Trends and Implications for the Transition” (2013).
- ¹⁰⁹ Afghanistan Watch, “Natural Resources and Conflict in Afghanistan: Seven Case Studies, Major Trends and Implications for the Transition” (2013).
- ¹¹⁰ Mining Minerals and Sustainable Development, “Breaking Ground” (2002).
- ¹¹¹ Mining Minerals and Sustainable Development, “Breaking Ground” (2002).
- ¹¹² Leah Soroka, “MIDAS” Presentation, CSNRM Training (Nov 2013).
- ¹¹³ U.S. Geological Survey, “Map: Afghanistan Minerals Information System” (2014), <http://mapdss2.er.usgs.gov/openview/map.php>.
- ¹¹⁴ Natural Resources Canada, “Exploration and Mining Guide for Aboriginal Communities” (2013).
- ¹¹⁵ Natural Resources Canada, “Exploration and Mining Guide for Aboriginal Communities” (2013).
- ¹¹⁶ Natural Resources Canada, “Exploration and Mining Guide for Aboriginal Communities” (2013).
- ¹¹⁷ Natural Resources Canada, “Exploration and Mining Guide for Aboriginal Communities” (2013).
- ¹¹⁸ Petroleum Services Association of Canada (PSAC), “Industry Overview” (2014).
- ¹¹⁹ Petroleum Services Association of Canada (PSAC), “Industry Overview” (2014).
- ¹²⁰ Petroleum Services Association of Canada (PSAC), “Industry Overview” (2014).
- ¹²¹ Petroleum Services Association of Canada (PSAC), “Industry Overview” (2014).
- ¹²² Cairn Energy, “Oil and gas exploration and production project life cycle”, <http://www.cairnenergy.com/index.asp?pageid=554>.
- ¹²³ Petroleum Services Association of Canada (PSAC), “Industry Overview” (2014).
- ¹²⁴ Intermountain Oil and Gas BMP Project, “The Development Process” (2014), <http://www.oilandgasbmps.org/resources/development.php>.
- ¹²⁵ Petroleum Services Association of Canada (PSAC), “Industry Overview” (2014).
- ¹²⁶ Intermountain Oil and Gas BMP Project, “The Development Process” (2014), <http://www.oilandgasbmps.org/resources/development.php>.
- ¹²⁷ Petroleum Services Association of Canada (PSAC), “Industry Overview” (2014).
- ¹²⁸ International Alert, “Conflict-Sensitive Business Practice: Guidance for the Extractive Industries” (2005).
- ¹²⁹ Afghanistan Watch, “Natural Resources and Conflict in Afghanistan: Seven Case Studies, Major Trends and Implications for the Transition” (Jul 2012).
- ¹³⁰ Ciaran O’Faircheallaigh, “Compensation and benefit-sharing in the mining industry: The role of community development agreements” in Bread for the World & BICC, “Compensation Matters: Securing community interests in large-scale investments” (Mar 2014).
- ¹³¹ Adam Smith International, “The Strategic Environmental and Social Assessment for the Extractives Industry Sector in Afghanistan (SESA-EI)” Second Draft (Sep 2013).
- ¹³² Noorani, “Afghanistan’s Economic Transition in the Making ? Community Perspectives from Aynak and Hajigak Mining Sites” (2013).
- ¹³³ For Non-Designated Countries, such as Afghanistan, the Equator Principles assessment process evaluates compliance with the then applicable IFC Performance Standards on Environmental and Social Sustainability (Performance Standards) and the World Bank Group Environmental, Health and Safety Guidelines (EHS Guidelines). See Equator Principles, “About the Equator Principles”, <http://www.equator-principles.com/index.php/about-ep/about-ep>.

- ¹³⁴ Adam Smith International, “The Strategic Environmental and Social Assessment for the Extractives Industry Sector in Afghanistan (SESA-EI)” Second Draft (Sep 2013).
- ¹³⁵ World Bank, “Inspection Panel Report and Recommendations” (Apr 2013).
- ¹³⁶ Down to Earth, “Treasure in Troubled Land” (Oct 2013).
- ¹³⁷ Heinrich Böll Foundation, “Resource Extraction as a Danger to the State of Security in Afghanistan? An interview with Mussa Mahmoodi” (Jul 2013).
- ¹³⁸ Heinrich Böll Foundation, “Resource Extraction as a Danger to the State of Security in Afghanistan? An interview with Mussa Mahmoodi” (Jul 2013).
- ¹³⁹ Down to Earth, “Treasure in Troubled Land” (Oct 2013).
- ¹⁴⁰ Heinrich Böll Foundation, “Resource Extraction as a Danger to the State of Security in Afghanistan? An interview with Mussa Mahmoodi” (Jul 2013).
- ¹⁴¹ Noorani, “Afghanistan’s Economic Transition in the Making ? Community Perspectives from Aynak and Hajigak Mining Sites” (2013).
- ¹⁴² Benish, Abdul Jalil. “Dawa Ya Bala? Implications of Kilij Coal Mine Closure for Bamiyan’s Security Situation” Afghanistan Watch: Kabul (Mar 2014).
- ¹⁴³ Bread for the World and Bonn International Center for Conversion, “Compensation Matters: Securing Community Interests in Large-Scale Investments” (Mar 2014).
- ¹⁴⁴ Mining Minerals and Sustainable Development, “Breaking Ground” (2002).
- ¹⁴⁵ United Nations Environment Programme (UNEP), “Natural Resource Management and Peacebuilding in Afghanistan” (2013).
- ¹⁴⁶ Heinrich Böll Foundation, “Facts and Figures about the Aynak Copper Mine” (Jul 2013).
- ¹⁴⁷ Adam Smith International, “The Strategic Environmental and Social Assessment for the Extractives Industry Sector in Afghanistan (SESA-EI)” Second Draft (Sep 2013).
- ¹⁴⁸ AIHRC, “Report on Economic, Social and Cultural Rights” (Dec 2011), http://www.aihrc.org.af/media/files/Reports/SECR/Report%20on%20ESCR_Final_English_12_2011.pdf.
- ¹⁴⁹ ICMM, “Water Management in Mining: A Selection of Case Studies” (May 2012), <http://www.icmm.com/www.icmm.com/water-case-studies>.
- ¹⁵⁰ Philippe Rekacewicz, UNEP/GRID-Arendal, “Mining effects on rainfall drainage” (2005).
- ¹⁵¹ Institute of Peace and Conflict Studies, “Chinese Energy Explorations in Afghanistan: A Case Study” (10 Mar 2014).
- ¹⁵² World Bank, “Inspection Panel Report and Recommendations” (Apr 2013).
- ¹⁵³ Heinrich Böll Foundation, “Resource Extraction as a Danger to the State of Security in Afghanistan? An interview with Mussa Mahmoodi” (Jul 2013).
- ¹⁵⁴ Environmental Law Institute & United Nations Environment Programme, “Water Management in Post-Conflict Countries Critical to Peace Building and Economic Recovery – New Study”, Environmental Peacebuilding (Mar 2014).
- ¹⁵⁵ Robert Goodland, “Responsible Mining: The Key to Profitable Resource Development” (2012).
- ¹⁵⁶ Tailings.info
- ¹⁵⁷ Tailings.info
- ¹⁵⁸ Afghanistan Ministry of Mines, “Aynak Project Update” (May 2012).
- ¹⁵⁹ Philippe Rekacewicz, UNEP/GRID-Arendal, “Mining effects on rainfall drainage” (2005).
- ¹⁶⁰ Robert Goodland, “Responsible Mining: The Key to Profitable Resource Development – Defining ‘Best Practice Responsible Mining’” (Apr 2012).
- ¹⁶¹ Oil in Uganda, “Flaring: old habits die hard” (Aug 2013).
- ¹⁶² Reuters, “Chad suspends China’s CNPC over environment” (Aug 14 2013). For a more nuanced discussion of CNPC in Chad, Sudan, Niger and XXX, see Geert van Vliet & Geraud Magrin, eds. “The environmental challenges facing a Chinese oil company in Chad” Focales 09 (Nov 2012), <http://art-dev.cnrs.fr/docs/09-VA-Focales.pdf>.
- ¹⁶³ International Alert, “Conflict-Sensitive Business Practice: Guidance for Extractive Industries” (Mar 2005).
- ¹⁶⁴ Down to Earth, “Treasure in Troubled Land” (Oct 2013).
- ¹⁶⁵ Interviews by the author in Kabul and Bamiyan province, Nov 2013.
- ¹⁶⁶ Down to Earth, “Treasure in Troubled Land” (Oct 2013).
- ¹⁶⁷ Benish, Abdul Jalil. “Dawa Ya Bala? Implications of Kilij Coal Mine Closure for Bamiyan’s Security Situation” Afghanistan Watch: Kabul (Mar 2014); Sadaf Lakhani, “Extractive Industries and Peacebuilding

- in Afghanistan: The Role of Social Accountability” United States Institute of Peace, Special Report (Nov 2013).
- ¹⁶⁸ Interviews by the author in Kabul and Bamiyan province, Nov 2013.
- ¹⁶⁹ Integrity Watch Afghanistan, “Chromite Extraction in Kunar, Factor of [In]Stability: A Case Study” (Nov 2013).
- ¹⁷⁰ Benish, Abdul Jalil. “Dawa Ya Bala? Implications of Kilij Coal Mine Closure for Bamiyan’s Security Situation” Afghanistan Watch: Kabul (Mar 2014).
- ¹⁷¹ Heinrich Böll Foundation, “Facts and Figures about the Aynak Copper Mine” (Jul 2013).
- ¹⁷² Mining Minerals and Sustainable Development, “Breaking Ground” (2002).
- ¹⁷³ Radio Free Europe, “At Least 27 Afghans Die in Mine Collapse in Samangan Province” (15 Sep 2013); “Al Jazeera, “Afghan miners killed in coal mine collapse” (15 Sep 2013); Washington Post, “In Afghanistan, villagers and government battle over blame for coal mine collapse” (7 Oct 2013); Frontier News, “18 killed as coal mine collapses in Samangan” (1 May 2014).
- ¹⁷⁴ World Bank, “Inspection Panel Report and Recommendations” (Apr 2013).
- ¹⁷⁵ Sohaila Weda Khamosh, “No childhood for most children” Killid Magazine (Nov 2013).
- ¹⁷⁶ Oxfam Australia, “Women, Communities and Mining” (Dec 2009).
- ¹⁷⁷ Oxfam Australia, “Women, Communities and Mining” (Dec 2009).
- ¹⁷⁸ Oxfam Australia, “Women, Communities and Mining” (Dec 2009).
- ¹⁷⁹ Rachel Wareham, Presentation on “Gender and Mining” (Nov 2013).
- ¹⁸⁰ Javed Noorani, “Afghanistan’s Economic Transition in the Making? Community Perspectives from Aynak and Hajigak Mining Sites” (2013).
- ¹⁸¹ Bridges Across Borders Cambodia & Development and Partnership in Action, “A Community Guide to Mining: Impacts, Rights and Action” (2012).
- ¹⁸² Robert Goodland, “Responsible Mining: The Key to Profitable Resource Development – Defining ‘Best Practice Responsible Mining’” (Apr 2012).
- ¹⁸³ International Council on Mining and Metals, “The Role of Mining in National Economies” (Oct 2012).
- ¹⁸⁴ Benish, Abdul Jalil. “Dawa Ya Bala? Implications of Kilij Coal Mine Closure for Bamiyan’s Security Situation” Afghanistan Watch: Kabul (Mar 2014).
- ¹⁸⁵ SwissDev, Presentation on ASM in Mongolia.
- ¹⁸⁶ SwissDev, Presentation on ASM in Mongolia.
- ¹⁸⁷ Petroleum Services Association of Canada, “Industry Overview”.
- ¹⁸⁸ Heinrich Böll Foundation, “Resource Extraction as a Danger to the State of Security in Afghanistan? An interview with Mussa Mahmoodi” (Jul 2013).
- ¹⁸⁹ Bridges Across Borders Cambodia & Development and Partnership in Action, “A Community Guide to Mining: Impacts, Rights and Action” (2012).
- ¹⁹⁰ International Council on Mining and Metals, “The Role of Mining in National Economies” (Oct 2012).
- ¹⁹¹ Benish, Abdul Jalil. “Dawa Ya Bala? Implications of Kilij Coal Mine Closure for Bamiyan’s Security Situation” Afghanistan Watch: Kabul (Mar 2014).
- ¹⁹² Leah Soroka, “MIDAS” Presentation, CSNRM Training, Nov 2013.
- ¹⁹³ Leah Soroka, “MIDAS” Presentation, CSNRM Training, Nov 2013.
- ¹⁹⁴ Bread for the World and Bonn International Center for Conversion, “Compensation Matters: Securing Community Interests in Large-Scale Investments” (Mar 2014).
- ¹⁹⁵ USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).
- ¹⁹⁶ USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).
- ¹⁹⁷ United States Institute of Peace, “Extractive Industries and Peacebuilding in Afghanistan: The Role of Social Accountability” (2013).
- ¹⁹⁸ Nicholas Shaxson, “The resource curse, or the paradox of poverty from plenty” (Sep 2013), <http://taxjustice.blogspot.co.uk/2013/09/is-finance-like-crude-oil-resource.html>.
- ¹⁹⁹ USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).
- ²⁰⁰ USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).
- ²⁰¹ AREU, “Land Governance at the Crossroads: A Review of Afghanistan’s Proposed New Land Management Law” (Oct 2012).
- ²⁰² USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).
- ²⁰³ USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).

- ²⁰⁴ AREU, “Land Governance at the Crossroads: A Review of Afghanistan’s Proposed New Land Management Law” (Oct 2012).
- ²⁰⁵ USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).
- ²⁰⁶ USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).
- ²⁰⁷ USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).
- ²⁰⁸ USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).
- ²⁰⁹ USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).
- ²¹⁰ USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).
- ²¹¹ International Network to Promote the Rule of Law, “Islamic Law Guide” (2013).
- ²¹² International Network to Promote the Rule of Law, “Islamic Law Guide” (2013).
- ²¹³ International Network to Promote the Rule of Law, “Islamic Law Guide” (2013).
- ²¹⁴ International Network to Promote the Rule of Law, “Islamic Law Guide” (2013).
- ²¹⁵ International Network to Promote the Rule of Law, “Islamic Law Guide” (2013).
- ²¹⁶ International Network to Promote the Rule of Law, “Islamic Law Guide” (2013).
- ²¹⁷ USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).
- ²¹⁸ USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).
- ²¹⁹ USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).
- ²²⁰ Draft Minerals Law 2012, art. 35.
- ²²¹ USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).
- ²²² USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).
- ²²³ USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).
- ²²⁴ Draft Minerals Law 2012, art. 40.
- ²²⁵ USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).
- ²²⁶ International Network to Promote the Rule of Law, “Islamic Law Guide” (2013).
- ²²⁷ International Network to Promote the Rule of Law, “Islamic Law Guide” (2013).
- ²²⁸ Some of the involuntary resettlement safeguard policies and international best practice include: World Bank, “Operational Policy 4.12: Involuntary Resettlement”, available at <http://go.worldbank.org/GM0OEIY580>; International Finance Corporation, “Performance Standard 5: Land Acquisition and Involuntary Resettlement”, available at http://www.ifc.org/wps/wcm/connect/3d82c70049a79073b82cfaa8c6a8312a/PS5_English_2012.pdf?MO D=AJPERES; Asian Development Bank, Policy on Involuntary Resettlement; Organisation for Economic Co-operation and Development, Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects; Basic principles and guidelines on development-based evictions and displacement, developed by United Nations Special Rapporteur on the right to adequate housing, Millon Kothari (Kothari Guidelines). See also, Accountability Counsel, ADB Comparative Analysis of Involuntary Resettlement Policy, www.accountabilitycounsel.org.
- ²²⁹ .
- ²³⁰ Accountability Counsel, ADB Comparative Analysis of Involuntary Resettlement Policy, www.accountabilitycounsel.org.
- ²³¹ Accountability Counsel, ADB Comparative Analysis of Involuntary Resettlement Policy, www.accountabilitycounsel.org.
- ²³² Accountability Counsel, ADB Comparative Analysis of Involuntary Resettlement Policy, www.accountabilitycounsel.org.
- ²³³ Accountability Counsel, ADB Comparative Analysis of Involuntary Resettlement Policy, www.accountabilitycounsel.org.
- ²³⁴ USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).
- ²³⁵ USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).
- ²³⁶ USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).
- ²³⁷ International Network to Promote the Rule of Law, “Islamic Law Guide” (2013).
- ²³⁸ International Network to Promote the Rule of Law, “Islamic Law Guide” (2013).
- ²³⁹ International Network to Promote the Rule of Law, “Islamic Law Guide” (2013).
- ²⁴⁰ USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).
- ²⁴¹ USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).
- ²⁴² GoIRA, 2009 Water Law, art. 34.
- ²⁴³ GoIRA, “National Water and Natural Resources Development: National Priority Program Two” (2010).

-
- ²⁴⁴ Afghanistan Watch, “Natural Resources and Conflict in Afghanistan: Seven Case Studies, Major Trends and Implications for the Transition” (Jul 2012).
- ²⁴⁵ USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).
- ²⁴⁶ Committee on Economic, Social and Cultural Rights, General Comment 15 (2002).
- ²⁴⁷ Robert Goodland, “Responsible Mining: The Key to Profitable Resource Development – Defining ‘Best Practice Responsible Mining’” (Apr 2012).
- ²⁴⁸ Robert Goodland, “Responsible Mining: The Key to Profitable Resource Development – Defining ‘Best Practice Responsible Mining’” (Apr 2012).
- ²⁴⁹ GoIRA, “Environment Law” (2007).
- ²⁵⁰ GoIRA, “Environment Law” (2007), art. 76.
- ²⁵¹ GoIRA, “Environment Law” (2007), art. 1.
- ²⁵² GoIRA, “Environment Law” (2007), art. 22.
- ²⁵³ GoIRA, “Environment Law” (2007), art. 77.
- ²⁵⁴ GoIRA, “Environment Law” (2007).
- ²⁵⁵ GoIRA, “Environment Law” (2007), art. 71.
- ²⁵⁶ GoIRA, “Environment Law” (2007), art. 72.
- ²⁵⁷ GoIRA, “Environment Law” (2007), art. 13.
- ²⁵⁸ GoIRA, “Environment Law” (2007), art. 13.
- ²⁵⁹ GoIRA, “Environment Law” (2007), art. 4(1).
- ²⁶⁰ GoIRA, “Environmental Impact Assessment Regulations” (2008), Reg. 2, Schedule I: Screening of Activities.
- ²⁶¹ GoIRA, “Environmental Impact Assessment Regulations” (2008), Reg. 2, Schedule I: Screening of Activities.
- ²⁶² GoIRA, “Environmental Impact Assessment Regulations” (2008), Reg. 2.
- ²⁶³ GoIRA, “Environmental Impact Assessment Regulations” (2008), Reg. 2.
- ²⁶⁴ Heinrich Böll Foundation, “Resource Extraction as a Danger to the State of Security in Afghanistan? An interview with Mussa Mahmoodi” (Jul 2013).
- ²⁶⁵ World Bank, “Inspection Panel Report and Recommendations” (Apr 2013).
- ²⁶⁶ Bridges Across Borders Cambodia & Development and Partnership in Action, “A Community Guide to Mining: Impacts, Rights and Action” (2012).
- ²⁶⁷ GoIRA, “Environmental Impact Assessment Regulations” (2008), Reg. 7.
- ²⁶⁸ GoIRA, “Environment Law” (2007), art. 5.
- ²⁶⁹ GoIRA, “Environment Law” (2007), art. 6.
- ²⁷⁰ GoIRA, “Environment Law” (2007), art. 7.
- ²⁷¹ GoIRA, “Environment Law” (2007), art. 76.
- ²⁷² Draft Minerals Law 2012, art. 41.
- ²⁷³ GoIRA, “Environment Law” (2007), art. 7.
- ²⁷⁴ GoIRA, “Environment Law” (2007), art. 19.
- ²⁷⁵ GoIRA, “Environment Law” (2007), art. 17.
- ²⁷⁶ Robert Goodland, “Responsible Mining: The Key to Profitable Resource Development – Defining ‘Best Practice Responsible Mining’” (Apr 2012).
- ²⁷⁷ See Community Protocols, <http://www.community-protocols.org/>; Natural Justice, Bio-Cultural Community Protocols: A Toolkit for Community Facilitators (2012), <http://www.community-protocols.org/toolkit>.
- ²⁷⁸ Robert Goodland, “Responsible Mining: The Key to Profitable Resource Development – Defining ‘Best Practice Responsible Mining’” (Apr 2012).
- ²⁷⁹ Robert Goodland, “Responsible Mining: The Key to Profitable Resource Development – Defining ‘Best Practice Responsible Mining’” (Apr 2012).
- ²⁸⁰ ELAW, “Guidebook for Evaluating Mining Project EIAs” (2010), <https://www.elaw.org/mining-eia-guidebook>.
- ²⁸¹ **Community EIA Consultants:** E-Tech International, <http://www.etechninternational.org/>; Center for Science in Public Participation, <http://www.csp2.org/>; and Environmental Law Alliance Worldwide, <https://www.elaw.org/>.
- ²⁸² Robert Goodland, “Responsible Mining: The Key to Profitable Resource Development – Defining ‘Best Practice Responsible Mining’” (Apr 2012).

-
- ²⁸³ Draft Minerals Law 1391 (2012), unofficial English translation dated 26 May 2013.
- ²⁸⁴ Draft Minerals Law 2012, art. 4.
- ²⁸⁵ GoIRA, “Minerals Law” (2010), art. 4; Draft Minerals Law 2012, art. 5.
- ²⁸⁶ USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).
- ²⁸⁷ GoIRA, “Hydrocarbons Law” (2009).
- ²⁸⁸ USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).
- ²⁸⁹ MoM, “Policies”, <http://mom.gov.af/en/page/3993/7664>.
- ²⁹⁰ MoM, “Strategic Environmental and Social Assessment of the Extractives Industry Sector in Afghanistan” (Dec 2013).
- ²⁹¹ GoIRA, “Minerals Law” (2010), art. 101(2).
- ²⁹² USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010); Draft Minerals Law 2012, art. 16.
- ²⁹³ USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010); Draft Minerals Law 2012, arts. 31, 33.
- ²⁹⁴ USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).
- ²⁹⁵ USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).
- ²⁹⁶ Draft Minerals Law 2012, art. 9; USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).
- ²⁹⁷ Draft Minerals Law 2012, art. 19.
- ²⁹⁸ Draft Minerals Law 2012, art. 48; GoIRA, “Minerals Law” (2010), art. 28.
- ²⁹⁹ GoIRA, “Minerals Law” (2010), art. 28.
- ³⁰⁰ Draft Minerals Law 2012, art. 56.
- ³⁰¹ Draft Minerals Law 2012, art. 59; USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).
- ³⁰² GoIRA, “Minerals Law” (2010), art. 36.
- ³⁰³ Rights & Democracy, “Getting it Right”, Step 11, <http://hria.equalit.ie/en/phases/index.html#/phase/b/etape/11/>.
- ³⁰⁴ Draft Minerals Law 2012, art. 91.
- ³⁰⁵ Draft Minerals Law 2012, art. 8(2); USAID, “Afghanistan – Property Rights and Resource Governance Profile” (2010).
- ³⁰⁶ GoIRA, “Minerals Law” (2010), art. 24.
- ³⁰⁷ Draft Minerals Law 2012, art. 90.
- ³⁰⁸ Extractive Industries Transparency Initiative, “What is the EITI?”, [Eiti.org/eiti](http://eiti.org/eiti).
- ³⁰⁹ Afghanistan Extractive Industries Transparency Initiative, “What is EITI?”, <http://aeiti.af/what-is-eiti.html>.
- ³¹⁰ Extractive Industries Transparency Initiative, “EITI Factsheet” (2014).
- ³¹¹ Afghanistan Extractive Industries Transparency Initiative, “What is EITI?”, <http://aeiti.af/what-is-eiti.html>.
- ³¹² Afghanistan Extractive Industries Transparency Initiative, “EITI and Afghanistan”, <http://aeiti.af/eiti-and-afghanistan.html>.
- ³¹³ Afghanistan Extractive Industries Transparency Initiative, “EITI and Afghanistan”, <http://aeiti.af/eiti-and-afghanistan.html>.
- ³¹⁴ Afghanistan Extractive Industries Transparency Initiative (AEITI), “Summary of Afghanistan Second EITI Reconciliation Report 1389” (2012), http://aeiti.af/site_files/13933122953.pdf.
- ³¹⁵ Afghanistan Extractive Industries Transparency Initiative (AEITI), “Summary of Afghanistan Second EITI Reconciliation Report 1389” (2012), http://aeiti.af/site_files/13933122953.pdf.
- ³¹⁶ Extractive Industries Transparency Initiative, “EITI Board Decision on Afghanistan” (2013), eiti.org/files/Afghanistan.pdf.
- ³¹⁷ Extractive Industries Transparency Initiative, “EITI Board Decision on Afghanistan” (2013), eiti.org/files/Afghanistan.pdf.
- ³¹⁸ Labour Law (No. 35 of 2007).
- ³¹⁹ Adam Smith International, “The Strategic Environmental and Social Assessment for the Extractives Industry Sector in Afghanistan (SESA-EI)” Second Draft (Sep 2013).
- ³²⁰ A list of the 78 Equator Principles financial institutions is available at <http://www.equator-principles.com/index.php/members-reporting>. Commercial banks adhering to the Equator Principles and

some export credit agencies require their clients who receive loans and financing for a project in Afghanistan to comply with (1) the Performance Standards of the World Bank's private sector arm, the International Finance Corporation and (2) the World Bank Group Environmental, Health and Safety (EHS) Guidelines.

³²¹ Bank on Human Rights, "What are the rules the MDBs have to follow?", available at

<http://bankonhumanrights.org/about/what-are-the-rules-the-mdbs-have-to-follow/>.

³²² The Bank on Human Rights website, written for civil society and grassroots advocates, has a wealth of material for you to learn more about the content of development bank safeguards policies,

<http://bankonhumanrights.org/about/what-are-the-rules-the-mdbs-have-to-follow/>.

³²³ ACCESS Facility hosts a navigational tool to find grievance mechanisms linked to development banks, export credit agencies and other institutions, at <http://accessfacility.org/navigator-start>. A list of 15 development bank independent accountability mechanisms is available at

www.opic.gov/sites/default/files/files/2012-snapshot-iams.pdf.

³²⁴ World Bank, Inspection Panel, <http://ewebapps.worldbank.org/apps/ip/Pages/Home.aspx>.

³²⁵ Asian Development Bank, Accountability Mechanism, <http://www.adb.org/site/accountability-mechanism/main>.

³²⁶ A list of 15 development bank independent accountability mechanisms is available at

www.opic.gov/sites/default/files/files/2012-snapshot-iams.pdf.

³²⁷ These NGOs include: Accountability Counsel, www.accountabilitycounsel.org/resources/arg/; Bank

Information Center, www.bicusa.org/resources/capacity-building-and-tools/; Bank on Human Rights,

bankonhumanrights.org; Center for International Environmental Law,

www.ciel.org/Intl_Financial_Inst/index.html; ECA Watch, www.eca-watch.org/; FIDH,

www.fidh.org/IMG/pdf/guide_entreprises_uk-sectioniv.pdf; International Accountability Project,

accountabilityproject.org/article.php?list=type&type=14; SOMO (Centre for Research on Multinational Corporations), www.grievancemechanisms.org/intro.

³²⁸ See United Nations OHCHR, YouTube video, in English with Persian subtitles, "What is a human rights treaty body?", <https://www.youtube.com/watch?v=vE0T45t040k&feature=related>.

³²⁹ James Anaya, United Nations Special Rapporteur on the Rights of Indigenous Peoples, "Report to the Human Rights Council: Study on Extractive Industries and Indigenous Peoples" (Jul 2013).

³³⁰ Sustainable Development Strategies Group, "Mining CDA Problems and Issues".

³³¹ Adapted from Global Rights' Training Manual for CSOs in Uganda, and the IFC and IBLF Guide to Human Rights Impact Assessment and Monitoring,

http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Guide+to+Human+Rights+Impact+Assessment+and+Management/.

³³² United Nations Environment Programme (UNEP), "Natural Resource Management and Peacebuilding in Afghanistan" (2013); Jane Nelson, "The Business of Peace: the private sector as a partner in conflict prevention and resolution" (2000).

³³³ Bridges Across Borders Cambodia & Development and Partnership in Action, "A Community Guide to Mining: Impacts, Rights and Action" (2012).

³³⁴ Viviane Weitzner, North-South Institute, "Dealing Full Force: Lutsel K'e Dene First Nation's Experience Negotiating with Mining Companies" (Jan 2006).

³³⁵ Sadaf Lakhani, "Extractive Industries and Peacebuilding in Afghanistan: The Role of Social Accountability" United States Institute of Peace, Special Report (Nov 2013).

³³⁶ Bridges Across Borders Cambodia & Development and Partnership in Action, "A Community Guide to Mining: Impacts, Rights and Action" (2012).

³³⁷ Bridges Across Borders Cambodia & Development and Partnership in Action, "A Community Guide to Mining: Impacts, Rights and Action" (2012).

³³⁸ Noorani, "Afghanistan's Economic Transition in the Making ? Community Perspectives from Aynak and Hajigak Mining Sites" (2013).

³³⁹ O Trade, "Local Procurement" Presentation at Prospectors & Developers Association of Canada Convention (Mar 2014).

³⁴⁰ Sustainable Development Strategies Group, "Mining CDA Problems and Issues".

³⁴¹ Claudia Müller-Hoff, "Options for communities: Strategies for negotiation and legal action" in Bread for the World & BICC, "Compensation Matters: Securing community interests in large-scale investments" (Mar 2014).

³⁴² Claudia Müller-Hoff, “Options for communities: Strategies for negotiation and legal action” in Bread for the World & BICC, “Compensation Matters: Securing community interests in large-scale investments” (Mar 2014).

³⁴³ Claudia Müller-Hoff, “Options for communities: Strategies for negotiation and legal action” in Bread for the World & BICC, “Compensation Matters: Securing community interests in large-scale investments” (Mar 2014).

³⁴⁴ Claudia Müller-Hoff, “Options for communities: Strategies for negotiation and legal action” in Bread for the World & BICC, “Compensation Matters: Securing community interests in large-scale investments” (Mar 2014).

³⁴⁵ Geert van Vliet, “Extractive activities, dams and negotiation: Hypothesis for discussion” (updated 2011).

³⁴⁶ Claudia Müller-Hoff, “Options for communities: Strategies for negotiation and legal action” in Bread for the World & BICC, “Compensation Matters: Securing community interests in large-scale investments” (Mar 2014).

³⁴⁷ Claudia Müller-Hoff, “Options for communities: Strategies for negotiation and legal action” in Bread for the World & BICC, “Compensation Matters: Securing community interests in large-scale investments” (Mar 2014).

³⁴⁸ Claudia Müller-Hoff, “Options for communities: Strategies for negotiation and legal action” in Bread for the World & BICC, “Compensation Matters: Securing community interests in large-scale investments” (Mar 2014).

³⁴⁹ Claudia Müller-Hoff, “Options for communities: Strategies for negotiation and legal action” in Bread for the World & BICC, “Compensation Matters: Securing community interests in large-scale investments” (Mar 2014).

³⁵⁰ Claudia Müller-Hoff, “Options for communities: Strategies for negotiation and legal action” in Bread for the World & BICC, “Compensation Matters: Securing community interests in large-scale investments” (Mar 2014).

³⁵¹ Claudia Müller-Hoff, “Options for communities: Strategies for negotiation and legal action” in Bread for the World & BICC, “Compensation Matters: Securing community interests in large-scale investments” (Mar 2014).

³⁵² IIED, “Biodiversity and culture: exploring community protocols, rights and consent” Participatory Learning and Action 65 (2012).

³⁵³ Stephanie Booker, “Biocultural Community Protocols: A useful means of securing community interests in the context of extractive industries” in Bread for the World & BICC, “Compensation Matters: Securing community interests in large-scale investments” (Mar 2014).

³⁵⁴ Viviane Weitzner, North-South Institute, “Dealing Full Force: Lutsel K’e Dene First Nation’s Experience Negotiating with Mining Companies” (Jan 2006).

³⁵⁵ Stephanie Booker, “Biocultural Community Protocols: A useful means of securing community interests in the context of extractive industries” in Bread for the World & BICC, “Compensation Matters: Securing community interests in large-scale investments” (Mar 2014).

³⁵⁶ Shrumm, H. & Jonas, H., eds., “Biocultural Community Protocols: A Toolkit for Community Facilitators”. Natural Justice: Cape Town (2012), <http://www.community-protocols.org>.

³⁵⁷ Shrumm, H. & Jonas, H., eds., “Biocultural Community Protocols: A Toolkit for Community Facilitators”. Natural Justice: Cape Town (2012), <http://www.community-protocols.org>.

³⁵⁸ Stephanie Booker, “Biocultural Community Protocols: A useful means of securing community interests in the context of extractive industries” in Bread for the World & BICC, “Compensation Matters: Securing community interests in large-scale investments” (Mar 2014).

³⁵⁹ Shrumm, H. & Jonas, H., eds., “Biocultural Community Protocols: A Toolkit for Community Facilitators”. Natural Justice: Cape Town (2012), <http://www.community-protocols.org>.

³⁶⁰ Stephanie Booker, “Biocultural Community Protocols: A useful means of securing community interests in the context of extractive industries” in Bread for the World & BICC, “Compensation Matters: Securing community interests in large-scale investments” (Mar 2014).

³⁶¹ Robert Goodland, “WRI’s Informative Memo for Access Law & Practice: Environmental and Social Assessment” (2008).

³⁶² Bridges Across Borders Cambodia & Development and Partnership in Action, “A Community Guide to Mining: Impacts, Rights and Action” (2012).

³⁶³ Ciaran O’Faircheallaigh, “Briefing Paper for the Bank Information Centre: Community Controlled Impact Assessment, Impact and Benefit Agreements and World Bank Policies on Indigenous Peoples” (Nov 2013).

³⁶⁴ Ciaran O’Faircheallaigh, “Briefing Paper for the Bank Information Centre: Community Controlled Impact Assessment, Impact and Benefit Agreements and World Bank Policies on Indigenous Peoples” (Nov 2013).

³⁶⁵ Ciaran O’Faircheallaigh, “Briefing Paper for the Bank Information Centre: Community Controlled Impact Assessment, Impact and Benefit Agreements and World Bank Policies on Indigenous Peoples” (Nov 2013).

³⁶⁶ Ciaran O’Faircheallaigh, “Briefing Paper for the Bank Information Centre: Community Controlled Impact Assessment, Impact and Benefit Agreements and World Bank Policies on Indigenous Peoples” (Nov 2013).

³⁶⁷ Ciaran O’Faircheallaigh, “Briefing Paper for the Bank Information Centre: Community Controlled Impact Assessment, Impact and Benefit Agreements and World Bank Policies on Indigenous Peoples” (Nov 2013).

³⁶⁸ Ciaran O’Faircheallaigh, “Briefing Paper for the Bank Information Centre: Community Controlled Impact Assessment, Impact and Benefit Agreements and World Bank Policies on Indigenous Peoples” (Nov 2013).

³⁶⁹ Ciaran O’Faircheallaigh, “Briefing Paper for the Bank Information Centre: Community Controlled Impact Assessment, Impact and Benefit Agreements and World Bank Policies on Indigenous Peoples” (Nov 2013).

³⁷⁰ Greenwatch Uganda, “A Community-Based Guide for Monitoring Impacts of Oil and Gas Activities on the Environment” (2011), <http://www.greenwatch.or.ug/files/downloads/COMMUNITY%20BASED%20GUIDE%20BOOK.pdf>; ELAW, “Guide for Evaluating Mining Project Environmental Impact Assessments” (Jul 2010), <http://www.elaw.org/mining-eia-guidebook>.

³⁷¹ Organizations specializing in advice to communities on environmental impact assessments include E-Tech International, Center for Science in Public Participation, and Environmental Law Alliance Worldwide.

³⁷² Ciaran O’Faircheallaigh, “Compensation and benefit-sharing in the mining industry: The role of community development agreements” in Bread for the World & BICC, “Compensation Matters: Securing community interests in large-scale investments” (Mar 2014).

³⁷³ Bread for the World & BICC, “Compensation Matters: Securing community interests in large-scale investments” (Mar 2014).

³⁷⁴ Ciaran O’Faircheallaigh, “Compensation and benefit-sharing in the mining industry: The role of community development agreements” in Bread for the World & BICC, “Compensation Matters: Securing community interests in large-scale investments” (Mar 2014).

³⁷⁵ Ciaran O’Faircheallaigh, “Compensation and benefit-sharing in the mining industry: The role of community development agreements” in Bread for the World & BICC, “Compensation Matters: Securing community interests in large-scale investments” (Mar 2014).

³⁷⁶ Sustainable Development Strategies Group, “Mining CDA Problems and Issues”.

³⁷⁷ Ciaran O’Faircheallaigh, “Compensation and benefit-sharing in the mining industry: The role of community development agreements” in Bread for the World & BICC, “Compensation Matters: Securing community interests in large-scale investments” (Mar 2014).

³⁷⁸ Ciaran O’Faircheallaigh, “Compensation and benefit-sharing in the mining industry: The role of community development agreements” in Bread for the World & BICC, “Compensation Matters: Securing community interests in large-scale investments” (Mar 2014).

³⁷⁹ Ciaran O’Faircheallaigh, “Compensation and benefit-sharing in the mining industry: The role of community development agreements” in Bread for the World & BICC, “Compensation Matters: Securing community interests in large-scale investments” (Mar 2014).

³⁸⁰ Ciaran O’Faircheallaigh, “Compensation and benefit-sharing in the mining industry: The role of community development agreements” in Bread for the World & BICC, “Compensation Matters: Securing community interests in large-scale investments” (Mar 2014).

³⁸¹ Sustainable Development Strategies Group, “Mining CDA Problems and Issues”.

³⁸² Ciaran O’Faircheallaigh, “Compensation and benefit-sharing in the mining industry: The role of community development agreements” in Bread for the World & BICC, “Compensation Matters: Securing community interests in large-scale investments” (Mar 2014).

³⁸³ Ciaran O’Faircheallaigh, “Compensation and benefit-sharing in the mining industry: The role of community development agreements” in Bread for the World & BICC, “Compensation Matters: Securing community interests in large-scale investments” (Mar 2014).

³⁸⁴ Ciaran O’Faircheallaigh, “Compensation and benefit-sharing in the mining industry: The role of community development agreements” in Bread for the World & BICC, “Compensation Matters: Securing community interests in large-scale investments” (Mar 2014).

³⁸⁵ Ciaran O’Faircheallaigh, “Briefing Paper for the Bank Information Centre: Community Controlled Impact Assessment, Impact and Benefit Agreements and World Bank Policies on Indigenous Peoples” (Nov 2013).

³⁸⁶ Ciaran O’Faircheallaigh, “Briefing Paper for the Bank Information Centre: Community Controlled Impact Assessment, Impact and Benefit Agreements and World Bank Policies on Indigenous Peoples” (Nov 2013).

³⁸⁷ Viviane Weitzner, North-South Institute, “Dealing Full Force: Lutsel K’e Dene First Nation’s Experience Negotiating with Mining Companies” (Jan 2006).

³⁸⁸ Bridges Across Borders Cambodia & Development and Partnership in Action, “A Community Guide to Mining: Impacts, Rights and Action” (2012).

³⁸⁹ Claudia Müller-Hoff, “Options for communities: Strategies for negotiation and legal action” in Bread for the World & BICC, “Compensation Matters: Securing community interests in large-scale investments” (Mar 2014).

³⁹⁰ Claudia Müller-Hoff, “Options for communities: Strategies for negotiation and legal action” in Bread for the World & BICC, “Compensation Matters: Securing community interests in large-scale investments” (Mar 2014).

³⁹¹ Rights & Democracy, “Getting It Right”, Step 7, <http://hria.equalit.ie/en/phases/index.html#/phase/a/etape/7/>.

³⁹² Bridges Across Borders Cambodia & Development and Partnership in Action, “A Community Guide to Mining: Impacts, Rights and Action” (2012).

³⁹³ Rights & Democracy, “Getting It Right”, Step 7, <http://hria.equalit.ie/en/phases/index.html#/phase/a/etape/7/>.

³⁹⁴ Rights & Democracy, “Getting It Right”, Step 7, <http://hria.equalit.ie/en/phases/index.html#/phase/a/etape/7/>.

³⁹⁵ Rights & Democracy, “Getting It Right”, Step 7.

³⁹⁶ Rights & Democracy, “Getting It Right”, Step 7.

³⁹⁷ WITNESS, Video Advocacy Planning Toolkit, <http://toolkit.witness.org>.

³⁹⁸ Rights & Democracy, “Getting It Right”, Step 7.

³⁹⁹ Rights & Democracy, “Getting It Right”, Step 7.

⁴⁰⁰ Frans Gelfius, “80 Tools for Participatory Development” Inter-American Institute for Cooperation on Agriculture (2008), <http://www.iica.int/Esp/regiones/central/cr/Publicaciones%20Oficina%20Costa%20Rica/80tools.pdf>.

⁴⁰¹ Rights & Democracy, “Getting It Right”, Step 7. See also Participatory Research and Development for Sustainable Agriculture and Natural Resources Management: A Sourcebook, www.idrc.ca; Participatory Rapid Appraisal, www.serd.ait.ac.th.

⁴⁰² Rights & Democracy, “Getting It Right”, Step 7, <http://hria.equalit.ie/en/phases/index.html#/phase/a/etape/7/>.

⁴⁰³ Rights & Democracy, “Getting It Right”, Step 7, <http://hria.equalit.ie/en/phases/index.html#/phase/a/etape/7/>. See also International Development Research Centre, Module 10C: Focus Group Discussion, www.idrc.ca

⁴⁰⁴ Rights & Democracy, “Getting It Right”, Step 7.

⁴⁰⁵ Rights & Democracy, “Getting It Right”, Step 7.

⁴⁰⁶ Rights & Democracy, “Getting It Right”, Step 7.

⁴⁰⁷ Rights & Democracy, “Getting It Right”, Step 7.

⁴⁰⁸ Rights & Democracy, “Getting It Right”, Step 7.

⁴⁰⁹ Rights & Democracy, “Getting It Right”, Step 7.

⁴¹⁰ Office of the Compliance Advisor/Ombudsman, “Participatory Water Monitoring: A Guide for Preventing and Managing Conflict”, Advisory Note (2008).

⁴¹¹ **Artisanal and small-scale mining impacts:** ASM-PACE Methodological Toolkit, <http://www.asm-pace.org/projects/methodological-toolkit.html>.

⁴¹² **Community health and well-being impacts:** “Community Wellbeing Impact Assessment Worksheet”, in Natural Justice, Bio-Cultural Community Protocols: A Toolkit for Community Facilitators (2012), pages 43-43 <http://www.community-protocols.org/toolkit>; Canary Research Institute for Mining, Environment and Health, “Mining & Health: A Community-Centred Health Assessment Toolkit” (2009), <http://www.miningwatch.ca/publications/mining-health-community-centred-health-assessment-toolkit>.

⁴¹³ **Gender impacts:** Oxfam Australia, “Women, Communities and Mining” (Dec 2009) (Dari translation available from USAID MIDAS); Alliance for Responsible Mining, “Gender Dimensions of Artisanal and Small-Scale Mining: A Rapid Assessment Toolkit”, <http://www.communitymining.org/en/gender-issues-and-child-labor2/95-gender-dimensions-of-artisanal-and-small-scale-mining-a-rapid-assessment-toolkit>.

⁴¹⁴ **Human rights impacts:** Rights & Democracy, “Getting It Right: Human Rights Impact Assessment Guide”, <http://hria.equalit.ie/en/index.html>.

⁴¹⁵ **Environmental impacts:** Hesperian Institute, “A Community Guide to Environmental Health” http://www.hesperian.org/publications/download_EHB.php; Greenwatch Uganda, “A Community-Based Guide for Monitoring Impacts of Oil and Gas Activities on the Environment” (2011), <http://www.greenwatch.or.ug/files/downloads/COMMUNITY%20BASED%20GUIDE%20BOOK.pdf>; ELAW, “Guide for Evaluating Mining Project Environmental Impact Assessments” (Jul 2010), <http://www.elaw.org/mining-eia-guidebook>.

⁴¹⁶ Rights & Democracy, “Getting it Right”, Step 11, <http://hria.equalit.ie/en/phases/index.html#/phase/b/etape/11/>.

⁴¹⁷ Rights & Democracy, “Getting it Right”, Step 11.

⁴¹⁸ **Reading contracts:** OpenOil, “Oil Contracts: How to Read and Understand Them” (2012), <http://openoil.net/understanding-oil-contracts/>; ResourceContracts.org, “Mining Contracts: How to Read and Understand Them” (2013), <http://www.resourcecontracts.org/blog/guides-to-contract-terminology.html>; ELAW, “Natural Resource Contracts: A Practical Guide” (2013), <https://www.elaw.org/contracts>; International Bar Association, “Model Mine Development Agreement”, <http://www.mmdaproject.org>.

⁴¹⁹ World Bank Institute, Contract Monitoring Roadmap, <http://contractroadmap.org/>.

⁴²⁰ Uganda Contracts Monitoring Coalition, “A Tool for Monitoring Social and Environmental Compliance in the Extractive Sector” (2012), <http://www.ucmc.ug/>.

⁴²¹ Oil in Uganda, <http://www.oilinuganda.org/>.

⁴²² Cordaid & OpenOil, Extractives Policy Briefs, <http://www.cordaid.org/en/topics/extractives/briefing-notes/>.

⁴²³ See for example the Latin American Dialogue Group on Mining, Democracy and Sustainable Development, <http://www.dialogolatinoamericano.org/english/home.html>.

⁴²⁴ Voluntary Principles on Security and Human Rights, <http://www.voluntaryprinciples.org>.

⁴²⁵ United Nations Environment Programme (UNEP), “Natural Resource Management and Peacebuilding in Afghanistan” (2013).

⁴²⁶ Jill Shankleman, “Going Global: Chinese Oil and Mining Companies and the Governance of Resource Wealth” Wilson Center (2011).

⁴²⁷ Afghanistan Watch, “Natural Resources and Conflict in Afghanistan: Seven Case Studies, Major Trends and Implications for the Transition” (2013).

⁴²⁸ CDA Collaborative Learning Projects, “‘Conflict Management and Compliance Operation’ Among Chinese State-Run Enterprises” (26 Sep 2012).

⁴²⁹ Daniel Franks, “Costs of Company-Community Conflict in the Extractive Sector”, Presentation in Chile (May 2014); International Alert, “Conflict-Sensitive Business Practice: Guidance for Extractive Industries” (Mar 2005).

⁴³⁰ International Alert, “Conflict-Sensitive Business Practice: Guidance for Extractive Industries” (Mar 2005).

⁴³¹ European Coalition on Oil in Sudan, “Business Principles”, <http://www.ecosonline.org/oilandbusinessprinciples/businessprinciples/>.

-
- ⁴³² Afghanistan Watch, “Natural Resources and Conflict in Afghanistan: Seven Case Studies, Major Trends and Implications for the Transition” (2013).
- ⁴³³ International Alert, “Conflict-Sensitive Business Practice: Guidance for Extractive Industries” (Mar 2005).
- ⁴³⁴ CDA Collaborative Learning Projects, “Preventing Conflict in Exploration: A Toolkit” (2012), [http://www.cdacollaborative.org/publications/corporate-engagement/cep-tools/preventing-conflict-in-exploration-tool-\(english\)/](http://www.cdacollaborative.org/publications/corporate-engagement/cep-tools/preventing-conflict-in-exploration-tool-(english)/).
- ⁴³⁵ United Nations Environment Programme (UNEP), “Natural Resource Management and Peacebuilding in Afghanistan” (2013).
- ⁴³⁶ Adam Smith International, “The Strategic Environmental and Social Assessment for the Extractives Industry Sector in Afghanistan (SESA-EI)” Second Draft (Sep 2013).
- ⁴³⁷ Laura Barretto, Alliance for Responsible Mining, “Analysis for stakeholders on formalization in the artisanal and small-scale gold mining sector based on experiences in Latin America, Africa and Asia” (Sep 2011).
- ⁴³⁸ Laura Barretto, Alliance for Responsible Mining, “Analysis for stakeholders on formalization in the artisanal and small-scale gold mining sector based on experiences in Latin America, Africa and Asia” (Sep 2011).
- ⁴³⁹ Alliance for Responsible Mining, <http://communitymining.org>; MMSD, “Breaking New Ground”, Chapter 13, <http://www.iied.org/mmsd-final-report>; International Labour Organization, <http://www.ilo.org/global/industries-and-sectors/mining/lang--en/index.htm>.
- ⁴⁴⁰ World Bank, “Overview: Why is local content relevant in the oil, gas, and mining sectors?” (Oct 2013).
- ⁴⁴¹ World Bank, “Local Content Policies in the Oil, Gas, and Mining Sector” Conference Presentations (Oct 2013), <http://www.worldbank.org/en/events/2013/10/01/local-content-policies-in-oil-gas-mining-sector#4>.
- ⁴⁴² Leah Soroka, “MIDAS” Presentation, CSNRM Training (Nov 2013).
- ⁴⁴³ Saferworld & Conciliation Resources, “Advocacy Capacity Building: A Training Toolkit” (2011).
- ⁴⁴⁴ Adapted from Shrumm, H. & Jonas, H., eds., “Biocultural Community Protocols: A Toolkit for Community Facilitators”. Natural Justice: Cape Town (2012), available at <http://www.community-protocols.org>; and Mayers, J. “Stakeholder power analysis” Power tools series. International Institute for Environment and Development: London UK (2005), available at <http://www.policy-powertools.org/Tools/Understanding/SPA.html>.
- ⁴⁴⁵ Adapted from Shrumm, H. & Jonas, H., eds., “Biocultural Community Protocols: A Toolkit for Community Facilitators”. Natural Justice: Cape Town (2012), available at <http://www.community-protocols.org>.
- ⁴⁴⁶ Shrumm, H. & Jonas, H., eds., “Biocultural Community Protocols: A Toolkit for Community Facilitators”. Natural Justice: Cape Town (2012), available at <http://www.community-protocols.org>.
- ⁴⁴⁷ These elements have been adapted from Rights & Democracy, “Getting it Right”, Step 11.
- ⁴⁴⁸ Rights & Democracy, “Getting it Right”, Step 11.
- ⁴⁴⁹ Rights & Democracy, “Getting it Right”, Step 11.
- ⁴⁵⁰ Rights & Democracy, “Getting it Right”, Step 11.
- ⁴⁵¹ Rights & Democracy, “Getting it Right”, Step 11.
- ⁴⁵² SASAC, “Guidelines to the State-owned Enterprises Directly under the Control of Central Government on Fulfilling Corporate Social Responsibilities”, available at <http://www.sasac.gov.cn/n2963340/n2964712/4891623.html>.
- ⁴⁵³ MOFCOM, “Guidelines for Environmental Protection in Foreign Investment and Cooperation” (Mar 2013), available at <http://english.mofcom.gov.cn/sys/print.shtml?/policyrelease/bbb/201303/20130300043226>.
- ⁴⁵⁴ MOFCOM, “Opinions on Development of a Culture by Chinese Enterprises Overseas” (May 2012), <http://english.mofcom.gov.cn/sys/print.shtml?/newsrelease/significantnews/201205/20120508131401>.
- ⁴⁵⁵ World Resources Institute, “Environmental and Social Policies in Overseas Investments: Progress and Challenges for China” (2013), <http://www.wri.org/publication/environmental-and-social-policies-overseas-investments>.
- ⁴⁵⁶ United Nations Declaration on Human Rights Defenders (1998).
- ⁴⁵⁷ Rights & Democracy, “Getting it Right”, Step 4.

⁴⁵⁸ Bridges Across Borders Cambodia & Development and Partnership in Action, “A Community Guide to Mining: Impacts, Rights and Action” (2012).

⁴⁵⁹ Bridges Across Borders Cambodia & Development and Partnership in Action, “A Community Guide to Mining: Impacts, Rights and Action” (2012).

⁴⁶⁰ GoIRA, Constitution, art. 36.

⁴⁶¹ GoIRA, Environment Law (2007), art. 7.

⁴⁶² Bridges Across Borders Cambodia & Development and Partnership in Action, “A Community Guide to Mining: Impacts, Rights and Action” (2012).

⁴⁶³ GoIRA, Constitution, art. 34.

⁴⁶⁴ Bridges Across Borders Cambodia & Development and Partnership in Action, “A Community Guide to Mining: Impacts, Rights and Action” (2012).

⁴⁶⁵ Bridges Across Borders Cambodia & Development and Partnership in Action, “A Community Guide to Mining: Impacts, Rights and Action” (2012).

⁴⁶⁶ Global Rights, System of remedy for business-related human rights abuses, <http://prezi.com/rv7qr6fyuip/system-of-remedy-for-business-related-human-rights-abuses/>.

⁴⁶⁷ FIDH, “Corporate Accountability for Human Rights Abuses: A Guide for Victims and NGOs on Recourse Mechanisms” (Mar 2012), <http://www.fidh.org/en/globalisation-human-rights/business-and-human-rights/Updated-version-Corporate-8258>.

⁴⁶⁸ See for example, Democracy Center, Citizen Advocacy Library, <http://democracyctr.org/citizenadvocacy/materials-for-effective-advocacy/>; Carlos Zorrilla, “Protecting Your Community Against Mining Companies and Other Extractive Industries: A Guide for Community Organizers” (2009), <http://www.culturalsurvival.org/news/united-states/protecting-your-community-0>.

⁴⁶⁹ Bridges Across Borders Cambodia & Development and Partnership in Action, “A Community Guide to Mining: Impacts, Rights and Action” (2012).

⁴⁷⁰ Democracy Center, “Lobbying – the Basics” (2002).

⁴⁷¹ GoIRA, “Environment Law” (2007), art. 4(1).

⁴⁷² Saferworld & Conciliation Resources, “Advocacy Capacity Building: A Training Toolkit” (2011).

Afghanistan Watch
+93 799 21 55 77,778 89, 38, 33
www.watchafghanistan.org
publication@watchafghanistan.org

Global Rights: Partners for Justice
+1 202 822 4600
www.globalrights.org
info@globalrights.org