

COPPER BOTTOMED?

Bolstering the Aynak contract:
Afghanistan's first major mining deal



NOVEMBER 2012

global witness

STOP PRESS

Since completion of this report, the Afghan Ministry of Mines has taken the landmark step of publishing over 200 extractives contracts. Global Witness welcomes this important move to translate public commitments to transparency into reality, and crucially, the recognition this shows of the right of the Afghan people to see and scrutinise the deals negotiated on their behalf for their valuable national assets.

Whilst the contracts published so far are primarily for smaller, low-value operations, a number of strategically important agreements such as the Amu Darya oil, the Qara-Zaghan gold and the West Garmak coal contracts have also been made public. However, there is some way to go to achieve the full transparency essential to set the right foundation for Afghanistan's emerging extractives sector.

As at 30 October 2012, the terms of Afghanistan's biggest foreign investment to date – the Aynak copper deal – remain secret. It is understood that discussions between the Chinese investing consortium and the Government of the Islamic Republic of Afghanistan are ongoing and we urge that the contract be published in line with Afghanistan's commitment to transparency and the Chinese principles of '*mutual benefit*' and '*win-win cooperation*'. More broadly, more steps are required to address the gaps laid out in Chapter 1 (*Contract Transparency*), namely transparency of ancillary, sub and supply contracts and major project agreements; and public information on who is behind the companies benefiting or bidding to benefit from the extractives sector. By making these further advances, Afghanistan can build on the positive moves already made and achieve a truly transparent extractives sector.

About Global Witness

Global Witness is a London-based non-governmental organisation that investigates the links between natural resources, conflict and corruption, and associated environmental and human rights abuses. We aim to promote improved governance, transparency and accountability in the management of the natural resource sector to ensure that revenues from resources are used for peaceful and sustainable development rather than to finance or fuel conflicts, corruption or state-looting. We work across Asia, Africa and South America, investigating the activities of European, North American, Asian and African companies and governments, and the role of the international financial system.

Historically, our investigations, publications and engagement with policy makers have been a key catalyst in the creation of the Kimberley Process, to tackle the trade in conflict diamonds, and the Extractive Industries Transparency Initiative, to encourage transparency over payments and receipts for natural resource revenues. We were co-nominated for a Nobel Peace Prize in 2003 for our work on conflict diamonds.

See www.globalwitness.org for further information.

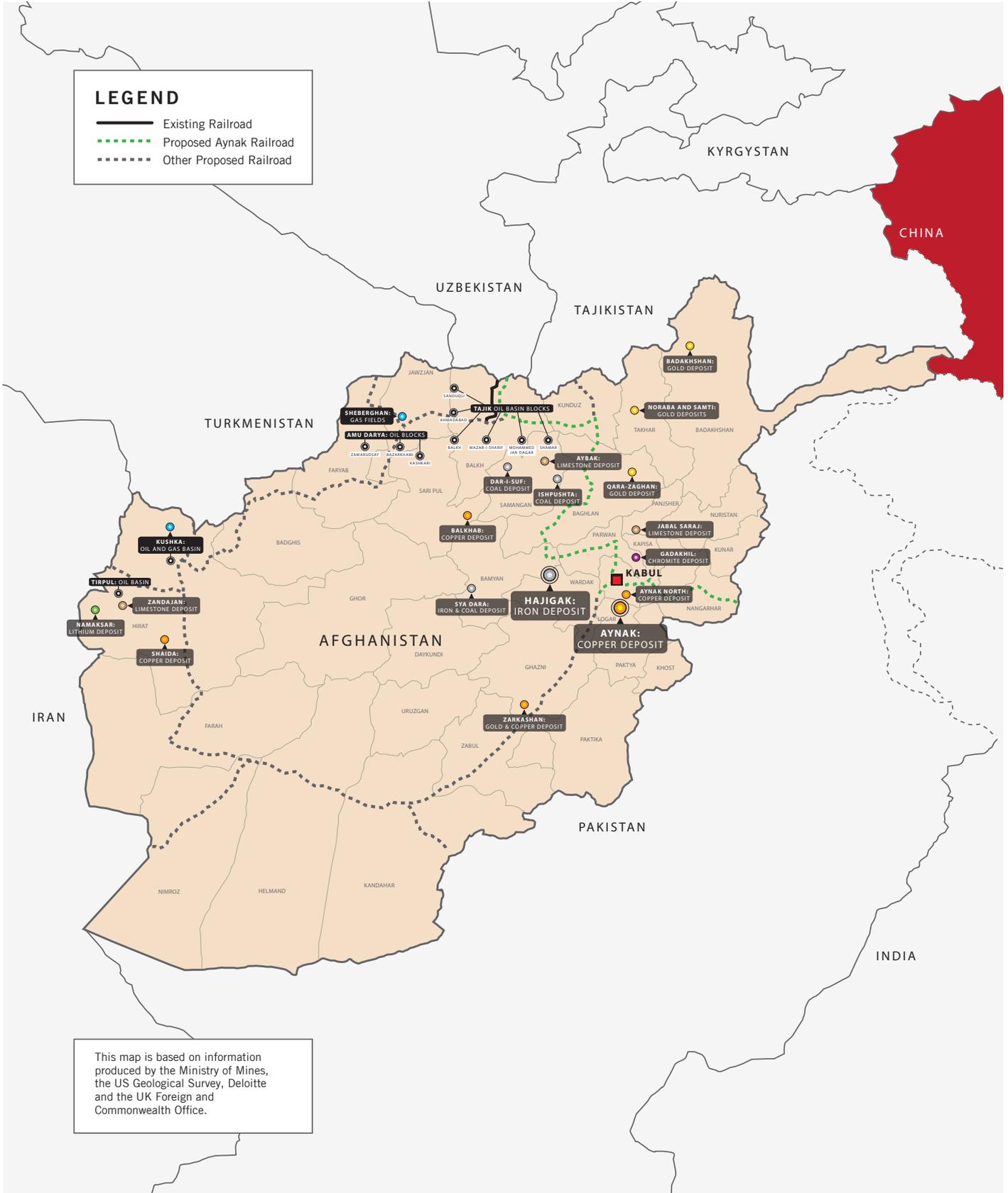
Acknowledgments

In reviewing the Aynak contract, Global Witness has benefited from the invaluable support of a range of experts.

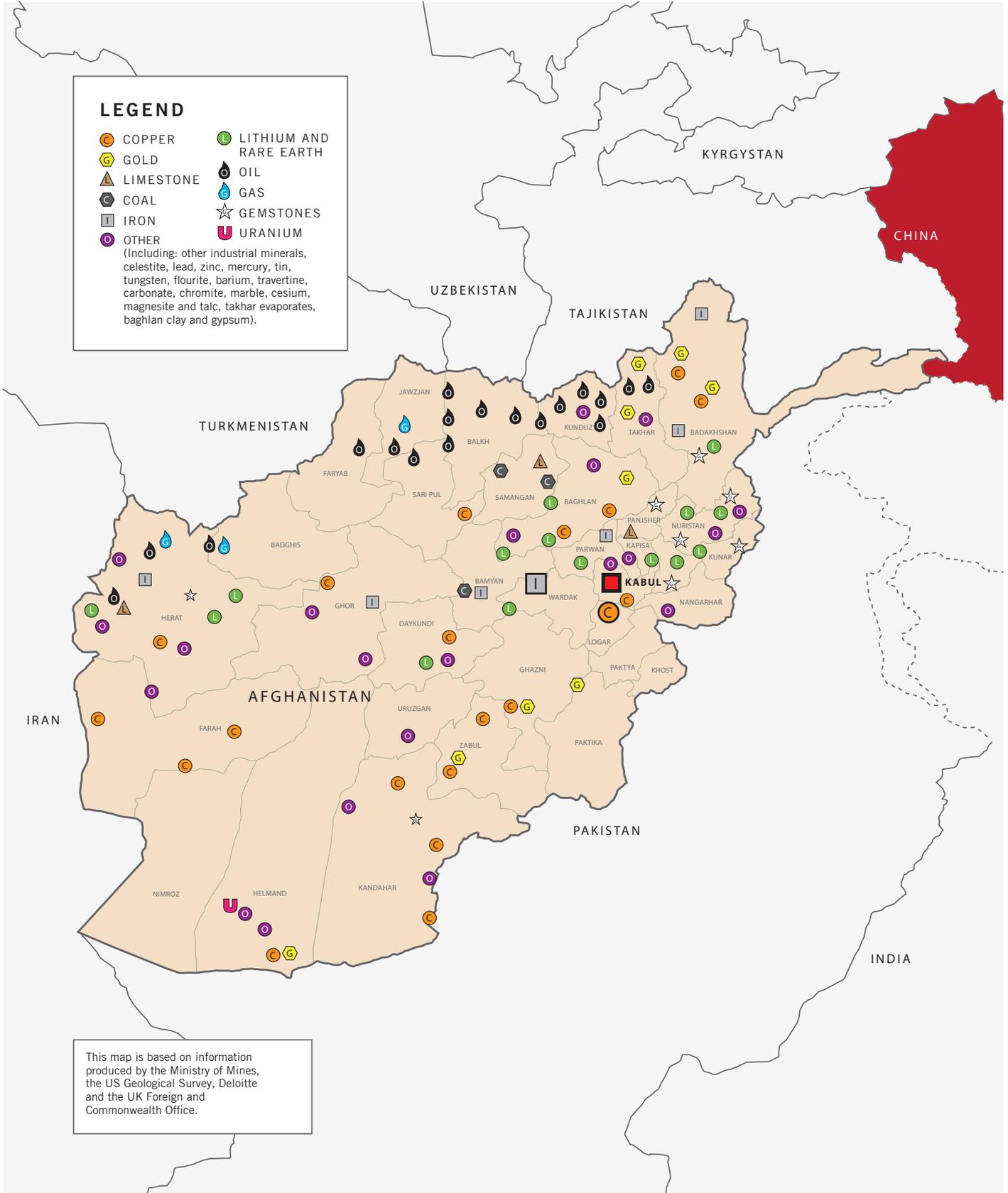
We would, in particular, like to express our gratitude to:

- Professor Sheldon Leader, Anil Yilmaz, Tara van Ho, Aygun Kazimova, Youseph Farah, Judith Schonsteiner and Rasmiiya Kazimova at the Essex Business and Human Rights Project, UK;
- Dr Ana Elizabeth Bastida at the Centre for Energy, Petroleum and Mineral Law and Policy at the University of Dundee, UK;
- Philip Riches and Sandra Healy at Stone Chambers and Advocates for International Development; and
- Kristen Genovese and Amanda Kistler of the Center for International Environmental Law, Washington D.C.

Map One. A map of significant mineral and petroleum deposits in Afghanistan that have been awarded or are being tendered.



Map Two. This map shows some of the potential and known mineral and petroleum deposits identified in Afghanistan to date. According to the Ministry of Mines, a survey of 30% of the country has revealed mineral resources worth an estimated \$3 trillion.



Glossary and acronyms

\$	US Dollar.	ICMM	International Council on Mining and Metals.
Amicus curiae	A third party that joins a dispute to provide voluntary opinion. The role of the <i>amicus</i> is to assist the court or arbitrator in deciding a case by providing information and a different perspective from that of the parties.	IFC	The International Finance Corporation, the private sector development arm of the World Bank.
Aynak contract	For the purposes of this report, the principle contract entered into between GIRoA and MJAM in May 2008 in relation to the Aynak copper mine is referred to as the Aynak contract.	IMC	The Inter-Ministerial Council which is made up of ministers from six Afghan ministries. The Minister of Mines chairs the group and the Minister of Finance is the vice-chair.
BFS	Bankable Feasibility Study.	ISAF	The International Security Assistance Force, the NATO-led security mission in Afghanistan.
Consortium	The consortium consisting of China Metallurgical Group Corporation and Jiangxi Copper Company Limited which has been awarded the Aynak contract.	JCL	Jiangxi Copper Company Limited, the minority share holder in the MJAM joint venture.
DAFA	Délégation Archéologique Française en Afghanistan.	MCC	China Metallurgical Group Corporation, the majority share holder in the Consortium.
DRC	Democratic Republic of Congo.	MDP	Mine Development Plan.
EIA	Environmental Impact Assessment required under the Afghanistan Mineral Law.	MJAM	MCC-JCL Aynak Minerals, the joint venture company set up by the Consortium for the Aynak project.
EITI	Extractive Industries Transparency Initiative.	MPU	Mining Protection Unit.
EMP	Environmental Management Plan required under the Afghanistan Mineral Law.	NEPA	National Environmental Protection Agency of Afghanistan.
Extractive industries	For the purpose of this report, the extractive industries are defined as the oil, gas and mineral exploitation industries.	OECD	Organisation for Economic Co-operation and Development.
FPIC	The principle of free, prior and informed consent.	RAP	Resettlement Action Plan.
GDP	Gross Domestic Product.	UN	United Nations.
GIRoA	Government of the Islamic Republic of Afghanistan.	UNEP	United Nations Environment Programme.
Grievance mechanism	A structured process that enables disputes or grievances between two or more parties engaged in business, legal or societal relationships to be addressed.	UNESCO	United Nations Educational, Scientific and Cultural Organization.
IAP	International Advisory Council on Sustainable Resource Development for Afghanistan (also known as the International Advisory Panel) – a body funded by the World Bank.	UNHRC	United Nations Human Rights Council.
IAIA	International Association for Impact Assessment.	UNGPs	“Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework” proposed by UN Special Representative John Ruggie and endorsed by the UNHRC in 2011. This Framework consists of three pillars: (1) the duty of the State to protect human rights; (2) the corporate responsibility to respect human rights; and (3) the need for greater access to remedy for victims of business-related abuse.

Contents

Foreword	8
Executive Summary	9
Top-line recommendations	14
Introduction	15
Afghanistan's extractives sector – potential and challenges	15
Box 1: The central role of the international community	16
Recognising risk – commitments to best practice	16
The Aynak copper concession	17
A word on methodology	18
Global Witness analysis	18
1. Contract transparency	19
Box 2: The rising tide of contract transparency	20
Why contract transparency matters	21
Transparency and contract summaries	21
Transparency and project documents	22
Transparency and model contracts	22
Recommendations on transparency	23
2. Contract structure and drafting	24
International standards	24
Keeping up with best practice	25
Box 3: MCC corporate standards	25
Sovereign immunity: When is a company not a company?	26
Realistic deadlines?	26
Competing rights	26
Who makes the final call on whether or not to proceed with the project?	26
Drafting errors and omissions	27
Recommendations on contract structure and drafting	27
3. Community participation and grievance mechanisms	28
The importance of community buy-in	28
Box 4: What is the local community around Aynak?	28
a) Access to information	29
Recommendations on access to information	30
b) Community engagement	30
Box 5: Protecting mining investments	33
Recommendations on community engagement	33
c) Grievance procedures	33
Box 6: Discussions with the local community	35
Arbitration: a private justice?	36
Recommendations on grievance procedures	36
4. Economic provisions	37
The need for full information	37
When is a royalty rate not a royalty rate?	37
Box 7: Lessons from Liberia	38
Renegotiating financial provisions?	38
Rights to other minerals and natural resources	39
What are the costs?	39
Helping the taxman	40
Recommendations on economic provisions	40

Contents continued

5. Security	41
Recommendations on security	43
6. Environmental safeguards	44
Who is looking after the environment?	45
Environmental commitments	45
Project plans and local engagement	46
Box 8: Public participation - an Afghan and international norm	47
Box 9: The Papua New Guinea experience	48
Closure and post-closure	49
Recommendations on environmental safeguards	50
7. Land and water rights	51
Monitoring safeguards	51
Resettlement	52
Compensation	52
Water usage	52
Recommendations on land and water rights	54
8. Social provisions	55
Aid programme	55
Employment	55
Health and Safety	56
Healthcare	57
Education	58
Housing	58
Infrastructure and power supply	58
Delivering on promises	58
What happens when the project ends?	58
Recommendations on social provisions	59
9. Heritage issues and other area-specific risks	60
Box 10: The power of cultural heritage	61
Recommendations on heritage issues and other area-specific risks	63
10. Assessments and monitoring	64
Box 11: What is GIRoA already doing?	64
Assessments	64
Monitoring	65
Independent expert panels	66
Recommendations on assessments and monitoring	68
Conclusion	69
Appendix 1: Table of Aynak bids	70
Appendix 2: Public information on Aynak contractual terms	71
Appendix 3: The Consortium relations with local community	73
Endnotes	74

Foreword

In April 2012, Global Witness published a **comparative analysis** of the Aynak copper contract and the Qara-Zaghan gold contract. Aynak was awarded to a Chinese consortium, while the Qara-Zaghan concession was awarded to an Afghan company backed by a JP Morgan-facilitated group of investors. Qara-Zaghan was signed in 2011, three years after Aynak under the new ministerial regime at the Ministry of Mines.¹

The Qara-Zaghan contract is publicly available, and the analysis highlighted this as progress. However, overall, it found the contractual basis for the Qara-Zaghan project was weaker than for Aynak. This suggests lessons have not yet been learned from the Aynak experience.

Global Witness is revisiting the Aynak contract now because, as Afghanistan's first major mining agreement and the country's largest foreign investment, the contract sets the tone for all Afghanistan's future mineral and petroleum negotiations and should set a strong standard for all future investments in the country.

The stakes are high and urgent. Over the coming months, more of Afghanistan's most valuable mineral and petroleum deposits are due to be sold off. The Aynak project itself stands at a critical point, with decisions set to be made on how the mine will be exploited and the ongoing relocation of local people. In short, the foundations for this critical sector are being laid today.

By providing a detailed examination of the Aynak contract, this report aims to highlight key learning points that need to be taken on board now to ensure that Aynak and all future projects in this highly complex and volatile environment – western and non-western alike – proceed on the right basis: so that they avoid fuelling conflict, corruption, environmental and human rights abuses and, instead, generate real and long-term economic and social benefits for the Afghan people.

Former Minister of Mines Ibrahim Adel (front right) shakes hands with Shen Heting, general manager of MCC, the Consortium's majority stakeholder, during the signing ceremony for the Aynak contract, Kabul, May 2008. The contract sets the framework for Afghanistan's first major mining project and biggest foreign investment so far. Strengthening this contract and learning lessons for new deals is essential to ensure the Afghan people benefit from their country's mineral and petroleum wealth.
(Credit: Landov/Press Association Images).



Executive Summary

On 25 May 2008, the Government of the Islamic Republic of Afghanistan (GIROA) signed a contract with a Chinese state-backed consortium to mine the country's largest-known copper mine in Logar province – the Aynak concession.^a The deal could play a key role in Afghanistan's future, generating, according to the World Bank, an estimated \$541 million per year for GIROA from 2016,² creating around 5,000 jobs and bringing in much-needed infrastructure investment.³ However, these potential benefits are seriously undermined by secrecy over the contract terms, missing or ambiguous project safeguards and key economic provisions that need to be renegotiated.

Work at the project site is already beset by challenges. The discovery of culturally valuable Buddhist archaeological remains has delayed progress, whilst attacks at the site and kidnap threats against staff have raised questions over the feasibility of the project. It is a critical time therefore to review and strengthen the contractual basis for the project, to ensure that it provides the right foundation for success at Aynak, and that it sets the precedent needed as new mining deals come up for agreement.

The fact that the contract for this huge and important project has not been published is in itself a significant issue. Global Witness has obtained and analysed the

near-final April 2008 draft of the agreement. Whilst this is not ideal, evaluating the draft terms has allowed us to identify areas of weakness that need to be addressed urgently at Aynak, and lessons, both positive and negative, which should be taken into account in upcoming concession contract negotiations.

Top of our recommendations is the need to publish the contract, the ancillary agreements and associated project documents in full and without delay. Further details on contract implementation need to be agreed to provide a voice for local communities, guard against security risks and enable stronger oversight and monitoring. Specific clauses that grant excessively favourable economic terms and access to other resources also need urgent renegotiation.

Strengthening the contractual basis for Aynak is crucial to achieve the Chinese State Council objective of: "creating a friendly environment for public opinion, walking the road of peaceful development policy, and preserving our good image and a good corporate reputation".⁴



The Consortium has built a camp (background) to house workers at the copper mine, whilst workers (foreground) rapidly excavate major archaeological artefacts and structures from the area. The Aynak project site has a rich and tumultuous history. It was the centre of an ancient and powerful Buddhist kingdom,⁵ and in recent decades has been used by Soviet troops and as a training base for Al-Qaeda, at which three of those who would later participate in the 9/11 attacks were instructed.⁶ (Credit: Jerome Starkey).

a: For the purposes of this report, the term 'Aynak contract' is used in reference to the principle contract for the Aynak project, the final version of which was signed by GIROA and the China Metallurgical Construction Company (MCC)/Jiangxi Copper Company Limited (JCL) consortium in May 2008. The term does not encompass the ancillary agreements subsequently signed in relation to the Aynak project.

The Aynak contract was signed by the MCC/JCL consortium but the clauses within the contract refer to MCC. The consortium has since set up an operating company, MCC-JCL Aynak Minerals Company (MJAM) to manage the Aynak project. For ease of reference, however, all entities representing the investing companies in the Aynak project are referred to as the 'Consortium' in this report.

Main findings^b

1. Transparency: At the time of going to print, neither the signed Aynak contract nor the railway, security and other agreements linked to it and signed subsequently have been made public. This means that the Afghan people, its parliament, local communities and large sections of the Afghan government do not have access to a document which is crucial to the economic future of the country.

There is also no provision within the contract for sub-contracts or supply contracts negotiated by the Consortium to be made public, nor for the beneficial ownership of companies awarded such contracts to be published. Understanding what all projects agreements say and who benefits from them is a prerequisite to guarding against corruption. Global Witness investigations in countries such as the Democratic Republic of Congo (DRC) and Zimbabwe, for example, have shown how opacity over issues such as beneficial ownership raises risks of corruption and off-budget funding for powerbrokers.

2. Contract structure and drafting: The contract makes positive references to international standards such as the Equator Principles, and recognises the need for responsible management. However, language on how these standards are to be implemented is vague and ill defined, raising questions on how/whether they can be applied in practice.

A crucial gap in the contract is that it makes no provision for a final decision stage on whether and when to proceed with exploitation based on a full assessment of expected costs and benefits. This means that no one is addressing the question of what happens if the expected costs of mining to the Afghan people (including adverse social, environmental, human rights and cultural impacts) outweigh the benefits.

The contract also makes no reference to the principle of 'sovereign-immunity'. This enables state or state-owned entities to claim immunity from the jurisdiction of the courts of another state in some circumstances. As the Consortium is partially owned by the People's Republic of China, unless precautions are taken, there is a risk that this principle could be claimed as a bar to proceedings against it in relation to the Aynak project.

3. Community participation and grievance mechanisms: In interviews with Global Witness, members from the Aynak project area have raised serious concerns over the project's impact. The contract, however, does not require consultation with the local community, nor does it set up a mechanism to deal with community concerns and complaints. If contractual commitments are ignored, the only recourse to justice for the community is via a closed arbitration process – meaning they

would need to rely on the government to bring a claim on their behalf. In Uganda, the referral of an ongoing tax dispute over a major oil project to arbitration in 2011 has caused public outcry because it means that citizens are being kept in ignorance of proceedings and decisions which could have serious implications for them.

The Ministry of Mines and the Consortium is attempting to fill the contractual gap and ease on-site problems by carrying out consultations and setting up a 'grievance redressal mechanism'. However, without access to the contract, project documents or the support to fully understand what the impacts could be, the community is at a disadvantage and will not be able to fully participate. Meanwhile, the Consortium is not legally obliged to engage in these activities if not specified within the contract terms and conditions. Establishing a trusted and reliable process to address concerns is central to securing local buy-in and to preventing grievances from escalating into violence and conflict around the mine.

4. Economic provisions: Afghanistan stands to gain substantial revenues through payments for access rights, royalties and taxes. However, the economic potential is undermined by a provision that could allow for royalty rates to be matched in the future if another company working on an alternative mine site agrees a different royalty rate with the Government. This applies not only to copper deals, but to any other minerals, regardless of comparative market value – leaving the royalty rate wide open to downward negotiation in the future and chilling future investment by dis-incentivising 'sensible' royalty deals for other minerals.

On similar lines, the contract appears to give the Consortium a six-month period of exclusivity to bid for minerals or other natural resources discovered within the project area. It paves the way for the Consortium to claim rights to a range of resources, independently of its work on the Aynak concession, including coal, timber and water.

Both provisions could be very valuable to the Consortium, with potentially huge impacts on resource use and economic benefits at the local and national levels. At present, they are excessively weighted in favour of the Consortium and need to be renegotiated.

Other than the headline royalty figure, it is impossible to fully evaluate the economic impact of the deal because vital information is not available - for example, details of associated infrastructure agreements such as the railway. Social benefits and potential social and environmental impacts are not priced and taken into account. Until this information is made available for evaluation, the financial implications of the deal for the Afghan people remain unclear.

b: References for the points covered in this section can be found in the main body of the report.



Afghan police guard the Aynak project compound. The government of Afghanistan has set up the Mining Protection Unit to provide security for the country's extractives sector, with 1700 police officers at Aynak and plans for total personnel of up to 7000 future projects.⁷

(Credit: Brent E. Huffman, see <https://www.facebook.com/buddhasofaynak>).

5. Security: To ensure security around mining operations, GIRoA has set up a specific Mining Protection Unit (MPU). Without safeguards, however, international experience suggests that such forces can become part of the problem.

There are, sadly, numerous examples of what can go wrong. In Peru, for example, protestors against a copper mine claim to have been tortured and sexually abused by the Peruvian police, whilst in the DRC armed groups and members of the Congolese military generate funds by imposing illegal taxes at mine sites and along mineral transportation routes and by controlling mineral smuggling networks. Warring parties then use this cash to fund the fighting and line their own pockets.

The contract references the Voluntary Principles on Security and Human Rights which provide clear guidelines on the steps that the company and the state should take to guard against human rights abuses by security forces. They are, however, only as good as their implementation. Unless the parties agree and publish how the principles will be put into place, and their implementation is enforced and monitored, they are toothless, providing a veneer of international standards which is not backed up by reality.

A major concern is that wider security arrangements for the Aynak project are set out in a separate agreement which has not been made public. There may be specific points such as the exact locations of security forces which need to be kept private for reasons of national security. Other elements, however, could and should be made public, including basic information on the MPU mandate, composition and respective responsibilities of the government and company for security and for addressing complaints made against security forces. Crucially, it must be clear how forces will be held to account for any misconduct.

6. Environmental safeguards: The Aynak project is likely to have serious environmental impacts, given its size and location. The risks that the project could place an added strain on water supplies or lead to water contamination need particular consideration, especially given the potential ramifications – for example, on the water supply of Kabul province.

Positively, the contract commits the Consortium to addressing environmental problems and adhering to international standards. There is, however, no requirement for environmental impacts to be monitored so that adverse effects can be identified and dealt with quickly. It also places the Ministry of Mines in charge of approving environmental assessments – potentially placing a major strain on capacity and risking a conflict of interests.

The contract does not require public consultation on environmental safeguards or publication of related information. This works against independent monitoring of important environmental protections and could reduce public buy-in to the project.

The Consortium's majority shareholder, MCC, has experienced environmental controversy in Papua New Guinea. Since 2010, its Ramu Nico nickel mine project has been embroiled in a long-running court dispute over local landowner claims that the method chosen to dispose of waste from the project could have serious adverse environmental effects. Although the court ultimately found in favour of the company, there were substantial delays to production, generating millions of dollars in costs and adverse media coverage – all of which companies and government alike will wish to avoid replicating in Afghanistan.

Kabul River seen near Jalalabad, Afghanistan. The 700km river is the main waterway in the eastern part of Afghanistan. Without robust safeguards, the Aynak project could have major consequences for Afghanistan's environment – particularly for the water and land on which the Afghan people depend. Positive commitments in the Aynak contract to protect the environment and minimise adverse impacts now need to be backed up by detailed procedures and implemented. (Credit: AP/Press Association).



7. Land and water rights: The contract contains important provisions to limit project impacts on water use and to ensure that land issues are dealt with properly and compensation is paid.

On water, for example, the contract specifically prohibits the Consortium from using agricultural water or depriving any existing users of water they customarily use for their lands, villages, houses or animals. In a country which is heavily dependent on agriculture and livestock, and where water resources are already under strain, this is a key protection, particularly given the water-intensive nature of copper mining.

Such positive clauses are undermined, however, by the non-publication of the contract – meaning the local community is not aware of the rights that they have under its terms. There are also questions over how international guidelines are to be carried out in practice and, crucially, how contract implementation is to be monitored.

8. Social package: The contract commits the Consortium to developing and financing an aid programme for the local area, but limits consultation on the project to government officials, not communities – which risks creating a *white elephant* project that does not meet local needs. It also lacks commitments on the quality of infrastructure to be provided – a loophole which needs to be addressed.

A more fundamental question is whether extractives companies should directly provide or fund social services and infrastructure at all. There is a risk that the state will no longer provide schools and hospitals

in the area, on the basis that they are already being provided by companies. This can put the local people at the mercy of mining companies. For example, locals may feel compelled to agree to exploitation as the only way that they can get essential services.

Positively, on employment the contract commits the Consortium to training and employing specified percentages of Afghan nationals at different skill levels. However, this provision does not filter down to sub-contractors so its impact could be limited.

Clause 39(a) allows the Consortium to employ Afghan staff “upon terms which are acceptable to [the Consortium]”. This puts the ball in the Consortium’s court and could, in practice, disadvantage the Afghan population.

9. Heritage issues and other area-specific risks: Afghanistan’s rich cultural heritage is justifiably a source of national pride. Managed well, it could be an important unifying force, providing the diverse peoples of Afghanistan with symbols for their collective history, and it could provide the foundation for a future tourism industry.

Sadly, Afghanistan’s historic legacy has already been damaged by years of looting and, notably, by deliberate destruction under previous regimes. It would be tragic if the destruction of Afghanistan’s cultural heritage, exemplified by the Taliban’s demolition of the Bamiyan statues, was continued and legitimised in the quest for mineral derived wealth. The Aynak area is of particular historical significance, as part of an ancient and powerful Buddhist kingdom. It was identified as an archaeological

site in the 1960s and an archaeological team began studies there in 2004. So far, archaeologists working at the site have unearthed Buddhist monasteries, statues, sculptures, and other relics and artefacts, dating back hundreds of years.

Despite this, the contract contains no provisions for dealing with the major archaeological sites in the Aynak project area. The government and the Consortium are cooperating to ensure that artefacts from the Aynak site are properly removed but questions remain over whether these go far enough to protect Afghanistan's priceless heritage.

10. Assessments and monitoring: The Aynak contract requires social and environmental impact assessments of the project, and allows unrestricted official visits to monitor the site. However, there is no provision for assessments to be updated in the future, or for additional assessments on areas such as human rights.

On monitoring, the contract permits official inspectors to visit the site at *"all reasonable times"*, and requires the Consortium to provide regular reports to the Ministry of Mines and to furnish any other information requested. However, a significant loophole is that there is no time limit specified for the Consortium to respond to official requests for information and documents.

An independent expert panel is being funded by the World Bank and has produced at least one report on the Aynak contract – but its reports are not currently publicly available, and access to the panel is subject to

the prior approval of the Ministry of Mines. Therefore it is hard to judge whether the panel really is independent, and, if so, whether this independent advice has real value given that it is not subject to any publicly accessible external scrutiny.

Beyond this panel, there is an important role for independent bodies such as civil society to play in providing oversight for the project and feeding back community observations and concerns. However, there is no provision for such bodies to be given access to the project site, to local communities or to key project documents and information.

More broadly, it should be recognised that civil society needs time and support to build up skills and experience in what is a new sector for Afghanistan. The physical, legal and political dangers that they could be exposed to by carrying out research and speaking on what can be very sensitive issues also need to be identified and addressed. Only by creating a real space for civil society groups can they play their part in strengthening governance of the extractives sector.

There is an urgent need for GIRoA and the Consortium to work together to address these gaps and weaknesses to create the strong framework essential for the success of the Aynak project. Lessons must also be learned from the Aynak experience to develop a sector which brings with it real and long-term prosperity for the Afghan people.



An ancient Buddhist stupa or shrine recently excavated at the Aynak site. Exploration activity at Aynak has been hampered by its past. The need to excavate historic artefacts and to clear landmines during the Soviet era has delayed mining operations at the site.
(Credit: Jerome Starkey).

Top-line recommendations

Detailed recommendations for stakeholders are laid out in the text below. Based on our analysis, the top-line Global Witness recommendations for GIRoA and the Consortium on the Aynak project are as follows:

1. **Publish the contract, the ancillary agreements and associated project documents in full and without delay.**
2. **Agree and publish detailed procedures for implementation of the contract. These procedures should incorporate provisions which provide a voice for local communities, guard against security risks and enable stronger and more open oversight and monitoring.**
3. **Renegotiate clauses 6 and 20(c) which allow excessively favourable economic terms and access to other resources.**

For all extractives projects, GIRoA and relevant extractives companies should:

- In line with President Karzai's July 2012 decree, publish all mining agreements, ancillary agreements and significant project information in full, with details of beneficial ownership of companies, on relevant Ministry websites and in hard copy at accessible designated locations at project sites, with translations in Dari and Pashto.
- Commit to applying the latest available and most appropriate international best practice standards and principles for each stage of all extractives projects, and agree and publish processes setting out how such standards will be implemented.
- Before green-lighting any new extractives projects or the exploitation of any concessions already awarded, evaluate all expected benefits and costs (including environmental, social, human rights, cultural and local economy impacts) and publish the results of these evaluations.
- Commit to early and effective community and public engagement on all aspects of mining projects, including the initial decision on whether to commence exploration and exploitation.
- Ensure that grievance mechanisms are designed through consultation with the affected community and include safeguards against corruption at the local or national level. The final remits of grievance resolution bodies should be published and mining companies should publish their agreement to abide by the decisions of such bodies.

- Ensure that the MPU is exclusively staffed by specially trained and accountable Afghan National Police Units, and that all mining agreements reference the Voluntary Principles on Security and Human Rights backed up by full reporting requirements. Require mining companies to carry out due diligence to ensure their operations do not contribute to violence or human rights abuses.
- Ensure there is capacity for effective official monitoring of mining projects, and support civil society, parliament and the media to carry out independent monitoring of the extractives sector.
- Work with the international community to allow independent expert panels to provide additional oversight on major projects. The remits and reports of such panels should be published and access to them should be independent of GIRoA.

The international community should:

- Prioritise the development of capacity and frameworks to effectively manage and monitor extractives project. Ensure this approach is reflected in the approach taken by internationally funded advisors.
- Provide further funding, training and support to build capacity in the GIRoA bodies (national and local), parliament, civil society and affected communities to ensure that they can engage effectively in mining sector governance.
- Incorporate contract transparency, community participation, and social, environmental, human rights and cultural safeguards within shared monitoring and evaluation frameworks for development assistance to Afghanistan. Disbursements of future aid should be linked to performance against these benchmarks.
- Stipulate that advisors funded by the international community to provide advice and support to GIRoA on extractives projects are prohibited from subsequently representing company counterparts on the same projects.
- With GIRoA, take steps to ensure that the Independent Advisory Panel has the remit to operate entirely independently, and that its remit, composition and reports are published.

Introduction

Afghanistan's extractives sector – potential and challenges

As Afghanistan looks to its future beyond transition in 2014,^c its massive mineral and petroleum potential is assuming central importance. Foreign aid to the country was valued at \$15.7 billion in 2010/11 – equivalent to nearly 100% of GDP.⁸ With GIRA's^d expenditure set to increase as it takes on full responsibility for security and civil service reforms,⁹ the search is on for a way to boost national revenues and move Afghanistan away from aid dependency in the future. Efforts to find a solution are focusing on the extractives industries and, linked to this, the 'resource-corridor' and 'New Silk Road' initiatives.^{e10}

Government announcements of up to \$3 trillion in mineral and petroleum deposits including rare earths, copper, iron, gold, oil, chromite and uranium have fuelled expectations that mining and its anticipated spin-offs could be the answer to Afghanistan's future funding needs.¹¹ Two mines are recognised as key potential national revenue sources – the Aynak copper deposit in Logar province and the Hajigak iron deposit in Bamyan province. According to the World Bank, revenue from these mines will generate an average of \$900 million per year until 2031.¹² A host of smaller concessions are also being awarded, with the potential to bring in around \$1 billion per year until the same date.¹³

Managed well, Afghanistan's extractive industries could drive sustainable development and help the country to move away from aid-dependency. However, the experience of other resource-rich countries such as Cambodia, the DRC, Iraq, Libya and Sierra Leone cautions that resource exploitation can exacerbate existing conditions of conflict, corruption, environmental degradation, unemployment and poverty.

In Afghanistan itself, natural resources have a history of financing and fuelling conflict. Minerals, precious gemstones, land, and timber were a critical source of war financing during the Soviet occupation, and in the ensuing years of civil war and Taliban rule. Today, many mines in the country continue to be exploited by criminal smuggling syndicates and insurgency networks.¹⁴ Weak state capacity to regulate mining operations can also directly fuel local grievances through the denial of rights to land, water and livelihoods. According to ISAF's own research such local grievances are a primary driver of support for the insurgency.¹⁵

Given this history and current conditions in Afghanistan, the pace, scale and approach to mineral sector development could increase risks to the country's stability and future economic growth.



Minister of Mines Wahidullah Shahrani and former US Ambassador to Afghanistan Karl W. Eikenberry. The international community has made strong commitments to good governance in Afghanistan's extractives sector. In May 2012, the US entered into a Strategic Partnership Agreement with Afghanistan, which included a commitment to support "Afghanistan's efforts to govern its natural resource wealth through an accountable, efficient, effective and transparent framework that builds upon and surpasses international best practice". (Credit: US Embassy Kabul/Creative Commons).

c: Under the transition process, full responsibility for Afghanistan's security will be handed over to national security forces by 2014. At the same time, the country will take on full responsibility for its own development.

d: For the purposes of this report, the term GIRA refers to the host of government bodies engaged in Afghanistan's extractives sector. Key institutions include: the Ministry of Mines which has primary responsibility for regulation, management and oversight of extractive resources; NEPA which has primary responsibility under the environmental law for environmental issues; the Ministry of Finance responsible for fiscal management and revenue collection in relation to mining; the Ministry of Interior Affairs responsible for the Mining Protection Unit which provides security for mine sites; the Ministry of Information and Culture responsible for archaeological issues at mine sites; and the Inter-Ministerial Council (IMC) responsible for monitoring and approving small and medium sized mining contract bids and approving large-scale mining contracts for implementation. Other important bodies include the Council of Ministers which (along with parliament) is required to approve very large mining contracts, and the Office of the President and Ministry of Justice.

e: The World Bank describes a 'resource corridor' as a sequence of investments and actions to leverage large scale extractive industry investments in infrastructure, goods and services into viable economic and diversification along a defined geographic area'. The 'New Silk Road' is a US backed initiative to develop a transportation, trade and energy network across Central and South Asia with Afghanistan at its heart.

Box 1: The central role of the international community¹⁶

To support Afghan economic independence, the international community is working with GIRoA to develop the country's extractives sector rapidly in the run up to 2014. Their assistance has played a crucial part in the sector to date and has enabled the development of Afghanistan's major extractive deposits.

Donors including the World Bank, US, UK, Germany and Australia have provided technical, legal and financial support for activities such as:

- Translation and assessment of geological information gathered during the Soviet era, and carrying out new geological surveys;
- Development and reform of laws, regulations and policies for the sector;
- Setting up and managing bidding processes and programmes to attract international investment to the sector;
- Legal advice and support in the negotiation of extractives contracts and associated infrastructure contracts;
- Implementation and monitoring of mining projects;
- Building capacity the Ministry of Mines and other GIRoA bodies; and
- Supporting Afghanistan's work to gain validation under the Extractive Industries Transparency Initiative.

This support gives them a unique interest in, and leverage over, setting robust governance frameworks for the sector from the outset.

Recognising risk – commitments to best practice

GIRoA and the international community have already acknowledged the risks associated with extractives sector development. The 2011 International Afghanistan Conference in Bonn, Germany emphasised the importance of international best practice to ensure that Afghanistan's mineral wealth directly benefits the Afghan people, revenue is earned and the environment is protected. Building upon this, the June 2012 Tokyo Declaration committed GIRoA and its international partners to *"the development of an Extractive Industries Development Framework that governs Afghanistan's natural wealth through an accountable, efficient, effective and transparent mechanism which builds upon and surpasses international best practices."*¹⁷

In July 2012, President Karzai issued a **decree** requiring all contracts signed in the past three years with national and international companies to be published in full.¹⁸ The Decree goes one step further for the extractives sector and requires the Ministry of Mines to develop a plan on contract transparency *"based on agreed international principles and with considerations of the future of the country"* - again specifically stating that contracts should be published in full (rather than in summary).^f

This Decree builds on positive steps that Afghanistan has already taken. One welcome development is Afghanistan's candidacy for the Extractive Industries Transparency Initiative – a global standard that promotes revenue transparency,^g as is the Memorandum of Understanding agreement between the Ministries of Finance and Mines *"for cooperation on transparency in mining revenues and fighting corruption"*.¹⁹ **The Minister for Mines, Wahidullah Shahrani has also committed to "totally transparent" mining operations,²⁰ and to the publication of all contract information in national languages and English within 48 hours of each contract award.**^{21h}

The following report evaluates how Afghanistan's first and biggest mining concession contract to date – the Aynak copper concession – supports these laudable rhetorical commitments.

Taking stock of the Aynak contract now is critical for two reasons:

- **To ensure that the Aynak project proceeds on the right basis:** Aynak is a massive project for Afghanistan, and the framework set up before exploitation starts will determine whether it will benefit the country or do harm. It is crucial that weaknesses in the contract are identified and addressed as quickly as possible, to ensure that the project has the strongest possible basis.

f: For the full Global Witness statement on the presidential decree, see <http://www.globalwitness.org/library/rhetoric-reality-president-karzais-presidential-decree-transparency-country%E2%80%99s-nascent>.

g: The Extractive Industries Transparency Initiative (EITI) is a global standard that promotes revenue transparency through a process overseen by government, companies and national civil society. Afghanistan became a candidate for EITI in 2010, and is currently taking steps to comply with the EITI standard. For further details on EITI, please see <http://eiti.org>. It should be noted that Global Witness sits on EITI board.

h: Other positive moves include Ministry engagement with the Natural Resource Charter, which provides clear principles for good resource management from discovery through to exploitation. With the support of the international community, the Ministry of Mines is also undertaking a full review of the legislation, regulations and procedure for the extractives sector, and working with NEPA on environmental regulations. It should be noted that Global Witness has and continues to contribute to the Natural Resource Charter.

- **To apply lessons to upcoming contracts.** As the country's first major mineral award, Aynak is a reference point for other concession contracts, large and small. In particular, the huge Hajigak iron contract is currently under negotiation, and a series of gold, copper and petroleum concessions are due to be awarded in the coming months.²² Strengthening and clarifying these contracts can play a role in developing an improved business environment, suitable for responsible company engagement in Afghanistan's mining sector.

The contract is, of course, only one part of the story. The ultimate success of the extractives sector will also depend on the existence of a comprehensive regulatory framework, government bodies with the capacity, will and coordination to manage and monitor the sector effectively, space for independent oversight, and an appropriate national government strategy for the long-term management of the country's natural resource base. However, the contract merits specific attention as it sets out the terms of the deal and the binding commitments the mining company is to abide by. This becomes even more important when the contract is for a major and long-running project like Aynak, and in a context where laws, regulations and policies for the extractives sector are still being developed.ⁱ

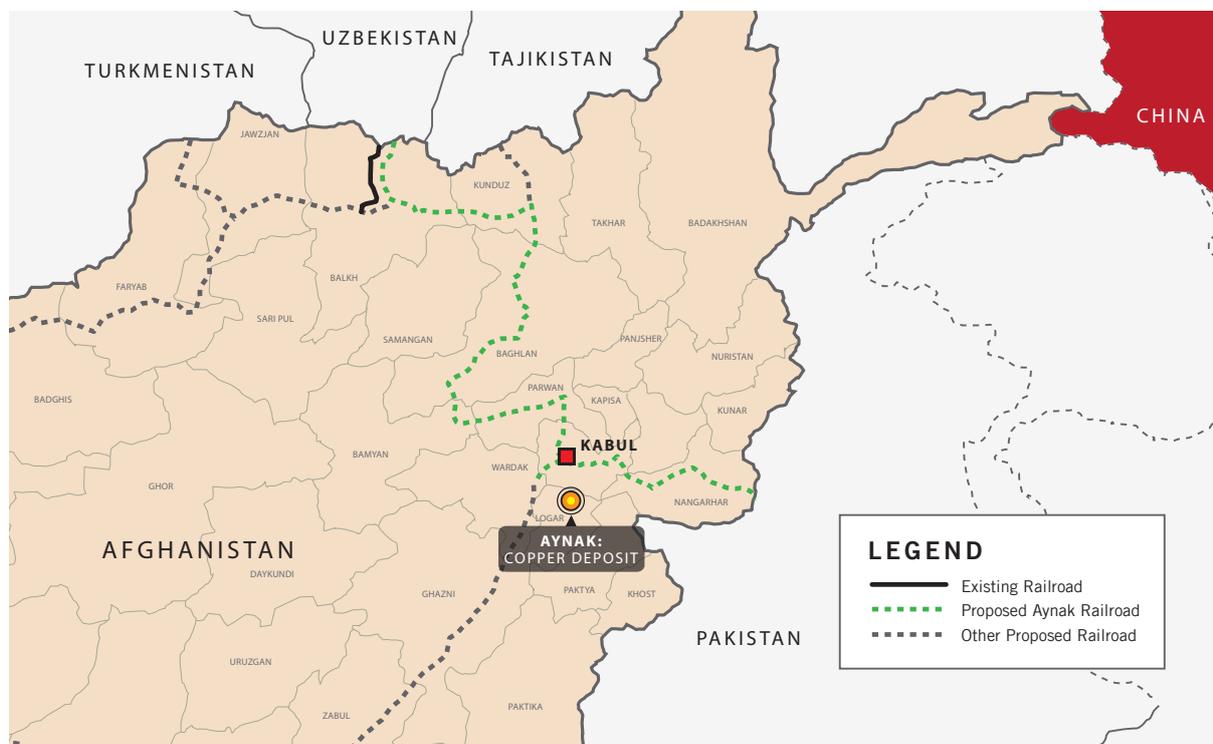
The Aynak copper concession

The Aynak area has great historical significance, as part of an ancient and powerful Buddhist kingdom.²³ Today, Aynak is best known for holding one of the world's richest unexplored copper deposits. The site is located 35km from Kabul in the province of Logar.

The Aynak copper concession was awarded during the tenure of the previous Minister of Mines, Ibrahim Adel. A consortium comprised of China Metallurgical Construction Company (MCC) and Jiangxi Copper Company Limited (JCL) (together, the 'Consortium') was selected as preferred bidder in September 2007. The Consortium subsequently set up an operating company called MCC-JCL Aynak Minerals (MJAM) to manage the project.²⁴

Details of the main bids put forward for the concession have been made public and the package provided by the Consortium does appear to be the strongest of the bidding companies. Both the Ministry of Mines and the Consortium emphasise that the bidding process was "transparent" and in line with "international best practice".²⁵ It should be noted, however, that the bidding process was criticised in a report by one former Ministry of Mines advisor and media allegations of corruption surfaced in November 2009.²⁶ These allegations have not been proven and Global Witness has not reviewed the bidding process within this report.

Map Three. A map of showing the location of Aynak.



i: An important question which remains to be answered is why any mining contracts and, in particular, a contract of the significance of Aynak was signed at a time when the comprehensive regulatory framework for Afghanistan's extractives sector had not yet been fully developed.

GIRoA and the Consortium signed the Aynak contract in May 2008. Described as a 'principle contract' it can be characterised as a framework agreement that sets basic principles and commitments. Specific aspects such as the project railway are briefly outlined with the details left to be negotiated and finalised in separate agreements.

Under the contract, the Consortium is granted the right to explore and exploit a copper deposit estimated to contain 240 million tons of material,²⁷ with a reported value of \$43 billion.²⁸ In return, the Consortium provides an investment package worth at least \$2.9 billion.²⁹ This includes an upfront payment totalling \$808 million (payable in three instalments) and substantial capital investment to pay for projects like the construction of a railway, a power plant and a water supply.³⁰ Ancillary contracts have been signed for each of these elements, and for security provision and access to other minerals required for exploitation activities.

Since signature of the Aynak contract, the project has been beset by challenges. Security has been particularly problematic with rocket attacks on the Aynak site and abduction threats to Consortium staff.³¹ There have also been substantial delays caused by the need to demine the project site, excavate archaeological remains from the site and relocate local residents. Production is now not expected to start until the end of 2014 at the earliest.³² An advantage of this delay is that it provides an opportunity for GIRoA and the Consortium to review and strengthen the contractual framework of the Aynak project. Increasing transparency, accountability and community engagement is essential to securing local consent for the project, addressing security concerns and ensuring a win-win situation for the Afghan people and the Consortium.

A word on methodology

Pending publication of the signed Aynak contract, Global Witness has reviewed an April 2008 draft. Whilst this is not the signed version we understand that the wording is final, with the exception of the fiscal and security provisions, final conditions on employment commitments and additional information in the appendices.

This report is also based on meetings and research carried out between June 2010 and August 2012 in Afghanistan, the US and Europe. The report text was finalised in August 2012.

In assessing the Aynak contract terms, Global Witness has received input from mining, human rights and environmental specialists and has met with members of the community local to the Aynak project and with Afghan civil society.

We have also considered international best practice for mining contracts, taking account of documents including the **International Finance Corporation (IFC)'s**

Sustainability Framework,³³ the **International Council on Mining and Metals (ICMM)'s Sustainable Development Principles**,³⁴ the **Natural Resource Charter**,³⁵ the UN Human Rights Council (UNHRC) **Guiding Principles for Business and Human Rights** (UNGPs),³⁶ the **Model Mine Development Agreement** being developed by the International Bar Association,³⁷ the **Voluntary Principles on Security and Human Rights**,³⁸ the **Organisation for Economic Cooperation and Development (OECD) Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas**,³⁹ the **Guidebook for Evaluating Mining Project EIAs** produced by the Environmental Law Alliance Worldwide,⁴⁰ the **IAIA guidelines**,⁴¹ and the **Framework for Responsible Mining**.⁴²

Global Witness analysis

The following analysis sets out ten main areas of concern in the contract which need urgent attention to address some of the challenges outlined above and ensure long-term sustainability of the project. These are:

1. Contract transparency
2. Contract structure and drafting
3. Community participation and grievance mechanisms
4. Economic provisions
5. Security
6. Environmental safeguards
7. Land and water rights
8. Social package
9. Heritage issues and other area-specific risks
10. Assessments and monitoring

Points 1, 2 and 10 – contract transparency, contract structure and drafting, and assessments and monitoring – are crosscutting themes. The remaining seven relate to specific themes and are dealt with in chronological order. Of these sections, 1 (contract transparency), 5 (security) and 10 (assessments and monitoring) are priorities and merit particular attention at this time.

For each area, we have set out detailed recommendations:

- for the Consortium and GIRoA, **to improve governance of the Aynak project;**
- for GIRoA, **to take on board lessons from Aynak for all current and planned mining projects;** and
- for the international community, on **how external funding and support should be provided to support shared objectives of a transparent and accountable mining sector which surpasses international best practice**, in line with the commitments made at the **Bonn** and **Tokyo** conferences and the **Afghanistan-US strategic partnership agreement**.

1. Contract transparency

As the section below shows, one of our main concerns is the lack of transparency over the contract provisions and ensuing implications for project sustainability.

The delay in publishing the Aynak contract and ancillary contracts presents a fundamental obstacle to ensuring good project governance and is out of keeping with current government commitments to transparency in the sector.

The Aynak contract was signed in May 2008 under the previous Minister of Mines. According to Minister Shahrani, the current minister who assumed responsibility for the Ministry of Mines in January 2010, the contract agreed under his predecessor cannot be published until all ancillary contracts have been executed.⁴³ In April 2011, he stated to Global Witness that this should happen by the end of 2011, by which time the Aynak contract would be made public. As at August 2012, however, neither the contract nor the ancillary contracts have been published. This means that the Afghan people, its parliament, local communities and large sections of the Afghan government do not have access to documents that are crucial to the economic future of the country.

In conversations with the Ministry of Mines, some officials have told Global Witness that they do not have access to the contract.⁴⁴ This could place Ministry of Mines staff tasked with negotiating implementation of the contract with the Consortium at a disadvantage. Instead, they have to rely on what they are told is in the contract. In addition, one of the international lawyers who advised GIRoA during the drafting and negotiation of the contract is now advising the Consortium on contract implementation.⁴⁵ To build trust in contracting processes, it is important that safeguards for international advisors are put in place and implemented to prevent any perception of conflicts of interest.

Brief details of the bids put forward by the Consortium and its competitors have been made public (see Appendix 1)⁴⁶ as well as summary details of the Consortium's social and infrastructure development obligations (see Appendix 2).

The Aynak contract was also provided to the International Advisory Panel (IAP), a panel of international mining experts, who reviewed the contract for "fairness" and provided "constructive suggestions to ensure contractual compliance across the construction and early production".⁴⁷ The IAP report is not public but Global Witness has obtained a copy, which is available on the [Global Witness website](#).



Transparency - the first step toward accountability.

j: In exchanges with the Global Witness, the advisor concerned has stated that his role in the Aynak contract was negotiated in an open forum and that his participation consisted of explaining the contract language to the parties and assisting them in reaching a "meeting of minds". He has also stated that his involvement in the Aynak tender process did not give him access to any "non-public information that would confer inappropriate advantage" as GIRoA deliberations were not conducted in English and he was not privy to "any discussions concerning compliance or enforcement policy or any future planning or strategy vis a vis the Consortium". Further, the advisor has explained that there were extensive discussions and communications, including with the Ministry of Mines, before he commenced work for the Consortium, and that "no objection based on a conflict of interest was raised as an impediment". Through exchanges with the Ministry of Mines, however, Global Witness has been informed that the advisor's move across to the investing company potentially contravened restrictions in his contract against providing services on the project to another party, and that the Ministry of Mines was not informed of his decision to move.

Box 2: The rising tide of contract transparency⁴⁸

There is a growing international recognition of the right of citizens to see the contracts agreed on their behalf for major national assets. The Revenue Watch Institute has documented the increasing number of governments that are electing to publish extractives contracts. Examples include:

- *Guinea*: The 2011 Mining Code requires publication of all contracts in the official gazette and on a government website.
- *Niger*: The 2010 constitution requires publication of all natural resource contracts as well as natural resource revenues on a disaggregated, company-by-company basis.⁴⁹
- *DRC*: A 2011 decree requires all oil, mining and forestry contracts to be published within 60 days of coming into effect.⁵⁰
- *Congo-Brazzaville*: Publishes many of its production sharing agreements on government websites.
- *Timor-Leste*: Publishes all production-sharing contracts of the Timor Sea zone.
- *Sao Tome and Principe*: 2004 oil revenue management requires public disclosure of all oil contracts. These can be found at public information offices in the country.
- *Liberia*: The 2009 EITI law requires public disclosure of mineral and forestry contracts.⁵¹
- *US*: The full text of mineral leases (contracts) and relevant information about payments are published. Contracts from the Gulf of Mexico are publicly available.
- *Iraq*: The Kurdistan Regional Government has published all of its petroleum production-sharing agreements.
- *Ghana*: Most important petroleum contracts made available for download online by the Ministry of Energy.
- *Denmark*: The 2005 model contract allows for access to contracts where “public interest outweighs confidentiality”.
- *Columbia*: Freedom of Information legislation allows disclosure of extractives contracts.
- *Bolivia*: Publishes many of its production sharing agreements on government websites.
- *Peru*: Publishes its model contracts and many of its final hydrocarbon and mining agreements.
- *Sierra Leone*: The new petroleum law requires publication of all oil contracts.

A notable example from the private sector is the Baku-Tblisi-Ceyhan (BTC) pipeline where a consortium led by BP publicly disclosed the project contracts to help manage local expectations and address concerns over social and environmental impacts.⁵²

k: In its 2009 ‘Contracts Confidential’, the Revenue Watch Institute examined the issue of contract transparency in detail, dismantling the traditional arguments for secrecy and providing case studies illustrating the positive impacts of transparency. See <http://www.revenuewatch.org/publications/contracts-confidential-ending-secret-deals-extractive-industries>.

l: In June 2011, Minister Shahrani attended the annual technical workshop of the Natural Resource Charter in Oxford, speaking from a panel at the event. The Charter was described as a ‘constant reference point to the Ministry [of Mines] in developing [Afghanistan’s] mineral codes and legislation’. See *Report from Natural Resource Charter annual technical workshop, Oxford, June 2011*, 19 August 2011. Available at <http://www.naturalresourcecharter.org/printpdf/2032>. [Accessed 21 September 2011].

Why contract transparency matters



The natural resource value chain summarises the stages by which a product is managed and its value realised – from the decision to extract all the way through to the ultimate use of revenues. Transparency is essential at all these stages in the Aynak project. Making information public is key to ensuring the right decisions are made, deal terms can be checked and extractive projects can be effectively managed and monitored.

Contract transparency is fundamental to any meaningful engagement with local communities, accountable project management and oversight. Access to these documents is key to understanding the nature of commitments the government and the company have entered into, and a prerequisite to identifying and addressing the serious risks that can accompany extraction and to monitoring the agreements effectively.^k

For example, the Natural Resource Charter, with which Minister Shahrani is currently engaging,^l emphasises the importance of transparency for effective governance. Precept 2 of the Charter calls for citizens, their parliamentary representatives and civil society to be well informed so they can hold their governments and companies to account and reduce risks of resource mismanagement. It describes extractive resources as “public assets” and notes, “*it is increasingly accepted that citizens have a basic right to information about government activities and the use of public assets.*”⁵³

There may be a small number of provisions that need to be kept out of the public domain, for commercial or security reasons. There is justification, for example, to keep confidential information which is genuinely commercially sensitive or which poses a real security risk (such as details on the positioning of security forces). **It is important that provisions are withheld only when and to the extent absolutely necessary.** Legitimate claims to confidentiality should not become a blanket excuse to avoid disclosing contract terms that should, in the public interest, be published.

Transparency and contract summaries

Publishing summary details of contracts is not enough. It is important that the full contracts are also made public, so that summary information can be checked for accuracy and to ensure crucial details have not been omitted. The importance of publication is well illustrated by the 2011 Qara-Zaghan gold contract of

which both summary details and full terms were made public. The summary refers to the creation of 280 job opportunities once the project starts but omits one major detail – that these jobs will only go to Afghans “*to the extent practicable*”.⁵⁴ Only by looking at full contract terms is it possible for Afghans to see this crucial condition that fundamentally affects the potential benefits available to them for this project.

For Aynak, the Ministry of Mines has now taken the positive step of making details of social benefit commitments in the contract public (see Appendix 2). On training, however, these published details refer to the company making arrangements for the training of “*local manpower*”.⁵⁵ The contract, by contrast, refers to the “*training of suitable persons of Afghanistan citizenship*” – with no specific requirement for training to be offered to local people. This discrepancy highlights again the need for full contract publication so that the summaries can be checked and verified, helping to build local trust in the public claims of GIRoA and the Consortium.

Over recent years, recognition of the importance of transparency has led an increasing number of governments to publish their extractives contracts (see Box 2). Contrary to dire predictions of investors fleeing, interest in the resources of these countries has continued to grow. One interesting example is Peru where contract publication was introduced specifically to create an open investment environment to attract more foreign investment.⁵⁶ This approach appears to have had success with Peru announcing the approval of \$28 billion in mining projects in June 2012.⁵⁷

In line with this emerging norm, Minister Shahrani has committed to “*totally transparent*” mining operations,⁵⁸ and to the publication of contract details in national languages and English within 48 hours of each contract award.^{59m} As of August 2012, however, only a small number of extractive contracts have been published in full and none of these are available in all three relevant

m: Afghan law has also started to take account of the need for public information on extractive activities. The 2010 Mining Law and Regulations require the publication of the material terms of any mining contract on the government website within 10 days of execution, and of annual reports on direct and indirect economic benefits from mining activities “in accordance with international best practices based on the Extractive Industries Transparency Initiative”.

languages – Dari, Pashto and English.⁵⁹ Following on from President Karzai's recent decree, it is important that the commitment to contract transparency becomes a reality so that all Afghans can see the agreements that have been signed in their name, and that commitments made within these agreements can be monitored. There needs to be a consistent approach across the extractives sector so as to ensure a level playing field for all mining and petroleum companies engaging in Afghanistan.

Transparency and project documents

While contract transparency is an important first step towards such “totally transparent” operations, sub-contracts and service contracts are also crucial for project oversight and accountability, along with key project documents such as impact assessments. Publication of subsidiary deals - **together with details of the ultimate beneficial owners^o of the companies securing these contracts** – can help guard against elite capture of valuable contracts arising from the project and can help to track financial flows.⁶⁰

South Sudan's new petroleum law shows the way ahead, with a requirement for *“beneficial ownership information”* of companies that have been awarded Exploration and Production Sharing Agreements to be published.⁶¹

Countries such as the DRC and Zimbabwe illustrate the financially and politically destructive impact secrecy can have. Global Witness has reported on links between mining company owners and political, police and military figures. Our investigations have revealed stakes in state mines being sold to private investors for a fraction of their value and the use of tax havens and secrecy jurisdictions, potentially depriving the state of mining revenues and creating a risk, off-budget funding to the advantage of key powerbrokers.⁶²

In Afghanistan itself, there are numerous examples of internationally funded construction projects where contracting arrangements have allowed money to be wasted, misused and in some cases potentially diverted to actors engaged in conflict or corruption.⁶³ **These risks need to be recognised and safeguards incorporated into the drafting of extractives contracts from the outset.**

Transparency and model contracts

For future contracts, Global Witness understands that a suite of standard contract terms is being developed. A ‘model contract’ will be produced for each type of concession so that, for example, all future gold concessions can be awarded on the basis of the same ‘gold model contract’ terms.⁶⁴ If implemented, this should allow a consistent approach to be taken to all future concession contracts. For this approach to be effective, **it is important that these model contracts are made public so that the terms can be fully reviewed and any concerns can be addressed from the outset.** It is, of course, essential that the model contracts take account of past experience, particularly lessons learned from the Aynak project. **Contracts based on model forms also need to be published so that there is accountability for any deviations from the model wording.**

n: As of August 2012, only two contracts are available in full on the English version of the Ministry of Mines website (the 2011 Qara-Zaghan gold contract and the 2011 Herat cement contract). The Dari version of the website includes full copies of the 2011 Herat cement contract, the 2011 Gadakhil chromite contract and the 2012 Maloma coal mine contract, whilst the Pashto version of the site appears to contain only contract summaries. The Ministry of Mines has also announced that the 2011 Amu Darya hydrocarbon agreement is available for public review but Global Witness has had no response to requests for a copy of this agreement.

o: The Financial Action Task Force defines a Beneficial Owner as *“the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement.”*

Recommendations on transparency

For the Aynak project GIROA and the Consortium should:

- **Publish, without further delay, the Aynak contract and associated agreements.** These contracts should be published in full, with Dari and Pashto translation, in soft copy on relevant Ministry websites and in hard copy at a designated area that is easily accessible by project-affected communities.
- **Publish documents arising in relation to the Aynak contract,** including sub-contracts, service contracts, assessments, studies, expert reports and recommendations. These should also be made available **on relevant ministry websites and in hard copy at designated locations accessible by affected communities with translations in Dari and Pashto.**

Across the extractives sector, GIROA should:

- **Make any model extractives contracts open to public consultation before finalisation.**
- **Publish all final model contracts,** in hard and soft copy, with local translations.
- **Publish all existing extractives contracts along with appendices and ancillary contracts, in hard and soft copy, with local translations.** Where confidentiality clauses apply, GIROA should negotiate amendments to enable publication. Associated project documents including service contracts, assessments, studies, expert reports and recommendations should also be published.
- **Engage with the public as future contracts are being negotiated, and publish final contracts immediately upon signature, together with details of beneficial ownership of contracting companies.** Ensure that translations are published and that steps are taken to make the contracts accessible to the local communities as soon as possible after signature.

- Ensure that current requirements on **politicians and public officials to declare any business interests** are met and agree processes to investigate and address potential conflicts of interest.
- Prohibit legal and other advisors brought in to advise GIROA on extractives projects from subsequently representing the company counterpart on the same project for a specified period and ensure that this prohibition is enforced.

The international community should:

- **Instruct the legal advisors they fund to incorporate transparency safeguards** into contracts including requirements for publication of ultimate company ownerships and corporate structures and for publishing associated infrastructure, service and sub-contracts. Ensure that **international lawyers continue to work with Afghan counterparts to ensure that local expertise is developed.**
- Stipulate that **donor-funded legal advisors brought in to advise GIROA** on a mining project are **prohibited from subsequently representing the company counterpart** on the same project.
- Provide **training and support to relevant ministries, local officials and civil society on how they can make extractive contracts fully accessible to the local community,** taking account of international experiences.
- Incorporate **transparency of contracts and of beneficial ownership of investing companies, together with accessibility of contracts within shared monitoring and evaluation frameworks** for development assistance to Afghanistan. In the first instance, this should apply to the Tokyo Mutual Accountability Framework.

2. Contract structure and drafting

The following section shows how errors and omissions in the contract structure and drafting could impact upon the application of international best practice standards to the project and of GIROA's ability to manage the project. It highlights concerns over whether or not state-backed companies can claim 'sovereign immunity' from prosecution and demonstrates the need for this to be addressed by GIROA in future legislation and contracts.

The Aynak contract makes positive references to international standards intended to protect people and environment, and recognises the need for responsible mine management. However, these positives are undermined by ambiguity over:

- Which international standards will apply and how these will be implemented in practice;
- How plans and timetables are to take account of recommendations from social and environmental assessments;
- Whether a full evaluation of all expected benefits and impacts will be done before a final decision is made on whether to proceed with exploitation; and
- Incomplete or absent definitions.

International standards

Clause 3 requires the Consortium to “conduct all ... operations and activities in a sound manner in accordance with best international mining engineering standards and practices” and under Clause 15, the Consortium “has made broad commitments ... concerning environmental protection including ... all World Bank Environmental and Social Safeguard Policies, the Equator Principles and the Voluntary Principles on Security and Human Rights.”

There is also a welcome recognition of the need for responsible management. Under Clause 15, the Consortium is required to “manage its activities in a technically, financially, socially, culturally and environmentally responsible manner to achieve the environmental protection and sustainable development objectives and responsibilities required by [the contract, Afghan law and applicable international conventions including the Kyoto Protocols].”

It is striking, however, that the contract calls for best international standards to be met for the conduct of mining operations yet no such requirement exists for environmental and social safeguards.

River valley in Logar province. Applying robust and updated international standards is essential to ensure that Afghanistan's environment and people are protected from adverse mining impacts. (Credit: Eric Sutphin courtesy of afghanistansmatters.com).



Furthermore, the operational provisions within the contract which set out how mining activities will be planned and executed do not explicitly take account of these positive references to international standards and best practice. **This means that, in practice, it is not clear how these standards will be applied, creating a risk that there is lip service to international standards which does not translate to reality.**

Chinese proverb: Nothing can be accomplished without norms or standards.

For example, under the operational provisions, the Consortium is required to develop a “*Bankable Feasibility Study*” (BFS) and a “*Mine Development Plan*” (MDP) before beginning to exploit the mine, and to submit a ‘Project Schedule’ setting out activity dates. These are key documents which will determine how, where and when exploitation will take place.

To bring the documents into line with international standards and best practice, they should take full account of international best practice standards. For example, if abiding by the IFC Sustainability Framework and the World Bank Policies and Guidelines, there should be time built in for appropriate participation by local communities, government agencies and experts to ensure potential impacts are taken into account in the costs, and that planning is done to minimise and mitigate adverse effects. This is integral to full compliance with these standards.

However, under the contract, the BFS is simply defined as “*a feasibility study prepared in sufficient depth and detail so that the study would be normally acceptable to international lending institutions*”, whilst the MDP is not defined at all. Without further detail, there is ambiguity as to how or to what extent either document is required to take account of best practice guidelines.

This view is shared by the World Bank’s Independent Advisory Panel, who commented: “[IAP] considers the term [BFS] not sufficiently detailed to have practical application and to ensure that international standards are maintained.”⁶⁵

Keeping up with best practice

International standards of practice are rules and procedures developed by the world mining industry and others through lengthy periods of scrutiny and technical experience. They have evolved to protect the interests of all parties – operating companies, investors, communities and host governments. These standards are constantly evolving to reflect new learning and experience in the extractives sector. For a major project like Aynak, operating in a particularly challenging environment, it is in the interests of all stakeholders to take account of this world-wide learning by ensuring that the latest and best available standards and practice are used to guide each aspect of the project, at every stage.

As the contract stands, it is not clear how developments of referenced standards are to be taken into account. The Equator Principles, for example, have been updated this year and are due to be revised fully.⁶⁶ Will these revisions apply to the Aynak project?

Different standards have different strengths. The World Bank Principles and Guidelines, for instance, provide good guidance on issues such as environmental assessments, whilst the IFC Sustainable Framework (on which the Equator Principles are based) are useful on areas such as involuntary resettlement and labour rights. **To reflect this, the contract should require that, for each part and each stage of the project, the best and most up-to-date available international standards and principles should be applied.**

Box 3: MCC corporate standards⁶⁷

MCC, the majority investor in the Aynak project, has its own corporate standards for managing mining projects. It publishes ‘sustainability reports’ on what these standards are and how they are being met.

- Commitments to **environmental protection**; assessing and minimising environmental impacts to realise the harmonious development of the economy and the environment.
- Building **harmonious communities**, with promotion of local employment, community development and infrastructure so as to achieve common development. Respect for local cultures, resolution of disputes “*at the root*” and active integration with the local community to create a favourable external environment for the company.
- **Anti-corruption** efforts, including examination of subsidiaries.
- **Harmonious and stable labour relations**, with labour unions for employees, a healthy and safe working environment and investments in education and training.

Addressing weaknesses in the structure and drafting of the Aynak contract is therefore important to ensure that the project aligns with MCC’s own objectives and standards.

Beijing – where MCC, the majority shareholder in the Consortium is headquartered. As Afghanistan's first major mining investor, the Consortium can play a vital role in setting an example for future companies to follow. (Credit: 06photo/shutterstock)



Sovereign immunity: When is a company not a company?

Since the two investors in the Consortium, MCC and JCL, are partially owned by the government of the People's Republic of China, the principle of sovereign immunity could arise. Under this principle, the acts of a state are immune from the jurisdiction of the courts of another state. This prevents legal proceedings from being brought against a state without its consent. This principle can apply to agencies of the state including state-owned companies. There are exemptions to this immunity, including for commercial transactions, but these exemptions vary from country to country and it is not always clear how they will apply in practice. In one recent case in Hong Kong, the question of whether the DRC could rely on sovereign immunity was so unclear that the original ruling was overturned, and then overturned again, with the case ultimately going to Hong Kong's Final Court of Appeal, which upheld the sovereign immunity.⁶⁸ Such court proceedings are expensive, time-consuming and their outcome is uncertain, so it is in the interests of all parties to avoid the need for them. **In any project with an investor owned in whole or in part by a foreign government, the risk that the principle of sovereign immunity could become an obstacle to GIRoA bringing an action against the company should be identified and addressed from the outset.**

Realistic deadlines?

Potential risks arising from the lack of integration and detailed guidance within the contract are compounded by tight construction deadlines. Under Article 13, the Consortium is required to complete construction "within sixty (60) months from the effective date of this Mining Contract", and this period "shall not be extended for any delay which is caused by the fault of

[the Consortium], its subcontractors or any entities affiliated with [the Consortium]." Without further detail, it is not clear how a delay occasioned by, for example, the need to address an environmental issue caused by the Consortium will be classified. This gives rise to an ambiguity which could put pressure on the Consortium to rush construction in order to escape penalties. In practice, where issues such as the clearing of landmines and archaeological excavations at the site have arisen, the parties have been able to agree delays to operations, so this clause does not appear to have had an impact date. However, this may change as these external sources of delay are addressed. This potential risk should also be avoided as future contracts are negotiated.

Competing rights

The Consortium's property rights often compete with the social and environmental provisions in the contract. The Consortium's rights to land, water and minerals for mining operations may, in practice, conflict with community rights under the social provisions set out in the contract.

The priorities between these two conflicting sets of provisions need to be carefully balanced and well maintained. Since the community is not a party to the contract, in the event of a dispute over contractual commitments, an arbitrator is likely to place greater emphasis on the Consortium's property rights than on external social and economic rights.

This issue can be resolved by clarifying the weight to be accorded to such third party rights, or by referencing international laws or documents which would cause an arbitrator or Afghan court to give appropriate weight to social and environmental issues in their interpretation.

Who makes the final call on whether or not to proceed with the project?

The Consortium is required to produce the BFS and MDP during the initial exploration period, for review and approval by the Ministry of Mines. For the Ministry to evaluate the true feasibility of the project, however, it is essential that the BFS takes due account of all potential project impacts. For example, existing economic activities such as agriculture may be adversely affected by the environmental impacts of mining. This is a potential cost that needs to be taken into account when considering the overall feasibility of the Aynak project. In preparing the BFS, all potential social, environmental, human rights, cultural and local economy benefits and costs (including 'worst-case scenarios') should be identified and included.

A crucial question is what happens if these anticipated costs outweigh the benefits of extraction? As it stands, this scenario does not appear to be anticipated by the contract. Whilst the Ministry of Mines is required to approve the BFS and MDP, there are no provisions setting out what would happen if an assessment of

negative impacts and costs suggest that the exploitation should not proceed at this time. At present, there is strong pressure to get the project going as quickly as possible so that revenues can come online, but there also needs to be a recognition that this may not be in Afghanistan's best interest. **The contract should specifically require that the decision on whether to proceed with the project is made after the full assessment of the costs and benefits has been produced and reviewed.**

Drafting errors and omissions

More generally, the drafting of the contract needs to be reviewed. **Many key terms are either not defined or the definitions are insufficiently detailed.** There is, for example, no definition of the Mineral Law despite the fact that it is referenced throughout the contract and is central to its interpretation. Given that the Mineral Law is being revised, will the new law apply to the contract? Ambiguities of this type can lead to time-consuming and costly disputes between GIROA and the Consortium in the future.

Recommendations on contract structure and drafting

For the Aynak project GIROA and the Consortium should:

- Clarify that **for each part and each stage of the project, they will apply the latest international best practice standards**
- Ensure that broad commitments to Afghan law and international standards are **accompanied by or reference specific and detailed procedures.**
- Take steps to **clarify the position on sovereign immunity** including the agreement of a **contractual waiver by the Consortium of any sovereign immunity rights it may hold and a written statement from the People's Republic of China clarifying its position on any legal actions that may arise** (including claims for contractual breach, negligence and/or regulatory infractions).⁶⁹
- **Agree procedures in the event that the assessment of anticipated costs and benefits** of the Aynak project suggests that exploitation **should not go** ahead at the currently planned time.
- Agree that **plans for operational activities take full account of the need to minimise and mitigate social, environmental, human rights, local economic and cultural impacts.**

- Review and agree clarifications to the contract to **ensure a balance is maintained between corporate rights and wider social and environmental rights.**
- Review the contract drafting and **agree definitions for key terms which are not defined or are insufficiently defined.**

Across the extractives sector, GIROA should:

- Ensure that the **learning points identified from the Aynak contract are taken into account** in the preparation of model contracts and in the negotiation of future concession contracts.

The international community should:

- Provide support for **legal advice and training to staff** at relevant ministries on contract drafting, structure, international standards and best practice for each project area and on technical issues such as sovereign immunity.
- Incorporate requirements for **application of up-to-date and appropriate international standards and best practice** to mining projects **within shared monitoring and evaluation frameworks** for development assistance to Afghanistan.

3. Community participation and grievance mechanisms

A major weakness in the Aynak contract is that it does not set out a process to engage the community affected by the project, nor does it include any mechanism to address community complaints and concerns. This is compounded by continued secrecy over project documents, meaning the local community has incomplete information on the deal.

The following section shows how this has undermined the project and discusses the steps GIROA is now taking to bridge this contractual weakness.

The importance of community buy-in

For the local community, the Aynak project has the potential to bring in much-needed jobs, education, training, and improved local services. At the same time, there are risks that the community could suffer from the loss of land and other impacts on the environment, water supply and local livelihoods. If expected benefits do not materialise or are seen to accrue unfairly to particular individuals or groups at the expense of the wider community, this is likely to breed local

resentment and opposition to the project. In turn, this could increase support for the insurgency and instability around the mine. Already, Global Witness has heard repeated complaints from members of the local community: warning signs that need to be addressed as a matter of urgency (see Box 5). At the same time, thought must be given to the impact of the extractives sector for the Afghan people as a whole – particularly those communities that are not near extractives deposits. **Both local and national buy-in is essential to the successful development of the sector.**

It is in the interests of the company to secure community 'buy in' to the project. If the community ends up opposing the mine this could have serious implications, worsening conditions at the site and potentially making it more difficult for the Consortium to recruit and retain staff. Security concerns and local opposition to the project could also give rise to costly delays to mining operations and impact on the company reputation. At the same time, this would undermine efforts to combat the insurgency, raise security expenditure, potentially delay the receipt of mining revenues and impact on efforts to attract quality international investment to the sector. As laid out below, **access to information, community engagement, and appropriate grievance procedures are key to securing community buy-in.**

Box 4: What is the local community around Aynak?

Logar province, where Aynak is situated, is made up predominantly of rural villages and has amongst the highest rates of poverty and unemployment in Afghanistan.⁷⁰ The population is of mixed ethnicity and includes the traditionally nomadic Kuchi tribes, whose numbers vary in different seasons.⁷¹ Issues of land tenure are complicated, with long standing tensions between different ethnic groups. These tensions are compounded by partial land registration under previous regimes and movements in population during the recent decades of conflict.⁷² The local community is largely dependant on agriculture and livestock, making access to land and availability of water essential for their livelihoods. Currently, over four fifths of households in the province have access to irrigated land. Over half of the population does not have access to safe drinking water and literacy rates are low, particularly among women and the Kuchi population.⁷³

The Aynak concession area covers two districts,⁷⁴ with 24,500 people situated in 29 villages in and around the project site (in both Logar and Kabul).⁷⁵ Five villages have been identified so far as being directly affected by mining activities: Wali Killai, Kooz Chinarai, Adam Killai, Bar Chinarai and Siso Tangai. According to the surveys of the Ministry of Mines, there are 117 families from these villages, of which 62 are resident families whilst the rest have emigrated to other areas and countries including Pakistan.⁷⁶ The construction of a tailings pond (an area to store waste materials from mining operations) will also have a direct effect, with assessments of 11 villages, containing some 450 families having been carried out to help determine its location.⁷⁷ As the project progresses and work begins on the railway and other associated works, there may be further impacts on additional villages and families.

a) Access to information

Contrary to international best practice,^p the contract does not require the provision of information to the community on the project or its impacts. It also does not state how the community will be provided with the support to understand the implications of the project for them so that they can feed into consultations and assessments effectively and flag areas of risk or concern at an early stage.



A mining cartoon from Central Asia. Information on mining projects can be technical and complicated. It is not enough just to publish contracts. Affected communities also need to be given the support they need to understand the implications of project plans and documents. Only then can they engage effectively in the project process. (Credit: Zoï Environment Network / Ruslan Valitov 2012).

Outside of the contract, the Ministry of Mines has recently published documentation on the project including a “Resettlement Action Plan” (RAP). This document represents a major step forward in making information on the project available and accessible. It provides detailed information on the work GIROA is doing to resettle five villages immediately impacted by the Aynak project, setting out the international guidelines which are being followed, the results of socio-economic surveys carried out of the affected villages, concerns raised to date, and plans and progress made in compensating and resettling them. The RAP also summarises the Consortium’s social and infrastructure obligations under the contract.⁷⁸

Production and publication of the RAP is a welcome and important step, but much more needs to be done. **Critically, the Aynak main and sub-contracts have not been made public, nor has there been any commitment made to publish other key documents such as the BFS.** Without full publication, public statements about contractual commitments cannot be independently verified. For example, the RAP summary of the Consortium social obligations does not mention the contractual requirements to protect customary water rights.⁷⁹ This provides only a partial picture of company requirements to the community, therefore. Continuing failure to publish the contract could give rise to unrealistic expectations and, more generally, an atmosphere of distrust, potentially undermining the government and company relations with the community.



In Liberia, the Sustainable Development Institute, a local civil society group, delivers a community workshop explaining free, prior and informed consent. Local communities can participate effectively in decisions on natural resource management and ensure that they benefit ... if they are given the opportunity, tools and support they need.

p: See, for example, Performance Standard 1 of the International Financial Corporation Policy on Environmental and Social Sustainability (a revised version of which came into force on 1 January 2012), which requires disclosure of relevant project information to affected communities and their early and informed consultation and participation. See also Principle 18 of the UNGPs and Principle 10 of the International Council of Mining and Metals “Sustainable Development Principles.”

It also limits the ability of the local community and civil society to monitor the implementation of contract terms. **This underlines again the importance of making the Aynak contract and key project documents public.**

Beyond publication, it is important that communities are given the support they need to understand the implications of projects documents and, more broadly, what impacts mining projects can have. GIROA has been carrying out consultations, surveys and focus group meetings with members of the local community at Aynak, but published reports of these activities suggest they do not go far enough.⁸⁰ Community engagement to date appears to have focused on agreeing land compensation levels, gathering socio-economic data on affected villages, explaining expected employment and

social benefits from the project and recording general concerns raised.⁸¹ This is, however, only part of the story. The community also needs to understand what impacts the project could have on, for example, the environment and human rights and the plans to manage such impacts. This can be done by discussing with the community what support they need to understand possible impacts and project documents, including any legal or technical advice, and then seeking to provide that. They could also be offered a visit to an existing mine site, so that they can speak to local people to get a sense of what they have experienced and issues of which they should be aware.⁸¹ MCC has an existing project in Pakistan which could be a useful comparator for the Aynak community.⁸²

Recommendations on access to information

For the Aynak project GIROA and the Consortium should:

- **Ensure that the contract and key project documents are made available and fully accessible to the local community**, taking specific account of illiterate community members and groups at risk of marginalisation (such as women).
- Agree with the community additional steps for them **to better understand the potential impacts of mining on them, such as visits to existing company mines** (with the freedom to meet with local communities and experts around such mines independently).

Across the extractives sector, GIROA should:

- Ensure that potentially affected communities are **provided information from the outset and continuously on planned/potential projects**. This should be budgeted for before any project begins, and

special care should be taken to ensure that **potential excluded groups such as women, youth and local minorities are able to access information**.

The international community should:

- Provide **training and support to relevant ministries on making extractive contracts fully accessible to the local community**, taking account of international experiences.
- Provide **training and support to local officials and civil society** so that they can assist in ensuring that extractive contracts are **accessible to the local community**.
- Incorporate **community access to information into shared monitoring and evaluation frameworks** for development assistance to Afghanistan.

q: Companies on mining projects in other countries have facilitated visits to other mines they operate. However, it should be noted that for such visits to be of real benefit, visitors must have the opportunity, time and freedom to speak to members of the community around the mine being visited (see Miranda M et al, 2005, Framework for Responsible Mining: A Guide to Evolving Standards, 2005, p.69). Available at http://www.frameworkforresponsiblemining.org/pubs/Framework_20051018.pdf.

b) Community engagement

A weakness of the Aynak contract is that it does not set out how the community is to engage with the project. The Consortium and the Ministry of Mines are now establishing mechanisms to take account of local community needs and wishes but questions remain over how these are structured – in particular whether there are sufficient safeguards to ensure that the community as a whole is engaged as opposed to particular factions or local powerbrokers.

The importance of local participation is reflected in the motto of the Consortium’s operating company MJAM:

“Serve the local, benefit the local”⁸³

To comply with contractual requirements and Afghan and international laws and principles, detailed information on each stage of the project should be made available to the affected community sufficiently in advance for them to consider and comment on it. **At present, however, the contract does not set out how such information will be provided, nor any mechanisms for consultation and participation.**

The contract commits the Consortium to comply with the Equator Principles which,^r in turn, require free, prior and informed consultation with affected

communities at all stages of the project.⁸⁴ The Consortium also commits to comply with Afghan environmental law which provides that: *“Affected persons may express their opinion on the proposed project, plan, policy or activity, the preliminary assessment, the environmental impact statement, the final record of opinion and the comprehensive mitigation plan, before ... approval ... and [it must be demonstrated] to the National Environmental Protection Agency that affected persons have had meaningful opportunities, through independent consultation and participation in public hearings, to express their opinions on these matters on a timely basis.”⁸⁵*

At an international level, Afghanistan goes a step further, through its commitment to support the principle of free, prior and informed consent (FPIC)^s for indigenous peoples for any plans or projects which potentially impact on their access to land, water, minerals or other resources.⁸⁶ Putting in place consultation procedures in line with this higher-level principle will help ensure that there is community buy-in at all stages of the project.

On environmental issues, Principle 10 of the Rio Declaration states that *“environmental issues are best handled with participation of all concerned citizens”*, whilst in China the Provisional Measures for Public Participation in Environmental Impact Assessment sets out clear procedures for public participation on environmental protection.⁸⁷



The UN Human Rights Council (UNHRC) in Geneva, Switzerland. The Guiding Principles on Business and Human Rights endorsed by the UNHRC provide an international standard which should be incorporated into Afghanistan’s extractives contracts. (Credit: UN/Jess Hoffman/Creative Commons).

r: It is assumed for the purpose of this report that the reference in the contract to the Equator Principles is to the 2006 version. However, neither the Equator Principles or the other international standards referenced in the contract are defined. It is understood that this lack of definition has already led to disagreements over which versions of referenced international standards should apply (e.g. current version, or earlier now out-of-date versions). This emphasises the need for clear definitions.

s: FPIC requires that the community is: (1) free from government or company force, intimidation, manipulation, coercion or pressure; (2) given sufficient time to consider all relevant information prior to consider or not to agree to any given proposal; (3) given all relevant information to make the required decision in an appropriate language; the community should have access to independent information and, if requested, access to experts on law and technical issues; and (4) the right to give or withhold consent to each proposal. (Oxfam Australia, 8 August 2011).



A mining cartoon from Central Asia. This illustrates the problems that can occur when mining companies buy the support of local officials or influential groups, at the expense of the wider local population. It is important that Afghanistan learns from these experiences, putting in checks and balances to guard against the same problems arising in its extractive sector.

(Credit: Zoi Environment Network / Ruslan Valitov 2012).

Additionally, the UNGPs endorsed by the UNHRC **with express Chinese support** provide clear guidelines for states and companies on their respective obligations to protect and respect human rights.⁸⁸ Companies are required to conduct ongoing due diligence processes which should include “*meaningful consultation with potentially affected groups*”, with special attention paid to potential human rights impacts on groups “*at heightened risk of vulnerability or marginalization*”.

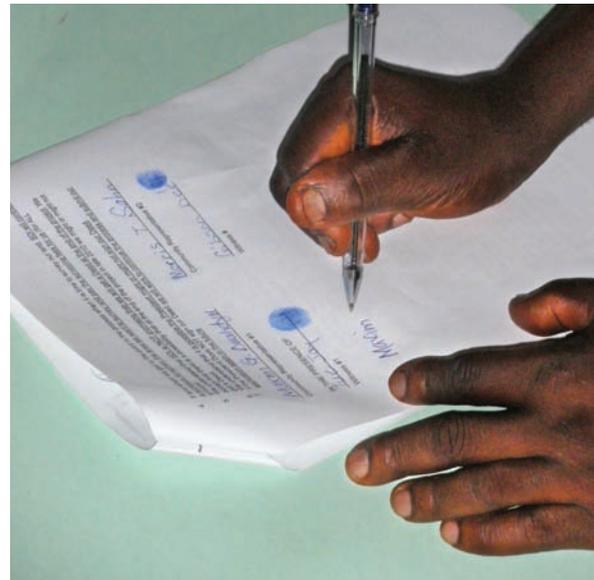
The lack of contractual provisions on community engagement does not preclude action on this front, however. In practice, the Consortium’s operating company, MJAM has confirmed to Global Witness that it has consulted the local community “*before, during and since the Aynak mining contract*”. The company states that it has authorised a social and environmental assessment for the project which includes interviews with residents. It also claims to frequently call for meetings with tribal elders to listen to their opinions and suggestions for project process.⁸⁹ As stated above, GIROA has also been carrying out surveys, consultations and focus groups on specific aspects of the project (land and resettlement).

“This mine is not going to thrive if these communities fail. The number one risk is the social licence to operate.”⁹⁰

World Bank Mining expert, Michael Stanley, commenting on the Aynak project in a Wall Street Journal article by Dion Nissenbaum, June 2012.

While such engagement is positive, questions remain as to what information is made available to which villages and when, what engagement there is on areas such as environmental and human rights impacts, and how the results of community engagement actually feed into the project plans. It is also not clear how the Consortium and Ministry of Mines consultations work together. For example, how are complaints made by community members to the Consortium fed across to the Ministry? To what extent does the Consortium have to take account of the results of Ministry consultations? Another crucial question is on the inclusiveness of consultation – whether the participation truly takes account of all affected villages and whether the people the Consortium meets with are seen as representative of the wider community. Rather than leave these questions, it is better to agree a clear process for participation with the impacted community, which should be in the form of a signed agreement between all three parties so that it is fully binding.

Special care should also be taken to ensure that potentially excluded groups such as women and ethnic and religious minorities are also part of the process. The contract requires the Consortium to “*respect the religious and cultural traditions of Afghanistan*”,⁹¹ which is an important provision. At the same time, there is a risk that it could become a bar to, for example, women benefiting from employment and educational opportunities at the Aynak project. The Ministry of Mines has made a positive start on this, through its consideration of the need to take account of women in its socio-economic surveys of the Aynak community.⁹²



Social agreement made between a logging company, the local community and the local authority in the Democratic Republic of Congo. Continued community buy-in is key to assuring that the project will proceed without local opposition and is in the interests of all parties. A widely used approach in the natural resource sector is for affected communities to reach agreement directly with the state and the company so that they know that the promises made to them are legally enforceable.

Box 5: Protecting mining investments^t

For investors, greater transparency and free, prior and informed community consent at all stages of extractives industry activity can yield significant dividends:

- Early consultation enables potential risks to be identified, allowing financial savings to be made.
- Addressing community concerns before they become grievances is more likely to be successful and effective. If concerns are not addressed at the outset, costly and potentially unsuccessful mitigation measures may be required at a later stage.
- Local opposition can give rise to protests and violence at any stage, potentially resulting in suspensions, costly delays and ultimately affecting project viability. Host governments may be induced to halt operations, revoke permits or impose fines, and project finance may be put at risk.
- Local conflicts can risk the security of mine staff, affect the work environment and make recruitment and retention of staff more difficult.
- Adverse publicity can affect brand image and reputation, and make negotiating with other host governments and attracting project finance more difficult.
- Demand for project outputs can be affected by boycotts, whilst supply of essential materials such as water supplies can be affected by community blockages.
- Obtaining widespread local support can help ensure the continuation of the project through changes in the governing regime.

Recommendations on community engagement

For the Aynak project GIROA and the Consortium should:

- Ensure that there are clear provisions to seek **FPIC** of the local community at all stages of the project, **backed by an agreement signed by the community and the Consortium.**
- Set out and agree the respective responsibilities of GIROA and the Consortium to ensure that **human rights are protected and respected** under the UNGPs.

Across the extractives sector, GIROA should:

- **Apply the standard of FPIC** of local communities to all extractives projects, starting from the initial decision to exploit a concession, and **incorporate this standard into all future extractives contracts.**

- Ensure that **community engagement processes take account of all community members** including minority ethnic groups, women and youth.
- **Incorporate the UNGPs into all extractives contracts.**

The international community should:

- **Provide training and support to GIROA to improve capacity** to fully evaluate and address the consequences of extraction.
- **Provide training and support to GIROA to improve capacity** to engage effectively with the local community and to improve capacity to implement the UNGPs.
- Incorporate **effective community engagement into shared monitoring and evaluation frameworks** for development assistance to Afghanistan.

^t: For a more detailed consideration and specific examples of the investment benefits of community consent see: Sohn J, Herz S & La Vina A, "The Business Case for Community Consent", World Resource Institute [USA], May 2007. Available from http://pdf.wri.org/development_without_conflict_fpic.pdf. [Accessed 15 September 2011].

c) Grievance procedures

When community complaints arise, it is important that there is a procedure in place to address them early on to avoid tensions building up and potentially fuelling conflict. Under the contract, either GIRoA or the Consortium can refer any disputes arising in relation to the Aynak project to arbitration (a confidential and private system to resolve disputes which is outside of the court system). Since the local community is not a party to the contract, however, this means of dispute resolution is not open to it. They are able to use national courts for issues covered by Afghan law, but where their concerns relate to commitments made only in the contract (such as company pledges not to use agricultural water) they cannot take action themselves. Instead, the community members would have to rely on GIRoA's willingness to bring actions on their behalf.

To bridge this gap, the Ministry of Mines is now in the process of setting up a 'grievance redressal mechanism' for the Aynak project. According to the Ministry, the mechanism will have a committee made up of representatives from relevant ministries, the company, a NGO, shuras (local/community councils) – including women's shuras, and the local/provincial government. Unresolved disputes will be referred to the Ministry and outcomes recorded in a database.⁹³

Whilst this is a welcome start, key questions remain that will determine its effectiveness. **It is important that these are fully considered and addressed in the design of the mechanism, drawing on the recommendations for grievance mechanisms set out in the UNGPs.**

For example:

- Community members will need to know what rights they have, so that they can bring complaints when these are breached. Again, contract transparency would allow this.
- The community needs to see the mechanism as legitimate, so committee representatives should be trusted and respected.
- There should also be protections in place for complainants, particularly if the complaint is against someone on or connected to the committee.

These are, of course, difficult to achieve in the Afghan context but it is important to look at how they can be done if the mechanism is to function effectively. Given the relatively small size of the directly affected community, one option may be to start with a general meeting, of which notice is given well in advance, to explain to the

Village elders at a shura in Logar province. For the Aynak grievance mechanism to effectively address local concerns and complaints, it is important that there is full community consultation in its design, and that its structure is agreed by those potentially impacted by the project.

(Credit: US Army photo by Sgt. Russell Gilchrest/Creative Commons).



entire community what is planned, provide them with information and a period to submit (in writing or orally to an independent representative) concerns or suggestions, and a procedure for taking these into account.

The final process should be confirmed in writing, agreed by the Consortium so that it is binding on the company, and the agreement should be published. There needs to be open and independent oversight

throughout to ensure that the process is and is seen to be fair and trustworthy.

A further issue is whether the Ministry of Mines is the appropriate body to make a final decision on complaints, given potential conflicts of interest in regard to its relationship with the mining company.

Box 6: Discussions with the local community

In November 2011, Global Witness met with various member of the community affected by the Aynak project. Some of the concerns raised highlight the difficulties of operating in the current environment, and the need for steps to be taken now. At the time these included:

- No formal information on the Aynak project had been provided to the community.
- Promises made by senior local officials in the past have not been kept. One example given was a broken pledge to resettle communities within the same area.
- The villages are divided between Kabul and Logar and community members go to different shura. There is an inconsistent approach to consulting community elders, so it can be unclear who is being consulted on behalf of the community.
- There was a suspicion that community members were deliberately being kept separate to avoid a united community voice.
- There is a risk of marginalisation of particular community groups.
- There was a need for the government to talk about the contract openly.
- Particular individuals and villages benefit disproportionately from employment and training opportunities due to their connections and local power dynamics.
- Concerns that, due to the conflict-history of the area, the education level of the local community is low so they are less likely to be chosen for high-level training courses provided by the mining company. Overall, the importance of a benefits package which reflects the needs of the local area was emphasised.
- References to individuals from outside areas claiming to be part of the affected community.
- A perception that water levels in wells are being affected by exploratory drilling operations.^u

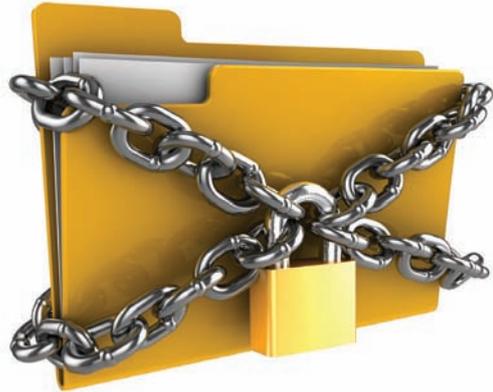
Both the Consortium and the community referred to previous complaints raised around the impact of the project on a community cemetery.⁹⁴ Positively, the Consortium has met directly with community members to resolve this issue. Arguably, however, if there had been consultation with the community on areas of cultural sensitivity at the outset, this problem would not have arisen in the first place. This emphasises the need for engagement and discussion from the outset.

^u: Discussions with geologists suggest that it is unlikely for such a water impact to take place at this stage of operations. However, concerns like this should be investigated and, if the project is not the cause, this should be explained to the community.

Arbitration: a private justice?

The use of arbitration to resolve disputes between GIRoA and the mining company is also problematic. As arbitrations are, by default, confidential, proceedings and judgments are not made public. This means that the local community and the Afghan people as a whole could be kept in ignorance of decisions which could have serious implications for them. In Uganda, for instance, the referral of an ongoing tax dispute over a major oil project to arbitration has caused public outcry.⁹⁵

To avoid a similar situation in Afghanistan, it is recommended that **GIRoA and the Consortium agree to make any arbitration proceedings between them open and published. Private actors such as non-governmental organisations should be allowed to present *amicus curiae* briefs to assist judicial authorities in their decisions.**^v Given that the affected population may struggle to gain access to justice due to a lack of funds or education, empowering civil society in this way could help safeguard the rights of the local community.



Arbitration is a private system of dispute resolution which parties can choose to use instead of going to court. Because it is a confidential process, it is widely used by companies who wish to agree binding settlements of disputes in private. Where one party to a dispute is a state, however, using a confidential process means that the people on whose behalf the state is acting are not able to see the settlement or decision which can have major implications for them.
(Credit: mmaxer/shutterstock.com).

Recommendations on grievance procedures

For the Aynak project GIRoA and the Consortium should:

- Ensure the **new grievance redressal mechanism at Aynak aligns with the UNGPs** and that its design takes account of consultation with the local community.
- Publish the agreement of the company to abide by decisions made through the new grievance redressal mechanism.
- Agree that all **judicial dispute resolution proceedings will be open, published** and will incorporate *amicus curiae* rights for civil society.

Across the extractives sector, GIRoA should:

- Ensure that future concession contracts make provision for appropriate **grievance procedures in line with the UNGPs and following consultation with the local community as to the appropriate form.**
- Clarify the **remit of the grievance redressal mechanism**

including whether it applies to projects associated to the Aynak mine, such as the railway construction.

- Ensure that all concession contracts provide for **judicial proceedings to be open, published and to include *amicus curiae* rights for civil society.**

The international community should:

- Provide **training and support to GIRoA to engage effectively** with the local community and to provide suitable grievance mechanisms.
- Provide **training and support to improve the capacity of parliament to monitor the provision of suitable grievance processes** and to follow up concerns identified through such processes.
- Provide **training and support to improve the capacity of local civil society** to ensure that grievance procedures and *amicus curiae* rights are effectively used.
- Incorporate **adequate, credible, accessible and efficient local grievance mechanisms into shared monitoring and evaluation frameworks** for development assistance to Afghanistan.

v: An *amicus curiae* is a third party that joins a dispute to provide voluntary opinion. The role of the *amicus* is to assist the court or arbitrator in deciding a case by providing information and a different perspective from that of the parties.

Civil society can play a helpful role through this procedure. In *Biwater Gauff (Tanzania) Ltd v United Republic of Tanzania*, for example, five civil society groups submitted a joint written brief on a dispute involving a water and sewage infrastructure project in Dar es Salaam. The tribunal award rendered on 24 July 2008 referred to the civil society submissions as providing “*expertise and perspectives that have been demonstrated to materially differ from those of the two contending parties and, as such have provided a useful contribution to these proceedings*”. Available at http://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC1589_En&caselId=C67 [Accessed: 9 September 2011].

4. Economic provisions

The following section shows how top-line high royalty rates are undermined by provisions which allow for future renegotiation, and which grant periods of exclusivity to bid for other minerals and resources in the project area. It also shows how much more information is needed for the overall economic impact of the project to be assessed.

With the transition deadline of 2014 fast approaching and an expected reduction in foreign assistance, the need for Afghanistan to mobilise domestic resources is attracting increasing attention. The contract terms are key to determining what economic benefits the Aynak project will yield and will form an important reference point for the economic structure of future concession contracts. The Chinese State Council's principles on foreign investment emphasise the need for *"equality ... mutual benefit, complementarity and win-win cooperation."*⁹⁶ Ensuring that the economic interests of the two contracting parties are fully evaluated and carefully balanced is essential to ensure that Aynak is truly a win-win project for GIRoA, the Afghan people and the Consortium.

The need for full information

Under the contract, Afghanistan is set to achieve direct and indirect benefits through:

- A contract premium – three staged payments from the Consortium totalling \$808 million for the right to explore and exploit the deposit;⁹⁷
- Royalties – a sliding scale of between 3% and 19.5% of the copper price, with the rate dependant on the London Metal Exchange copper price;⁹⁸
- Tax revenues – subject to tax incentives provided to extractive industry investors;⁹⁹
- Infrastructure development;¹⁰⁰ and
- Social development projects and employment.¹⁰¹

On the face of it, the royalty rates appear very high, suggesting that this could be a good financial deal from

the Afghan perspective. However, a lack of transparency presents a major obstacle to a proper evaluation of the economic benefit to the Afghan people of the Aynak project.

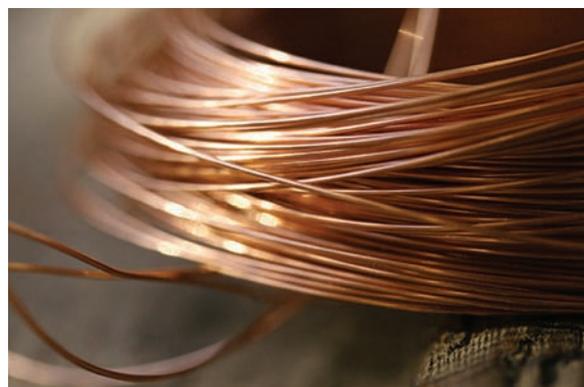
To fully assess the merits of the deal, further information on the deposit is required including details of the copper grade, the expected life of the mine and the estimated reserves. **Crucially, the ancillary agreements must be reviewed** so that the economic benefits for the two parties arising from the infrastructure projects can be taken into account, as well as the basis upon which the Consortium is able to access other minerals for the project.

When is a royalty rate not a royalty rate?

There are also a number of provisions within the main contract which could undermine any economic benefits arising from the project.

A major area of risk is Clause 20(c) which could allow the Consortium to revise the economic provisions within the contract to achieve more favourable rates.

This clause states that if GIRoA enters into a mining or industrial contract with another party that *"affords more favourable treatment with respect to the stability of fiscal or other tax terms than have been granted to the Consortium under this Mining Contract, the Parties agree that the Mining Contract shall be amended to apply the more favourable treatment to the Consortium."*



The royalty rate for copper under the Aynak contract appears very high. This could be negotiated down in the future, reducing the economic benefits of the deal.
(Credit: Angie Shyrygh/Creative Commons).

Box 7: Lessons from Liberia ¹⁰²

In August 2005, Mittal Steel entered into a landmark contract to exploit Liberia's extensive iron ore concessions. With an investment of around \$900 million over 25 years, the deal was expected to bring major economic benefits to the Liberian people including revenues, employment and improved infrastructure. However, upon analysis of the contract, Global Witness considered that a number of the terms risked undermining the potential economic benefit to the country including:

- Company freedom to set the sales price of the iron ore, and thus the amount of royalties due to the government.
- Preferential tax arrangements for Mittal including an extendable tax holiday of at least five years, potentially depriving Liberia of valuable tax revenues.
- The transfer of two major assets – a port and a cross-country railway – to Mittal Steel. The Liberian government could only access the railway if there was spare capacity – and for a cost. The transfer had the potential to deprive the government of an important source of national revenue and put at risk local community access to external markets, essential to their development.
- A stringent stabilisation clause which had the potential to undermine Liberia's right to regulate on human rights, environment and taxation and to fulfil its current and future obligations under the Liberian constitution as well as its international law commitments.
- Mittal was given rights to possess public land and compulsorily purchase private land at a valuation set by a person agreed between the Liberian government and Mittal without input from the land owner. The risk of inadequate compensation and insufficient consultation and grievance mechanisms for affected individuals represented a potential source of dispute and conflict.

Ultimately, pressure from the public and civil society led to a re-negotiation of the Mittal contract. This demonstrates how multinational companies can be responsive to such concerns.

Based on this provision, if GIRoA agrees lower royalty rates in the Hajigak or any other concession contract, the Consortium is automatically entitled to renegotiate the economic terms, and could result in a substantial reduction in, for example, the royalty rate.¹⁰³ Going further, there is no safeguard within the wording to prevent the Consortium itself bidding, either directly or through an associated company, for another concession on more favourable economic terms, in order to bring Clause 20(c) into effect. **One consequence of this could be that future negotiations for other mines are constrained by the need to include very high royalty rates that may not be appropriate for that mineral or acceptable to potential investors.**¹⁰⁴

An additional risk in this type of provision is that it can open the door for companies to 'cherry-pick' the best provisions available. If, for example, another concession is awarded with a lower royalty rate but a higher tax rate, the Consortium could use this as a reason to negotiate down their royalty rate - but crucially, without taking account of the change in tax rate. In this way, **provisions like Clause 20(c) could result in companies 'ratcheting down' financial provisions in mining contracts,**

to the detriment of the Afghan state and should be completed avoided.¹⁰⁵

Under Appendix V of the contract, the Consortium is not required to pay royalties on any construction materials it obtains from the Aynak license area and uses for infrastructure development. This provision should be taken into account in any review of the infrastructure ancillary agreements. If the proposed infrastructure projects are expected to consume substantial volumes of material such as gravel or quarry rock from the license area this could have implications for royalty payments arising from the project.

Renegotiating financial provisions?

Another important provision is Clause 10 which allows for revision to ensure the contract *"operates equitably and without major detriment to the interests of either party"*. The parties can agree to revise financial and other provisions depending on the *"conditions under which the mineral production is carried out ... ,the quality of the mineral, the market conditions for the mineral, the prevailing purchasing power of money and*

the terms and conditions prevailing for comparable minerals ventures". This suggests that the Consortium could renegotiate financial terms on the basis of, for example, high project costs, low copper quality or a fall in general copper prices. The clause could also allow the Consortium to resist any changes to the project that could increase its costs. This could be an obstacle to strengthening contractual gaps, since important improvements such as setting up effective community engagement and grievance resolution processes are likely to give rise to additional costs.

In practice, this provision may not be enforceable as it is simply an agreement by the parties to come to a new agreement in the future. However, to avoid any future disputes, this clause should be addressed, to make clear that it will **not be a bar to essential improvements to the project**.

Rights to other minerals and natural resources

The contract also grants the Consortium six months to apply for access rights to any "mineral or other natural resources" discovered within the Aynak license area (Clause 6). If GIRoA and the Consortium cannot agree terms for exploration and exploitation of these resources during this period, GIRoA can then award them to another bidder. Effectively, this provision gives the Consortium a six-month period of exclusivity to bid for newly discovered resources.

It is not unusual for companies to be granted such rights for mineral discoveries. However, given Afghanistan's vast mineral potential, which has yet to be fully explored, this provision could be very valuable in the Aynak context - particularly if highly valued minerals such as rare earths are discovered within the license

area. Access rights could be granted to the Consortium on non-competitive rates, therefore. The potential value of this period of exclusivity should be taken into account when evaluating the overall economic implications of the Aynak project.

The second element of Clause 6, which provides a period of exclusivity to apply for rights to "other natural resources", is more unusual and highly problematic. Since this phrase is not defined, the way is open for the Consortium to claim rights to a range of resources, independently of its work on the Aynak concession, including coal, timber and water. This could have serious implications for Afghanistan impacting at both the local and national level on Afghan access to key resources essential for energy and living requirements.

GIRoA has the opportunity now to put in place a contractual framework and structures which ensure that economic benefits from Aynak and other extractives projects truly benefit the Afghan people. For the Consortium, this can bring popular support to the Aynak project and, in line with the Chinese guidelines on social responsibility for state-owned companies, assist in "creating a 'responsible' image of central enterprises and increasing Chinese enterprises' influence" and in "[establishing] China's image as a responsible developing country."¹⁰⁶ Improving economic contract terms and helping to improve revenue management and oversight is also key for the international community, helping to ensure that the mining sector actually brings in the revenues essential to help pay for future GIRoA expenditure.

What are the costs?

To properly evaluate the Aynak project, GIRoA needs to **take account of the costs** of the project, both in terms of **impacts on economic activities** and in terms of **direct funding required from GIRoA** to support the project.



This Central Asian mining cartoon illustrates the risk of mining companies making speculative investments – sitting on their licences and then reselling them so that little mining is done and owners change frequently. This can mean that countries do not see the economic gains they expect from their extractive sectors for many years.

(Credit: Zoï Environment Network / Ruslan Valitov 2012).

For economic activities, Aynak and other mines could have major impacts on water resources and land use. This could in turn have serious ramifications for activities central to economic livelihoods, such as agriculture, animal husbandry and fishing.

GIRoA (and by default, those donors funding the Afghan budget) is also providing direct funding for the project. The MPU which provides security for the Aynak site (and other mine sites) is a state security force, and so should be state-funded. The Ministry of Finance is also reported to have allotted about \$3 million for the construction of infrastructure facilities at the town being set up for villagers relocated from the Aynak site. A further \$2 million has been requested for the current financial year for building infrastructure facilities and basic amenities at the resettlement site.¹⁰⁷ Other costs to GIRoA include the cost of staff and equipment to oversee and to address community issues on the project.

All new mining projects will bring with them costs that Afghanistan will have to shoulder. It is important that

such costs are evaluated up-front, and taken into account when deciding whether exploitation is economically viable.

Helping the taxman

To ensure that Afghanistan realises the expected revenue gains from the project, attention should be paid to tax as well as royalties. One area of risk here is that companies looking to reduce their tax bill sometimes use debt finance to artificially reduce their taxable income. If project funding is provided as a debt, the mining company will have to pay interest on it, which can result in deductions in the tax it has to pay. This means that where project capital is provided by a parent company, this funding is often structured as a 'loan' so that the group can minimise the tax they pay on the project. For the government concerned, this **artificial structure of funding can mean that they do not get the tax revenues they would otherwise have received from the project**. However, protections can be incorporated to guard against such tax schemes, for example, by putting a limit on debt financing.

Recommendations on economic provisions

For the Aynak project GIRoA and the Consortium should:

- Revise the provisions for the Consortium:
 - to **renegotiate fiscal terms** under Clause 20(c): to better protect the economic position of GIRoA and the Afghan people; and
 - **Delete reference to "other natural resources"** from Clause 6.
- Agree and publish a **more detailed procedure for mineral discoveries**, particularly of highly-valued resources such as rare earths.
- Confirm that **the Consortium payments from the Aynak project will be paid to a specified Afghan government account**.
- **Publish available information on the Aynak copper reserves and other resources** at the site, and generally **review the economic implications** of the Aynak project, taking account of any economic benefits to the Consortium under the ancillary agreements, any potentially valuable rights afforded to the Consortium and all costs to GIRoA in relation to the project.

Across the extractives sector, GIRoA should:

- In negotiating future contracts, ensure **economic evaluations take full account of all aspects** including the potential of other mineral and resource finds,

the economic costs and benefits of infrastructure commitments and the project associated-costs to be shouldered by GIRoA.

- Introduce safeguards, such as a **limit on debt financing**, to guard against the risk the risk that extractives companies will use debt financing arrangements to reduce artificially the tax payable for extractives projects.
- **Within the budget, separate out extractive industry revenues from other domestic revenues**, with additional lines on major projects like Aynak and Hajigak, to enable better monitoring of the resource revenues.

The international community should:

- Provide training to GIRoA to **increase capacity to negotiate effectively** economic aspects of the Aynak and future contracts and to improve management of revenue flows and expenditure arising from the extractive industry projects.
- Provide support for **capacity building** of GIRoA bodies charged with **reviewing and approving mining contracts** including the IMC and the parliament.
- Provide support for **capacity building for parliament and local civil society to enhance their ability to provide effective oversight** over fiscal aspects of the Aynak project.

5. Security

The following section shows how the Aynak contract does not adequately deal with the risk that the project could become a source of conflict or that the use of security forces could give rise to corruption and human rights abuses around the site.

In the context of ongoing conflict and insurgency, the Aynak project risks becoming a focal point for insecurity. The mine site has already been subject to rocket attacks, abduction threats have been made against the Consortium staff, and there have been reports of employees leaving the project due to the volatile security situation.¹⁰⁸ The development of the mine and associated infrastructure brings with it a host of valuable supply and sub-contracts. The international aid experience over the past ten years has shown that,



A police officer stands guard at Mes Aynak.
(Credit: Adam Ferguson/VII).



An Indonesian military unit. Past Global Witness research in Indonesia has revealed security forces demanding payment from an extractives company for protection from armed groups or disgruntled local communities, and the possible implication of security forces in human rights abuses.
(Credit Tim Hetherington/Magnum Photos).

without appropriate safeguards, the management of such supply and sub-contract can end up inadvertently funding conflict.^w Aynak is a high-profile target for attacks which could be aimed at gaining attention or extorting money, whilst disenchantment of communities around the mine could feed into local conflict.

To ensure security around mining operations, GIROA has set up a specific Mining Protection Unit (MPU). Without safeguards however, international experience suggests that such forces can become part of the problem. This can happen in a number of ways – for example, security forces could perpetrate human rights abuses, directly engage in conflict or create their own off-budget revenue through exercising control of the site or supply routes.

While the Aynak contract commits the Consortium to the Voluntary Principles on Security and Human Rights, wider security arrangements for the Aynak project are set out in a separate agreement which has not been made public. There may be discrete points that need to be kept private for reasons of national security, such as information on exact locations of security forces.

w: Over the last ten years, there have been numerous reports of how the country's major funding source, international aid, has been diverted to actors alleged to be engaged in corruption or conflict. See for example, the 2010 US Congress report, 'Warlord, Inc: Extortion and Corruption Along the US Supply Chain in Afghanistan'. Available from http://www.cbsnews.com/htdocs/pdf/HNT_Report.pdf.

It is important, however, that national security does not become an excuse to prevent information which is in the public interest from being published. Only those points which absolutely pose a security risk should be withheld, with all other elements of security agreements being published. **In particular, any terms setting out the mandate of the mine protection force at the mine; the standards it is required to meet; its reporting structure; the respective responsibilities of the company and the government with regard to security; and the means of redress against any abuses carried out by a member of the protection force.**

Given the likely interaction between security forces and the local community, it is particularly crucial that there are sufficient community protections in place and clarity on how forces will be held accountable for any misconduct. There are numerous international examples of what can go wrong. In northern Turkey, for example, during the construction of the BP's Baku-Tbilisi-Ceyhan pipeline, there were community complaints that local security forces were intimidating them when they argued for fair compensation payments,¹⁰⁹ whilst in Peru protestors against a copper mine claimed to have been tortured and sexually abused by the Peruvian police.¹¹⁰

In Afghanistan, a cabinet decree was issued in May 2012 recording that security forces had taken over and closed down 83 "illegal mines" so that they could be handed over to the Consortium to provide energy

sources for the Aynak project.¹¹¹ This is the type of operation that could give rise to informal miners losing their livelihoods and potential clashes between the community and security forces, which could cause seriously adverse impacts.

Effective implementation of the Voluntary Principles on Security and Human Rights is one important step in addressing these risks. These principles provide guidelines on how mining companies should engage with security forces and how they should respond to allegations of human rights abuse.^x They are, however, only as good as their implementation and this comes down to government will and capacity. **To have any effect, the contractual commitment to the principles needs to be backed up by an agreed and published process for implementation together with full reporting requirements, independent verification and monitoring.** Without this, the commitment to the principles could be meaningless, particularly since the Consortium companies are not official participants in the voluntary principles process so cannot even be held to account in that forum.

The risk of off-budget gains by, for example, security forces or powerbrokers controlling supply routes also needs to be guarded against. In eastern DRC, members of the Congolese military and armed groups derived illegal profits from control of the mining sector and use the funds both for personal gain and as a means

A bleeding man cuffed by Congolese government troops is taken away by soldiers at a checkpoint in North Kivu. Carrying out due diligence from the outset can help companies to identify and avoid human rights risks, and to ensure that mining activities do not contribute to conflict or abuse, as has been the case in eastern DRC. (Credit: Kate Holt)



x: For a detailed analysis of the Voluntary Principles on Security and Human Rights, and the additional steps required to back up and strengthen them, see the 2007 Global Witness report, 'Oil and Mining in Violent Places'. Available at http://www.globalwitness.org/sites/default/files/pdfs/oil_and_mining_in_violent_places.pdf.

of funding armed conflict. They do this by imposing illegal taxes at mine sites and along transportation routes, or by confiscating and trading the minerals directly.¹¹² Companies sourcing minerals from DRC are now required to carry out due diligence to ensure that their mineral purchases do not contribute to conflict or human rights abuses.^y

In the Afghan context, where conflict is ongoing and mines have traditionally played a role in providing financing to armed groups,¹¹³ **supply chain due diligence by companies is an important step. The OECD has produced due diligence standards setting out the checks and assessments that mining companies operating in conflict affected and high-risk areas**

should take to ensure that their activities do not contribute to violence or human rights abuses.¹¹⁴

Adopting and implementing these OECD guidance can also help companies to protect their reputations in a difficult environment, which is in turn important for securing future projects and ultimately their market.

It is also important to avoid military participation in the provision of security for mining projects. Using the military to staff the MPU could lead to mine sites and the communities being targeted by insurgents, contributing to increased violence. Instead, the **MPU should be staffed by specially trained Afghan National Police units that are fully accountable under the civilian and criminal codes of Afghanistan for the use of force.**

Recommendations on security

For the Aynak project GIROA and the Consortium should:

- **Publish the security agreement** for the Aynak project.
- **Publish beneficial ownership of all companies awarded deals connected to the Aynak project.**
- Agree **full reporting requirements for implementation of the Voluntary Principles on Human Rights and Security.**
- Agree to carrying out **due diligence** in accordance with the OECD due diligence standards to ensure that company operations do not contribute to human rights violations or conflict.

Across the extractives sector, GIROA should:

- **Publish details of security arrangements** for all current and future mining projects.
- **Publish beneficial ownership details of all companies awarded deals connected to the extractives sector.**
- Set up a mechanism, overseen **by a credible independent third-party to record and regularly publish the origins, sources and intensity of violence** around extractive operations and surrounding communities.

- Set up **systems, overseen by credible independent third parties, to investigate and address complaints and any abuses** by security forces around mines.
- Require all mining companies to **comply with the Voluntary Principles on Human Rights and Security**, backed up by full reporting requirements, and to **meet OECD due diligence standards** to ensure that their operations do not contribute to human rights violations or conflicts.
- Ensure that **security forces for mine sites are staffed by specially trained Afghan National Police units, with no involvement by the military.**
- Clarify **how security forces will be held accountable for any misconduct** and ensure that, at the very least, **those guilty of breaking the law are prosecuted.**

The international community should:

- **Provide support** for the **training and monitoring** of mine security forces, and for the **investigations and redressal** of complaints against forces.
- **Provide support** for GIROA and for oversight bodies including parliament, civil society and media on **identifying and guarding against adverse impacts on security and human rights.**
- Incorporate **appropriate safeguards against abuses by security forces into shared monitoring and evaluation frameworks** for development assistance to Afghanistan.

y: In February 2012, the government of the DRC passed a law requiring all mining and mineral trading companies operating in the country to meet OECD due diligence standards. This was followed, in May 2012, by the suspension of two companies for failing to carry out due diligence.

6. Environmental safeguards

The following section considers the potential environmental impacts of the Aynak project, and shows how these can be lessened by measures including annual environmental assessments, and public engagement on choice of mining methods, waste disposal and closure plans. The role of the Ministry of Mines as both environmental regulator and project developer for Aynak is also questioned.

Years of conflict and unmanaged resource exploitation have already inflicted immense damage on Afghanistan's environment, with impacts including scarce and contaminated groundwater, soil pollution, air pollution and depleted wildlife populations. As early as 2003, the UN Environment Programme (UNEP) was reporting on Afghan “*environmental refugees*” – people forced to migrate due to prolonged lack of water or loss of forest or woodland cover – and the risk that this could give rise to new conflicts over scarce resources.¹¹⁵

Mining adds another dimension to this dynamic, with implications for water, soil and air quality, habitats for animals and fish, noise and vibration, and the release of toxic substances. These consequences can be far-reaching and can themselves become a source of

conflict. In Sierra Leone, for example, communities in mining areas have raised concerns over environmental impacts, ranging from particles in the air affecting public health to damage to plantations and water supplies.¹¹⁶ In 2007, such concerns led to public demonstrations which resulted in the deaths of two protestors and the hospitalisation of others. Mining operations were subsequently suspended.¹¹⁷

Given its size and location, **the Aynak project is likely to have serious environmental impacts**. Copper mining is very water-intensive and the need to provide water for the mine, its workers and associated community is likely to impact on water supplies particularly in Logar and in Kabul province (to which the Aynak operating area extends).¹¹⁸ There is also potential for mining activities to lead to contamination of water supplies. In turn, this could have knock-on implications for the agricultural sector which currently employs 60% of the Afghan working population.¹¹⁹ There are also potential ramifications for Kabul city, where water resources are already under strain due to rapid population growth and droughts which have resulted in many wells becoming contaminated, dry or inoperable, limiting clean water access.¹²⁰

In short, the environmental impact of mining activities could have direct implications for future economic development, public health and access to clean water and land.

An Afghan man crosses a polluted river in Kabul. Years of conflict and unmanaged resource exploitation have already had a devastating impact on Afghanistan's environment. As the extractives sector develops, safeguards are needed to minimise further damage.
(Credit: AP/Press Association).





A young Kuchi girl herds sheep. Unless mining is carefully managed, the adverse impacts on the environment could be far-reaching, affecting land, water, livestock and fishing on which many Afghans depend for their livelihoods.

(Credit: Ian M. Terry/Creative Commons).

Who is looking after the environment?

Under the Minerals Law (both 2005 and 2010), the Ministry of Mines is responsible for approving and monitoring environmental obligations at the Aynak project. This overlaps with the role of the National Environmental Protection Agency (NEPA) as primary agency for environmental issues under Afghanistan's Environmental Law.¹²¹ According to the World Bank, the Ministry of Mines and NEPA have resolved this by “agreeing that the Ministry of Mines would have primary responsibility for [the Aynak] contract management, and that the Ministry of Mines and NEPA would meet to establish a similar agreement on their respective responsibilities related to supervision of the Aynak environmental/social impact assessments”.¹²² Since this is a change to the regulatory framework for the project, **it is important that these agreements are published on the Ministry of Mines website** (which already publishes details of the laws, regulations and policies that apply to the extractives sector).

Consideration also needs to be given to the implications of giving primary responsibility for environmental issues on extractives to the Ministry of Mines. This move could create **scope for conflicts of interest with other aspects of the Ministry's role on the project (notably the need to drive the project forward), as well as issues of capacity within the Ministry to assess and monitor compliance** in such a large and complex project. Since NEPA will retain responsibility for non-mining related environmental issues, the effect of this split will be that there will be two public agencies regulating national environmental impacts. This raises the risk of a **disconnect in approach and strategy** which could cause real problems in the long term.

The split in responsibility could also have serious implications for the application of the Environment

Law to the project. Under Article 16 of the Environment Law, NEPA can refuse to grant required permits if it considers that the project will “bring about significant adverse effects” or that proposed mitigation measures are inadequate.¹²³ NEPA can also withdraw a permit for failure to comply with its terms. These are important environmental safeguards but they are all supposed to be exercised by NEPA under the Environment Law. If the Ministry of Mines takes on responsibility for environmental aspects of the Aynak project, will it be able (and willing) to exercise these powers? Similarly, which agency will be responsible for enforcing the Environment Law (including important provisions over public participation)? Or is there a risk that the change in agency roles will create a vacuum?

It is important that safeguards are put in place to guard against conflicts of interest within the Ministry of Mines, including oversight mechanisms, and that there are clear, transparent and workable procedures for coordination between the Ministry of Mines and NEPA. Any change in agency responsibility should not mean that environmental protections set out in the law are ignored or trumped by economic imperatives.

Environmental commitments

The Aynak contract does recognise the need for environmental and social impacts to be addressed with broad commitments by the Consortium.

Under Clause 3, “all operations and activities under this Mining Contract shall be conducted in accordance with environmental protection and reclamation plans approved by the Ministry of Mines prior to the commencement of operations.” Clause 15 requires environmental impact assessments to be carried out and states that “the Consortium has made broad

commitments to the Ministry of Mines concerning environmental protection including, without limitation, its commitment to comply with the applicable environmental laws and regulations of Afghanistan, Afghanistan's environmental and social protection guidelines and policies, all World Bank Environmental and Social Safeguard Policies, the Equator Principles ..." Further, the parties agree *"to adhere to the strictest applicable standard to protect Afghanistan's environment and people"*.

There is, however, **no requirement under the contract for environmental assessments to be updated as the project progresses**. Given the scale of the Aynak concession and the fact that exploitation is set to continue for many years, **it is particularly important that environmental impacts are continuously reviewed so that adverse effects can be identified and dealt with as quickly as possible**. Annual environmental audits, along with periodic independent monitoring and inspection could address this. **Also missing is any provision allowing for the suspension of mining operations which cause environmental damage or any procedures for how operations will proceed if environmental remediation works are required**.

In Liberia, the 2009 iron ore contract with China-Union includes requirements for an annual environmental audit, regular updates to Environmental Impact Assessments and the Environmental Management Plans and periodic government environmental inspections. It also allows for operations to be suspended for material non-compliance with the Environmental Management Plan or to enable environmental remediation to take place.¹²⁴

Project plans and local engagement

The Ministry of Mines has taken the initial, positive step of publishing basic information on project plans and potential mining impacts.¹²⁵ However, contrary to international standards and Afghan environmental law, there is no contractual requirement to engage affected persons in identifying and deciding how to address environmental risks.

Aerial view of the Kenecott Bingham Canyon Mine. This is an open-pit copper mine near Salt Lake City, Utah in the US. Open pit mining involves removing layers and layers of surface material (overburden) to reach the mineral, usually by using heavy machinery such as bulldozers and dump trucks. Where deposits are at a substantial depth, open pit mining usually involves pumping groundwater out of the way, to allow mining to take place.¹²⁶ This form of mining can be very environmentally destructive, so it is particularly important to decide whether this is the most appropriate method and, if so, to put in place safeguards to minimise environmental impacts. (Credit: The Stock Solution).



The Aynak mine is made up of two zones, one of which is to be mined as an open pit, and the other as an underground, sub-level cave operation.¹²⁷ According to Ministry reports, the biggest environmental impact is expected to be the generation of about 60 million tonnes of waste rock and 9.7 million tonnes of tailings (another form of mining waste) every year.¹²⁸ To dispose of this waste, a 'tailings dam' (a dump for the waste) is to be developed.

The use of a tailings dam is one of several options for disposing of tailings and is not necessarily the most environmentally appropriate choice. Despite Afghan law and international standards, the Ministry has not published details of how the decision on the method of mining (i.e. open pit for one part and underground for the other) and choice of waste disposal was made nor

does there appear to have been any public consultation or engagement on this decision.

By contrast, it appears that a more open approach is being taken on deciding the location for the site of the tailings dam. Details of two potential sites that have been approved for inclusion in the Feasibility Study have been published, together with the reason for their selection: consideration of the earthquake risk in the area; the need for minimal disruption of resident populations; and being free of known occurrences of historical artefacts.¹²⁹ According to the Ministry of Mines, a social impact assessment has been carried out, involving a survey of the community in the areas being considered to assist the Ministry in deciding on the appropriate site.¹³⁰

Box 8: Public participation - an Afghan and international norm

Afghan Environmental Law 2007

Article 19

Affected persons may express their opinion on the proposed project, plan, policy or activity, the preliminary assessment, the environment impact statement, the final record of opinion and the comprehensive mitigation plan, before the approval of the project, plan, policy or activity, and the proponent must demonstrate to the National Environmental Protection Agency that affected persons have had meaningful opportunities, through independent consultation and participation in public hearings, to express their opinions on these matters on a timely basis.

In regard to a proposed project, plan, policy or activity that is likely to have highly significant adverse effects on the environment, affected persons must be allowed the opportunity to participate . . . by the National Environmental Protection Agency and relevant institutions.

The National Environmental Protection Agency shall not reach a decision on any application for a permit until such time that the proponent has demonstrated to the satisfaction of the National Environment Protection Agency that the proponent has distributed copies of the document to affected persons, informed the public that the document is being made available for public review by advertising the document and displaying a copy of it for inspection, and convened and recorded the proceedings of a public hearing ...

Rio Declaration^z

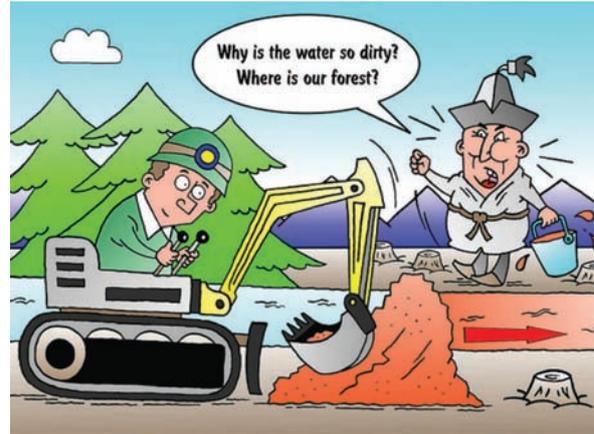
Principle 10

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy shall be provided.

z: The Rio Declaration was adopted by 178 nations at the United Nations Conference on Environment and Development, Rio de Janeiro, June 1992.

Given the size of the project and the potential environmental impacts far beyond the immediate project area, these are issues that should have been addressed openly and with due public engagement. To achieve this, steps can include publishing draft environmental documents in one designated public place (such as the Ministry of Mines website), allowing a period for written comments and holding public hearings to allow public statements to be made.

More broadly, there is as yet little information available on other potential environmental impacts, nor on how these are likely to be addressed. **The environmental assessment is a key document. This will set out the environmental risks of the project. It is important that there is full community and public engagement in developing this assessment, so that it is as comprehensive and accurate as possible. The assessment should also be published as soon as it is finalised so that it can be independently checked.**



A mining cartoon from Central Asia illustrating the local resentments that can arise where mining activities cause environmental damage. It is in the interest of all parties that the Afghan people are given the opportunity to participate from the outset, so that potential environmental impacts are identified and understood from the beginning, and steps to address these impacts get local and public buy-in. As well as protecting the Afghan environment, this can help ensure good company-government-community relations throughout the project. (Credit: Zoi Environment Network / Ruslan Valitov 2012).

Box 9: The Papua New Guinea experience

The experiences of the Consortium's majority shareholder, MCC, at its Ramu Nico nickel mine in Papua New Guinea illustrate the environmental risks of mining and the difficulties that can arise when communities object to planned operations on environmental grounds.^{aa131}

The Ramu Nico project ran into trouble when local landowners brought a court action against the mining company, objecting to the company's plan to dispose of waste from the mine through a 'deep sea tailings plan' (DSTP).¹³² The project had received government approval and the mining company had obtained required permits, but local landowners complained that the DSTP method of tailings disposal would cause environmental harm, and should be stopped.

During the proceedings in Papua New Guinea's national court of justice, arguments included that:

- there had been no proper environmental risk assessment; and
- government promises to publish an independent review into DSTP and to consult widely before going ahead with the project were not met."¹³³

The court found that the use of DSTP for the project was likely to have serious and adverse environmental effects, altering the ecology of a major bay, likely toxicity to marine organisms and a danger of contaminants being transported to the nearby town and coast.¹³⁴

The court ordered a temporary halt to the project,¹³⁵ but ultimately found in favour of the company and the Supreme Court refused a subsequent appeal.¹³⁶ The national court ruled that MCC had reason to believe that it had approval to operate the DSTP programme without disruption; that the livelihoods of people dependent on the project commencement would be adversely affected by a permanent injunction; and that MCC and the government were making genuine efforts to place effective monitoring protocols on the project.¹³⁷ It did, however, order the company to consult the landowners and to provide three-monthly updates on tailings and waste disposal issues throughout the lifetime of the mine.¹³⁸

The legal proceedings caused substantial delays to the project and generated negative publicity.¹³⁹ The cost to the company for each day of delay was estimated at 7million kina (around \$3.4 million).¹⁴⁰ The case highlights the need for community buy-in when addressing environmental impacts and illustrates the kind of situation that companies and government alike will wish to avoid in Afghanistan.

aa: The Ramu Nico project is a \$1.5 billion nickel and cobalt mine near Madang in Papua New Guinea. The project is 85% owned by MCC Ramu Limited which is, in turn, wholly owned by MCC-JJ Mining whose shareholders include MCC. RamuNico Management (MCC) Limited acts as project manager on the appointment of all joint venture partners.

Closure and post-closure

Often, the most **serious and far-reaching impacts of a mining project can occur after mining operations have ended**. If piles of waste rock and other leftover materials, abandoned open pits and tailings impoundments are not dealt with, they can **generate toxic waste water** which can cause **serious damage to water supplies for decades, or even centuries**. **A detailed, workable and properly funded plan for closing operations and reclaiming the site is needed before a mining project is approved, therefore**. This should set out how the environment will be returned, as far as possible, to its pre-mine quality, and how toxic releases will be permanently prevented.¹⁴¹

Under the Aynak contract, the Consortium is required to submit an environmental management plan, covering reclamation and closure requirements, before mining operations or commercial productions begin (Clause 15(c) and Clause 17(b)). There is, however, no provision for community or public engagement in the development of the closure and reclamation plans which is particularly problematic given their significance.

The International Bar Association's Model Mining Development Agreement provides for a final closure plan to be prepared in consultation with the local community at least a year before the end of production at

the site.¹⁴² It also sets out the respective responsibilities of the investing company and the government with regard to environmental management during and after project closure and provides for a post-closure monitoring committee to be set up by the company in consultation with the local community.¹⁴³ The parties should agree a clear procedure for community engagement of closure and reclamation plans, and processes for post-closure monitoring of agreement commitments.

It is also important that there is financial security in place to cover closure and post-closure costs. These costs can be large. According to the World Bank Group Oil, Gas and Mining Policy Division:¹⁴⁴

“Closure costs for environmental issues range from less than US\$1 million each for small mines in Romania to hundreds of millions of dollars for large lignite mines and associated facilities in Germany. More typically, closure costs will range in the tens of millions of dollars.”

The contract does provide for the company to provide a financial assurance in an amount to be determined by the Ministry of Mines, and guaranteed by an institution authorised by the Ministry of Mines. It is important, however, that there is **public participation in the assessment of what closing costs are likely to be and that the amount is backed by a bond or held in an escrow account**.



A mining cartoon from Central Asia illustrates the need to ensure that the plans to close operations and reclaim the site are agreed from the outset, with adequate financial guarantees put in place. (Credit: Zoi Environment Network / Ruslan Valitov 2012).

Recommendations on environmental safeguards

For the Aynak project GIRoA and the Consortium should:

- Publish all environmental assessments, environmental protection plans, closure and reclamation plans, and any reports produced on environmental/water impacts of the Aynak project.
- Agree and publish clarifications to the contract, including clear definitions of key documents including environmental and reclamation plans to avoid ambiguity.
- Publicly confirm that environmental audits and studies and the environmental management plan to be carried out and updated annually for the duration of the project.
- Take steps to enable effective community and public participation in identifying potential environmental impacts, devising environmental plans (including closure and reclamation plans) and agreeing amounts of financial assurances on environmental aspects.
- Ensure that the BFS takes account of the costs associated with minimising and mitigating environmental risks and costs associated with mining closure and post-closure environmental management.

Across the extractives sector, GIRoA should:

- Consider the **cumulative effect of all existing and planned concessions** on the environment and, particularly, on water resources and the water needs of the Afghan people, before awarding any new concessions which could further overstretch resources.

- Set up processes for **effective and early community and public participation in identifying environmental impacts** (including cumulative impacts) of planned mining projects, and in devising **environmental plans and agreeing financial assurances** to address environmental mitigation costs.
- Put in place **safeguards, including oversight mechanisms, against conflicts of interest between the Ministry of Mines' role on environmental issues, and other aspects of its role in driving mining projects forward and clear, transparent and workable procedures for coordination between the Ministry of Mines and NEPA.**
- Ensure that all extractives companies provide **adequate financial assurances (using bonds or escrow accounts)** from the outset to **cover all potential project costs including closure and remediation costs.**

The international community should:

- Provide **training and support to GIRoA, parliament and civil society to improve capacity for management and monitoring of environmental issues.**
- Incorporate **environmental governance benchmarks** within their donor management and evaluation frameworks.

7. Land and water rights

The following section considers how the impacts of the mining project on existing land and water use by the community around the mine are being addressed.

Across Afghanistan, competition between tribes and ethnic groups over land and water is a long-standing source of tension and conflict. In Logar province, these issues are particularly sensitive given the local dependence on agriculture and livestock farming.¹⁴⁵ A copper mining project brings with it a demand for land and large-scale consumption of water, exerting additional pressures on resources essential for habitation and livelihoods. Unless contractual safeguards are in place and properly monitored, there is a risk that the local population will lose essential land and water rights undermining local economic activity and potentially creating unrest and resentment. Further, associated projects, such as the planned railway are likely to have serious impacts, particularly on land, and questions remain as to how to safeguards within the contract apply to related infrastructure projects.

Monitoring safeguards

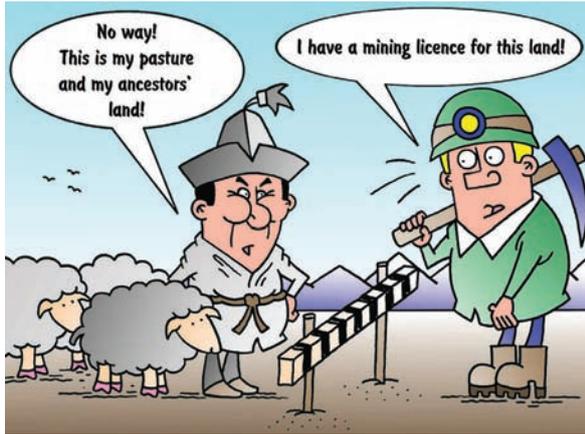
The risks surrounding land and water rights are recognised within the contract and measures have been put in place to protect the position of the affected population.

Clause 15 (f) provides for “*fair compensation*” for losses suffered from damage to land or water, or any interference in usage rights. Adversely affected local residents are to be compensated in line with “*applicable Afghan law and internationally accepted principles of fairness and reasonableness*” (Clause 23).

Where residents are required to move, resettlement should be in accordance with the World Bank Resettlement Guidelines and should not adversely impact their livelihood or diminish their standard of living (Clause 23). Specific consideration should be given to protecting the way of life of affected communities. It is recognised in Clause 23 that the Consortium’s development activities will impact on surrounding villages and residents, and the contract commits the Consortium to developing and financing an “*aid programme*” for their benefit.



A helicopter flying over agricultural fields in Logar province. Mismanaging extractives could have serious ramifications for Afghanistan’s agricultural sector which currently employs 60% of working Afghans. If the livelihood of the Afghan people is threatened by mining this could give rise to local opposition and conflict.
(Credit: US Army/
Creative Commons).



As this Central Asian cartoon illustrates, disputes over rights to land can cause local resentment and bad blood between mining companies and the surrounding community. (Credit: Zoï Environment Network / Ruslan Valitov 2012).

There are also restrictions on water use, preventing the Consortium from using agricultural water, or of depriving local users of a reasonable supply of the water which they have customarily used (Clause 37(c)). In Clause 19(b), the Consortium is further required to relinquish land it no longer requires. This should allow the community to take this land back, limiting the land that is 'off-limits' to them to that which is strictly necessary for the development of the mine. These are very positive provisions, but robust implementation and monitoring are key to their success.

Reports from the Ministry of Mines suggest that it, rather than the Consortium, is taking the lead in implementing resettlement requirements including setting up the new town for relocated villagers. A project authority – the 'Aynak Authority' has been established – which focuses on facilitating the project by supporting attempts to secure the resources including land needed for the mine.¹⁴⁶ The question is then who will be monitoring the implementation of the contractual safeguards on land and water? At present, it looks as though this is also up to the Ministry of Mines, raising questions over:

- Whether the Ministry of Mines has sufficient capacity to manage monitoring as well as implementation and facilitation; and
- Whether there are safeguards in place to guard against conflicts of interest between the Ministry's dual functions to implement and facilitate the project on the one hand and to monitor safeguards on the other.

Resettlement

Clause 23 provides some guidance, referencing the World Bank's Resettlement Guidelines.¹⁴⁷ Given that the project is likely to involve land acquisition and physical and/or economic displacement of people, **compliance with the IFC Performance Standard 5 on Land Acquisition and Involuntary Settlement would provide additional guidance.**¹⁴⁸ Provisions could also be strengthened by requiring best efforts^{bb} to resettle communities as a whole, as recommended by the IFC,¹⁴⁹ and by taking account of the possibility of future expansion of company operations and any associated, new resettlements, both of local communities and of migrant workers.

In the Aynak case, the Ministry of Mines has now published details of the new township, Ashab Baba, some 7-8km away from the mine site where all affected villagers will be relocated as well as to facilitate housing for the influx of persons expected as a result of mining operations.¹⁵⁰ It is understood that this location was chosen by the Logar Governor.¹⁵¹ Information has not, however, been made available of how the resettlement land compares to the land the villagers previously held.

Compensation

The contract provisions contain various terms which are unclear, ambiguous or which exclude the local community. The rate of compensation for land and property, for instance, is to be agreed by GIROA and the Consortium, without the involvement of the local community, by reference to "*internationally accepted principles of fairness and reasonableness*". Terms such as "*fairness*" and "*reasonableness*" are frequently used in contracts, so these do provide a general standard. They are however, too vague without being supported by more details on what sort of principles are envisaged to provide clear, substantive rights for affected people (Clause 23).

The Consortium is entitled to the use of public land for a nominal surface rent, but must compensate private landholders for the use of their land (Clause 37(a)(i)). The level of compensation is to be determined by a "*mutually agreeable third party*", but it is not clear how this phrase is to be interpreted.

The contract makes no provision for how compensation is to be dealt with for land that has been in customary but not legally recognised use by the local community. With regard to compensation already set, the Ministry

bb: The term "best efforts" can be understood as the use of sustained, dedicated and good faith efforts to achieve a particular result.

of Mines has taken the positive step of publishing details of the rates set and the basis for these rates.¹⁵² If these rates are not acceptable to the local community, the new mechanism for grievance redressal should provide a way for concerns to be raised. The question will be whether the mechanism is one that people trust and are willing to abide by.

Water usage

The contract provides protection for water rights that have been established “through custom” (37(c)). However, there is no detail on what is required to establish a custom (would, for instance, occasional users or nomads be able to establish custom?), nor is any remedy set out for those who may find it difficult to show customary usage.

In the event that water from a local resource is depleted for any reason, the local population would not, under the current terms, have any priority rights to adjacent water sources to which they have not established customary rights. Further, the current wording does not leave room for expansion of water usage by the local population, and could restrict the ability of an affected community to expand in economic development or population size.



An Afghan boy draws water from a well. The Aynak community has already raised concerns that their water supplies have been affected by mining exploration activities. Such concerns need to be addressed and the reasons for water impacts investigated. Otherwise, they can fester and give rise to local opposition and protests.



Afghans who have traditionally accessed water resources are afforded important protections under the Aynak contract ... but if they cannot see the contract, how do they know what their rights are? (Credit: James Gordon/Creative Commons).

Recommendations on land and water rights

For the Aynak project GIROA and the Consortium should:

- For future land and water claims, seek **free, prior and informed local consent** in respect of **resettlement, compensation, land and water rights**, with clearly defined procedures and timescales.
- **Agree clarifications to ambiguities** in the contract such as phrases like “custom” and “mutually agreeable third party”.
- Ensure that **protections for community water use take account of both current and future community needs**.
- **Continue to publish** consultations and reports on resettlement, compensation, land and water impacts relating to the Aynak project and ensure these issues are comprehensively addressed through future community consultations.
- **Agree** and publish details of **how implementation** of the contractual provisions on land and water **are to be monitored by GIROA**.
- **Encourage independent monitoring** by allowing civil society groups and parliament to access information on project implementation, the site and local villages.

Across the extractives sector, GIROA should:

- Focus efforts on monitoring land and water safeguards, and ensure there are checks in place against potential conflicts between the ‘facilitating function’ of the Ministry of Mines and any ‘monitoring’ of the project.
- For all future mining contracts, take account of learning points from Aynak including:
 - Ensure that provisions on resettlement, compensation, land and water rights are in line with international best practice and that key standards such as the **IFC Sustainability Framework** are specifically referenced and procedures for their implementation clearly set out.

- Incorporate a requirement for **free, prior and informed local consent** in respect of **resettlement, compensation, land and water rights**, with clearly defined procedures and timescales.

- **Ensure that protections for community water use take account of both current and future community needs.**

- Take account of the learning points from Aynak in the negotiation of future concession contracts.
- Before proceeding with any further extractives project, confirm that there will be **GIROA capacity to carry out any implementation and monitoring effectively and with safeguards against conflicts of interest**, throughout the lifetime of the project.

The international community should:

- Provide training and support to increase GIROA's capacity to address resettlement, compensation, land and water potential and actual impacts in accordance with best international practice.
- Provide training and support to parliament and civil society to increase their capacity to monitor the Consortium and GIROA efforts to address resettlement, compensation, land and water impacts.
- Incorporate land and water access rights within shared monitoring and evaluation frameworks for development assistance to Afghanistan.

8. Social provisions

The following section outlines some of the positive benefits provided by the contract for the local community – for example, in the areas of employment, training, education and health. It highlights however, that a lack of contractual detail on implementation and insufficient community consultation requirements could create white elephant projects that fail local expectations and create dissatisfaction.

Aid programme

Under Clause 23, the Consortium commits to developing and financing an aid programme to address mining development impacts on “surrounding villages and residents”.

International guidelines such as the IFC’s Handbook for Preparing a Resettlement Action Plan recommend direct consultation with the affected population as the best approach to designing such programmes.¹⁵³ By contrast, the Aynak contract requires only that that the investment package be developed “in consultation with appropriate government officials.”

Forward planning and consultation with the affected community, local representatives and civil society is essential to ensure that the package meets local needs and is sustainable, rather than creating white elephants that fail local expectations creating dissatisfaction.

Employment

On employment provisions, our analysis found some positive points and some negative.

On the positive side, **the Consortium commits to training and employing specified percentages of Afghan nationals at different skill levels.** (Clauses 39 and 40). This is an important way of ensuring that the population benefits from the mining development. Investment in training is crucial to enable the Afghan people to work in and run their own extractive projects in the future. There is **no detail, however, on how many Afghans will be trained, for how long or, importantly, how they will be selected.** Clause 40(a) refers to the Consortium training “suitable persons of Afghanistan citizenship”, but there is no clarification on how or by whom “suitability” will be determined. Clause 40(b) states “[The Consortium] shall establish and cooperate in a programme for Afghan nationals and grants to educational institutions of Afghanistan”. This is a very positive provision

A camp built by the Consortium at the Aynak site in Logar to house workers at the copper mine. The Consortium has committed to employing Afghan nationals, but how will Afghan staff be selected? Will local communities be given the training the skills and qualifications they need to take advantage of employment opportunities available? (Credit: Jerome Starkey).



but again there is insufficient detail. It is not clear how many Afghans will receive such grants, what types and duration of courses they will cover or how people will be selected for them. Details of the information provided by the Consortium to Global Witness on employment and training it currently provides to Afghans are set out at Appendix 3. **Notably the Consortium has stated that it is preparing to provide environmental protection and assessment training to six Ministry of Mines officials.** This is a good start and the longer courses are particularly important for Afghans to start developing the skills and training they need to manage and run their own extractives industry in the future. Concerns may, however, be raised over the way in which beneficiaries of training and jobs are selected, and in particular whether the process favours local power holders over the wider community. If there are such concerns, a crucial test will be whether they can be raised and satisfactorily resolved through the grievance redressal mechanism.

Unfortunately however, the contract does not reference sub-contractors, so there is no obligation to mirror the positive employment provisions in sub-contracts.

Clause 39(a) allows **the Consortium to employ Afghan staff “upon terms which are acceptable to [the Consortium]” could disadvantage the Afghan population and should be clarified.**

In discussions with the local community, one concern raised to Global Witness is that the community around Aynak has been particularly afflicted by conflict in recent decades and education has suffered. Consequently, fears have been expressed that where education and training opportunities are to be provided by the Consortium, these will not go to members of the

local community, as they will not have the base level of education and training required. **Concerns like this emphasise again the need for real consultation with the local community on what their needs are and what benefits they would like to receive from the project.**



This cartoon of Central Asian experiences of mining illustrates the need to ensure that local communities are given the education and training to take advantage of employment opportunities at mining projects.

(Credit: Zoi Environment Network / Ruslan Valitov 2012).

Health and Safety

For staff working on the project, the Consortium is obliged to use “internationally recognised modern” safety devices and precautions, and to “observe internationally recognized measures, including risk management measures, for the protection of the general health and safety of its employees” (Clause 3 (b) & (c)).



An artisanal mine in Panjshir. Existing small-scale mines are reported to have very bad working conditions. Setting up detailed and clear health and safety procedures for the extractives sector should be made a priority.

(Credit: Kate Holt).

This is a particularly important area, given reports of very poor conditions in currently operating mines in Afghanistan,¹⁵⁴ and the risk of land mines at and around the project site. For the local community, as of 2009, landmines were estimated to have caused 89 deaths and 92 injuries.¹⁵⁵ More recently, it has been reported that two Afghan workers were seriously injured when they dug up a land mine at Mes Aynak, and that a SUV full of Consortium workers hit a landmine, killing all passengers. Work to clear landmines from the area is ongoing, but the risk of a stray mine causing injury or death to workers at the Aynak project must be carefully considered and addressed.¹⁵⁶



A de-mining expert detects anti-personnel land mine for clearance in Kunduz, Afghanistan. An assessment of the Aynak project area found that 4.135 km² was contaminated with mines and 1.4 km² contaminated with 'Explosive Remnants of War'.¹⁵⁷ (Credit: UN Photo/Jawad Jalali/Creative Commons).

It is not clear, however, what health and safety provisions will be used for this project. Whilst there are broad references to health and safety in the Minerals Law and Regulations, detailed health and safety procedures in line with international standards have yet to be established.

This is a major gap that needs to be addressed as a matter of priority. It is also important that these clauses are strengthened through reference to specific international health and safety standards such as the IFC Performance Standard 2 on Labour and Working Conditions and requirements for health and safety training to be given to staff and for ongoing independent monitoring.

Healthcare

The Consortium also agrees to fund free healthcare in Clause 25 but only to its employees and their families. This could cause tensions in the community between those employed by the Consortium and others, with potentially serious impacts on vulnerable groups such as widowed women, orphaned children and the unemployed. The negative health impacts likely to arise from mining operations could compound this problem. To address this, **regular medical visits could be arranged for local residents to monitor, for example, the ongoing health situation and emergency health care for local residents.**

At the same time, the risks associated with an investing company adopting the responsibility of the government needs to be considered. Health and education facilities should be provided by government and funded by tax revenues. Passing funding on to a mining company effectively releases the government from these responsibilities for the provision of essential services to its citizens and can weaken the state-citizen relationship. Further, if such facilities are tied in with the concession award, this can have an impact on community decisions and consultations, since the local population may feel pressured to accept a concession in order to ensure they have access to health facilities. In addition, given that there are already health facilities within the province, there is a risk that staff from those facilities move to the new privately funded facilities (attracted by, for example, better pay), which could result in the undermining of state facilities.



A health clinic provided by a logging company in the north of the Democratic Republic of Congo. Despite the poor quality of the clinic, the local community has no alternative but to use it. This is one of numerous international examples of company commitments to build social facilities for communities falling flat. It is essential that pledges to provide community facilities include commitments to quality and that their implementation is effectively monitored.

Education

Under Clause 26, the Consortium agrees to fund free and adequate primary and secondary educational facilities for the children of all employees and “residents of the area surrounding Aynak specified in the approved social impact assessment”. **This is a welcome commitment, but the standards, results and definitions of the social impact assessment will need to be reviewed in order to determine how this might work in practice.** Issues may arise, for example, if the assessment specification sets an arbitrary boundary which excludes some affected individuals from this benefit, giving rise to tensions – say, if resettled individuals end up outside such a boundary. It is important to ensure that education is provided to all Afghans, with wording to guard against the risk that, for example, female children are excluded.

Housing

Under Clause 24, the Consortium is also to fund housing facilities for employees and their families at a “reasonable rental rate”. Again, this is an important provision, but **there needs to be oversight over what constitutes a reasonable rate.** Further, this provision refers again to consultation with “appropriate governmental officials” in relation to the number, type and location of such housing. To reiterate, **such consultation should be with the affected group in order to ensure that their needs are taken into account and to avoid future grievances.** Tying family housing to jobs presents a risk that where an Afghan employee loses his job, he and his family immediately lose housing – potentially giving rise to resentment and feeding into conflict. There is also a risk that employees feel unable to address employment issues or mistreatment, as they do not want to risk losing the homes, health and educational facilities for which they depend on their employer.

Similarly, Clauses 27 and 28 relating to the establishment of recreational centres and places for religious activity also refer to consultation with government officials. **Again, it is recommended that this be changed to allow for consultation with the local community,** particularly given the sensitivity of religion and the need to ensure that all religious groups are consulted and accounted for.

Infrastructure and power supply

Finally, there is a lack of clarity over provisions relating to the infrastructure and power supply that the Consortium is also providing (Part V of the contract). In particular, it is **not clear from the master contract whether the railway will be open to the public, how land is to be**

taken for the railroad, or what consultation will take place. There are many groups that may be affected and it is important that they are all considered. Without appropriate consultation and planning, for example, nomadic tribes may find that their ability to move across areas is affected. In relation to power supply, there are references to the provision of electricity to the project and to Kabul, but it is not clear whether the area surrounding Aynak will also benefit. **Without access to the ancillary contracts, such clauses cannot be properly evaluated.**

Delivering on promises

The implementation of all the social infrastructure and services commitments made will need to be monitored independently and the quality (up to international standard) assured. Natural resource exploitation projects in countries such as the DRC and Liberia have resulted in a serious deterioration of living conditions of affected populations. Contractual commitments to provide compensation to local communities in the form of social infrastructure and services, such as education and health facilities, have, in many cases not been met. These experiences have frequently given rise to community resentments, local opposition to resource exploitation activities and violent conflict.

In the DRC, for example, Global Witness has investigated the impacts of industrial-scale logging on the forests and local communities, and the quality of socio-economic development commitments made by logging companies.¹⁵⁸ Communities visited there have raised numerous complaints. They claim that, despite signed social obligation agreements, companies have often failed to build the promised schools, health facilities and roads. Where projects have been carried out, communities have complained of the poor quality of the construction works and of their non-completion. This means that facilities provided are of limited or only short-term use and are often abandoned. The failure of companies to meet community expectations and contractual obligations has increasingly led to local protests which, in turn, have often resulted in human rights by security forces called in to quell the unrest, culminating in rapes and death.¹⁵⁹ This highlights the need for establishing effective grievance mechanisms and effective monitoring of implementation of social development obligations both by government agencies and by civil society organisations.

What happens when the project ends?

Consideration must also be given to what will happen if and when the Consortium finishes the project or moves away from a particular area. In Liberia, Global Witness

has seen what can go wrong when companies cease operations or when projects change hands.^{cc} People previously employed and housed by mining companies can be left bereft. Company provided services and infrastructure such as hospitals may not be maintained, and can fall into disrepair when mining companies cease to engage. At Aynak, it is important that there is **planning from the outset to guard against the risk that infrastructure and services previously funded by**

the Consortium are discontinued or are not maintained once the project closes. Otherwise, the local community could be left worse off than they were before the project, particularly if the government invests less in the area due to the corporate social investment. **There are also clear lessons to be learned from issues surrounding the sustainability of aid-funded projects in Afghanistan, and GIRoA and the Consortium should take account of these to avoid repeating the same mistakes.**

Recommendations on land and water rights

For the Aynak project GIRoA and the Consortium should:

- Set up a process to **systematically engage with affected communities to agree the form that social packages should take** with agreements with the community confirmed in writing.
- Clarify that **employment commitments will be mirrored in sub-contracts** and review employment commitments to ensure that Afghans are protected against their contracts being terminated at the will of the company.
- Review **training programmes** for Afghan staff to ensure that they will **benefit Afghanistan in the long-term.**
- **Agree specific health and safety standards** such as the IFC Performance Standard 2 to be applied to the project, ensure that health and safety training is provided to staff and that there is ongoing independent monitoring of compliance with health and safety standards.
- Put in place **effective monitoring mechanisms for treatment of Aynak residents.**
- Agree on steps to **mitigate against division between company-employed local residents and other residents.**
- Ensure that **local community rights to the Consortium infrastructure and power supply developments are clarified.**

Across the extractives sector, GIRoA should:

- Ensure that there is **early and effective community engagement on the development of social facilities and aid packages, and careful planning for impacts of project closure on local communities.**
- As a matter of priority, issue **detailed health and safety procedures for all mining operations.**
- Identify, through consultation with key stakeholders in the Aynak project, **learning points from the Aynak social programme** to be taken into account in **negotiating future concession contracts and in setting the parameters for future social assessments.**
- Agree on measures to **monitor potential health impacts** of mining activities.

The international community should:

- Provide **training and support to GIRoA on addressing potential risks in social programmes and on long-term residents.**
- Provide **training and support to local civil society, media and parliament** to strengthen their capacity to monitor social programmes and address deficiencies.
- Incorporate **effective community engagement on the design of social packages and monitoring of social impacts of mining projects within shared monitoring and evaluation frameworks** for development assistance to Afghanistan.

cc: In this case mining operations ceased due to conflict, but former workers and their families continued to live in the company housing throughout the war, and were at risk of eviction when the mineral deposit was sold to Mittal Steel post-conflict. This was not the responsibility of Mittal Steel, but the government does need to provide assistance to their citizens who risk becoming homeless due to mine closure for whatever reason.

9. Heritage issues and other area-specific risks

The following section looks at the location of the Aynak concession area at a site of major archaeological significance and considers how this clash is being addressed.

Over the last few years, public attention has turned to the impact of the Aynak project on one of Afghanistan's most important archaeological sites. Worryingly, there was no anticipation of this issue at the time the contract was signed, and there is no reference at all within it on how the archaeological impacts are to be evaluated and addressed.

Aynak is home to ancient Buddhist sites, remnants of the area's role as a transit route for the spread of

Buddhism to Central Asia and China 2,000 years ago.¹⁶¹ It was identified as an archaeological site in the 1960s but it was not until 2004 that a team from the Institute of Archaeology of Afghanistan began the first study of the area.¹⁶² At least three sites, including six monasteries and numerous artefacts, have been identified within or adjacent to planned mining operations.¹⁶³ The Aynak contract, however, makes no provision to address the possibility of archaeological discoveries, and the China Daily has reported that the Consortium was not aware of the local history when it entered into the contract.¹⁶⁴ However, both GIRoA and the Consortium have reacted flexibly to the archaeological issue, with delays to the project agreed so that archaeologists can excavate the site.¹⁶⁵



One of the ancient monasteries that is being excavated at 'Mes Aynak'. The location of these monasteries is no accident. It is thought that the Buddhist monks settled at Mes Aynak (meaning "little copper well") precisely because of the supply of copper available, which allowed them to build grand settlements.¹⁶⁰ If this pattern occurs across Afghanistan, how will the tension between protecting the country's rich heritage and exploiting its valuable deposits be resolved?

(Credit: Joanie Meharry).

Box 10: The power of cultural heritage

Cultural heritage can play a major unifying role for a country like Afghanistan, providing people from different ethnic, linguistic and religious groups with *“the necessary symbols and points of reference for a collective memory and a renewed collective identity in case of conflict: ‘unity in diversity’”*.¹⁶⁶

The violent conflicts of the 1990s within Bosnia-Herzegovina showed just how important cultural heritage is to national identity. There, libraries, archives, museums, religious sites and historic architecture were deliberately attacked as *“factions attempted to manipulate the collective memory of the region”*.¹⁶⁷ Widespread destruction of books and religious materials such as treasured Islamic manuscripts¹⁶⁸ was part of an attempt to eliminate evidence that *“could remind future generations that people of different ethnic and religious traditions once shared a common heritage in Bosnia”*.¹⁶⁹ Post-conflict, work is ongoing to re-construct what has been lost by Bosnians determined to *“preserve their country’s historic ideal of a multicultural, tolerant society and the institutions that enshrine its collective memory”*.¹⁷⁰

The formation of modern day Iraq in 1921 brought with it the difficult task of establishing a national identity for a diverse population divided by ethnicity, religion and language. The past history of the land described as ‘the cradle of civilisation’ was instrumental in helping to develop a sense of national pride and unity.¹⁷¹ Recent decades of violence, conflict and looting have ravaged Iraq’s ancient sites but cultural heritage retains an important role in the national psyche and is recognised as a major economic resource for the country, with cultural tourism seen as an important potential source of income.¹⁷² However, like Afghanistan, the need to protect Iraq’s cultural wealth risks coming second place to extractives sector development. For both countries, the words of Mariam Omran Musa, the manager of the ancient site of Babylon have resonance: *“Oil and antiquities are both national wealth, but I have an opinion: when the oil is gone, we will still have antiquities”*.¹⁷³



Ancient Buddha statues inside a temple at Mes Aynak. The Aynak mine site is also home to one of Afghanistan’s most important archaeological sites. The historical significance of the site was known before the Aynak contract was awarded ... yet the contract says nothing about this. (Credit: AP/Press Association).

The Buddhist sites at Aynak are of immense historic value for Afghanistan and the world. Cultural heritage is emphasised in the Afghan constitution and Afghanistan is a party to the UNESCO World Heritage Convention. There is an ongoing campaign petitioning for the site to be put forward for World Heritage Site status, raising the question of whether it should be a 'no-go' site for mining.^{dd174} Since 2009, however, the French Archaeological Delegation to Afghanistan (DAFA) has been working at the site, using 'rescue archaeology' techniques to survey and excavate archaeological remains at speed so that they can be cleared from the site presumably to make way for mining operations to start.¹⁷⁵ According to the World Bank, DAFA has also been retained to "undertake an assessment of the site and develop the Cultural Heritage Management Plan".¹⁷⁶

"It is abominable to witness the cold and calculated destruction of cultural properties which were the heritage of the Afghan people and, indeed, of the whole of humanity. The Buddhas of Bamiyan were not inscribed on the World Heritage List but deserved to be and their destruction represents a true cultural crime ... This loss is irreversible. Everything possible must be done to stop further destruction", Former UNESCO Director-General, Mr Koichiro Matsuura.¹⁷⁷

In 2001, there was international condemnation over the destruction of two giant buddha statues which had overlooked the fertile Bamiyan Valley on the Silk Road for around 1,400 years.¹⁷⁸ The decision of the Taliban regime to dynamite the ancient statues was based on a religious edict against idolatrous graven images.¹⁷⁹ Over a decade on, we are seeing the prospect of further sacrifices of the Afghan people's cultural heritage – this time on the alter of economic development.

The archaeological issue should have been considered before the Aynak concession was put out to bid, and should certainly have been raised with the MCC/JCL consortium so that appropriate procedures could be put in place: (1) to evaluate whether mining should proceed at all given the potential cultural significance of the site; and (2) if mining does proceed, to agree a set of detailed procedures both for minimising impacts on the Buddhist sites and for dealing with any new finds identified during mining operations, including suspensions of works where necessary. Since this was not done, it is important that appropriate processes are put in place now and agreed by the parties.

More broadly, the impact that the archaeological finds have already had on mining operations illustrate why it is important to anticipate potential risks relevant to a concession area before making an award and agreeing on contract terms. Developing processes where issues are identified and fully addressed from the start should encourage investment, by allowing investors to better estimate costs and schedules and reduce project risks.

Two women walk past the huge cavity where one of the ancient Buddhas of Bamiyan used to stand, 17 June 2012. A poignant reminder of the destruction that has already been wrought on Afghanistan's cultural heritage. (Credit: Sgt Ken Scar/ Creative Commons).



dd: Notably, the ICMM has recognised that in some cases exploration and mining development may be incompatible with the objective of protecting areas of outstanding universal value. In 2003, ICMM members committed not to explore or mine in World Heritage properties.

Recommendations on heritage issues and other area-specific risks

For the Aynak project GIROA and the Consortium should:

- Agree that the **feasibility study should take account of the archaeological impacts of the project and the costs of relocating archaeological finds.**
- **Liaise with ministries and experts** dealing with the archaeological excavations including the Ministry of Information and Culture, the National Institute and the DAFA **to ensure that plans for mining activities take account of the need to minimise and mitigate archaeological impacts.**
- **Publish** documents prepared to date which provide **details of locations and timings of planned mining activities** so that these can be taken account in the prioritisation and management of the archaeological excavations.
- **Agree clear procedures in the event that further remains are identified during the lifetime of the project.**

Across the extractives sector, GIROA should:

- For future concessions, **consider potential cultural, historical, natural and social risks relevant to**

proposed license areas from the outset, taking them into account in the overall assessment of the proposed project before a decision to exploit is made.

- Take specific account of the need to minimise and mitigate impacts in these areas in contract negotiations.

The international community should:

- Support all efforts made to **minimise archaeological impacts** on the site and to preserve artefacts from the site.
- Ensure that for future projects, the **advisors and lawyers they fund should take specific account of archaeological and other concerns in the local area, and ensure the drafting of future contracts (and the regulatory frameworks) takes due account of these.**
- Incorporate **cultural and heritage safeguards within shared monitoring and evaluation frameworks** for development assistance to Afghanistan.



A gold head excavated at Mes Aynak, Summer 2010. GIROA and the Consortium are cooperating to ensure the archaeological site is excavated and that recovered artefacts are properly housed. But should the area be mined at all?

(Credit: Joanie Meharry).

10. Assessments and monitoring

The following section considers the framework for assessment and monitoring and identifies additional steps needed to ensure that the project is properly implemented and all contractual commitments are met.

No matter how good the mining contract looks on paper, it will only translate to a well-run project if agreed terms are implemented properly and safeguards and commitments are regularly assessed and monitored. To achieve this, it is necessary to ensure that there is provision for comprehensive assessments to be carried out regularly and to ensure there are no barriers, direct or indirect, to monitoring both by the government and, independently, by community groups, civil society, parliament and the media.

Box 11: What is GIROA already doing?¹⁸⁰

Steps that GIROA, with support from the international community, is already taking to ensure the good management and monitoring of the Aynak project include:

- Summary information on some contractual terms is available.
- Details of social assessments carried over the last six months and basic information on project plans and major environmental impacts have been published.
- The Ministry of Mines has developed a social policy and is setting up processes to assess the social and environmental impacts of the mining project.
- The Ministry of Mines is setting up a grievance mechanism for the project.
- The Ministry of Mines has established the Aynak Authority, a department mandated to assist the Consortium in all aspects of the projects. The Authority has so far focused on land acquisition and resettlement of affected communities.
- The World Bank is funding a project to build capacity at the Ministry of Mines and NEPA.
- A firm has been hired to monitor contractual, environmental, social and cultural protection issues at Aynak for a period of five years.
- The International Advisory Panel, comprising a group of mining experts, has been established to provide oversight over the Aynak bidding process and to review the Aynak contract.

Assessments

As it stands, the contract requires social and environmental assessments to be carried out but there is no requirement for these to be updated, nor is there any provision for any other assessments to be carried out or any independent safeguards.

The absence of detail on what project documents including the the Bankable Feasibility Study, the Mine

Development Plan and the Project Schedule should contain makes it unclear whether and to what extent these documents will take account of assessment outcomes.

Further, under the contract, the responsibility for independent assessment rests solely with the Ministry of Mines, creating scope for potential conflict with the focus of the ministry on promoting extraction and bringing in mining revenues. This contradicts the

Environment Law, under which NEPA holds responsibility for supervision of environmental and social assessments. In September 2011, the World Bank reported that the Ministry of Mines and 'National Environmental Protection Agency (NEPA) were to meet to agree how responsibility for clearing assessments was to be divided between them.¹⁸¹ Assuming this division has now been agreed, it should be published and details set out on how any potential **conflict of interest** is to be addressed.

Given the breadth of potential impacts of the Aynak project, it is important that there is both a **baseline study and regularly updated social, environmental, local economy, human rights, cultural, conflict and corruption assessments which should be made public.**^{ee} Steps should also be taken to assure independent assessments, by guarding against an assessor who is in favour of positive results for the project, either because of a direct link to GIRoA or the Consortium or because of the prospect of further commissions if the project continues. These **assessments should feed into operational plans** for the mine, so that changes to the timing, location and type of planned works can be changed where necessary.

Monitoring

Monitoring is key to guard against the risks of smuggling, off-record payments, and diverted funding – all of which could lead to mining revenue failing to reach government coffers and potentially funding conflict and corrupt actors.

The contract allows site visits and inspections by GIRoA authorised individuals and requires regular reports to be provided to the Ministry of Mines. The Consortium is also required to supply the Ministry of Mines with any other information it requests. However, there is **no requirement for such information to be provided within a specified period**, nor is it clear what powers other GIRoA bodies such as NEPA have to obtain information they require. Looking beyond the contract, a key question is whether the Ministry of Mines and NEPA has capacity to monitor the Aynak project both now and in the future.

Whilst a 'Project Authority' has been set up for Aynak, its role is limited to facilitating the Consortium requirements to carry out the project (such as acquiring appropriate land rights),¹⁸² rather than to take over contract compliance oversight and monitoring.

The World Bank is funding a programme which has a component focused on building institutional capacity



Based on mining experiences in Central Asia, this cartoon illustrates the risk that, on the one hand, mining companies may be obstructive when it comes to inspections, and on the other that a lack of coordination can result in different bodies duplicating inspection work. In Afghanistan, it is important that monitoring bodies have access to the project site and to project documents upon request. At the same time, to ease the burden on the company, such monitoring work needs to be well coordinated and communicated.

(Credit: Zoi Environment Network / Ruslan Valitov 2012).

at the Ministry of Mines and NEPA. This specifically includes increasing their capacity to “implement a dynamic inspection and contract compliance regime including in-depth support for oversight of the Aynak and Hajigak mining developments”.¹⁸³ For now, however, a consultancy firm has been hired to “monitor contractual, environmental, social and cultural protection issues at Aynak for a period of five years”.¹⁸⁴ It is important that support is being provided to enhance monitoring capacity but it does leave Afghan institutions dependent on international advisors, and it is not clear how their capacity is being built up to take on an effective monitoring role themselves in the future. Further, the consultancy firm itself appears to have been tasked with a very broad remit at Aynak, raising questions over whether it has sufficient staff and support to cover everything it is expected to do and, beyond that, to monitor other mining and petroleum projects in the country.

Other sources of oversight for the project are limited. Beyond the Ministry, civil society engagement in the extractives sector is restricted to a very small number of organisations, and the sector is similarly a new area for the parliament.

As time goes on and international support for Afghanistan falls, who will be left to continue monitoring the project into the future? Will they have the right numbers and sufficient skills and experience to manage such a

ee: This is in line with international best practice. For example, Precept 5 of the Natural Resource Charter emphasises the importance of impact assessments and subsequent monitoring stating that “environmental and social monitoring should be maintained throughout the life of the project consistent with a plan to minimise or mitigate possible adverse consequences”. In line with the UNGPs, the contract should also clarify expectations of company responsibilities to respect human rights and should provide for adequate state oversight with regard to human rights including through “independent monitoring and evaluation frameworks.”

significant project? With further concessions coming up for award, how will these additional projects be monitored both now and in the future? It is critical that the international community that has played such a significant role in getting the sector started looks now at what needs to be done to ensure there is appropriate capacity both in terms of staff numbers and relevant skills and experience to manage this sector.

Open and independent oversight is also critical to safeguarding the project. **Groups such as civil society, parliament, media and community groups can play an important role in monitoring how the project is proceeding and flagging warning signs at an early stage, before they become serious problems. To achieve this, it is critical that such groups can access project information and the project area, with appropriate requirements in the contract to back this up. They need to develop their skills and capacity and to coordinate their efforts so as to provide effective oversight. The security risk to groups working in this area also needs to be recognised.** Conducting research in mining areas, particularly in a context like Afghanistan, can be especially hazardous.¹⁸⁵ For such civil society groups to operate effectively therefore, the risks they face need to be recognised and addressed, so as to help to protect them from physical, legal and political dangers.

Over the last decade, there has been, on average, more than one killing a week of individuals investigating or speaking out on natural resource issues world-wide.¹⁸⁶

Unfortunately, the approach toward civil society engagement in Afghanistan's extractives sector leaves much to be desired. Whilst civil society is engaged directly through the EITI process, and through Ministry of Mines civil society consultation processes, there appears to be **little coordination, with different civil society bodies being brought into each process. This is compounded by the lack of information over when civil society consultations are taking place and which groups are involved.** This approach should be changed with the dates of proposed consultations advertised in advance in a consistent manner, and with all civil society groups with relevant expertise and experience being able to participate. **Currently, a major block to effective civil society engagement is the fear that speaking out will put groups at risk of being excluded from official processes – an impediment that needs to be addressed as a priority.**

More broadly, to ensure that the Consortium payments to GIRoA can be systematically monitored, there should be a requirement for **payment to be made to a specific government account.** The Ministry of Finance has taken the welcome step of adding a specific line and



In Ghana, a member of the community presents a report card that assesses the transparency of the country's forest sector. This is part of an ongoing project to support local civil society groups in forest-rich countries to engage with policy makers and advocate for accountable forest sector governance.¹⁸⁷ Similarly, civil society can play a crucial role in strengthening governance of Afghanistan's emerging extractives industry, particularly by monitoring the implementation of extractives contracts.

commentary on the Aynak project to the national budget, enabling better monitoring of the receipt of resource revenues.¹⁸⁸ Broadening this out, it is recommended that **the national budget should separate out extractive industry revenues from other domestic revenue sources, and continue providing further detail on major projects such as Aynak.**

Independent expert panels

The management of project revenues and associated spending could be further improved by the use of an **independent expert panel** with the remit to address economic, social, human rights, cultural and environmental elements of the project. In Indonesia, for example, an independent advisory panel has been established for the Tangguh liquefied natural gas project in West Papua, with a remit to cover economic, political and social issues. Within this role, the panel has advised on how revenue management can be strengthened for the benefit of the local people with recommendations to improve transparency, address weaknesses in the auditing system and support the local community by establishing a community development trust fund.¹⁸⁹

The World Bank is already funding one expert panel, the IAP comprised of international mining experts tasked with providing independent oversight of tender processes.¹⁹⁰ The IAP has already been engaged in Aynak, providing a opinion on the “fairness” of the contract and making “*constructive suggestions to ensure contractual compliance across the construction and early production*”.¹⁹¹

The Ministry of Mines has stated to Global Witness that this opinion was published on the Ministry website.¹⁹² However, we have not been able to find it on the website either now or over the past twelve months, so it appears that it has been taken down some time ago. This undermines the benefit of bringing in this independent function, since the Afghan people cannot see the points identified by this expert body or monitor how these points are taken on board both for the project itself and for the negotiation of future contracts. Global Witness has secured a copy of the IAP report on the Aynak contract, which is now available from our website. **All other reports by the IAP should also be made public, together with the professional backgrounds of its members.**

A further area of concern regarding the IAP contract is its relationship with the Ministry of Mines. Requests for meetings with the IAP or for a copy of its terms of reference are subject to the approval of the Ministry, suggesting a relationship which potentially undermines the IAP’s ability to act as an effective and truly independent monitoring body.¹⁹³ **It is important that the terms of reference of the IAP are reviewed to ensure that it is able to agree its own meetings, without reference to the Ministry of Mines, and that these terms of reference are made public.**

Subject to the resolution of the above concerns over the IAP, one possible way to bring in greater oversight to the extractives sector may be to expand its remit to cover full oversight of the Aynak and other mining projects. **Provided the panel’s remit is clearly defined, and members brought in with appropriate knowledge and experience, such a body could provide independent oversight of social, environmental, human rights, economic and any political issues.**



Members of the International Advisory Group established to support monitoring of the Chad - Cameroon Oilfield Pipeline Project walk with local residents towards a Bagyeli (pigmy) camp in Kribi, Cameroon. The Advisory Panel was made up of international experts with knowledge of governance, public finance management, environmental issues, social aspects of development, and community development. (Credit: Chad-Cameroon IAG/Céline Houdin).

Recommendations on assessments and monitoring

For the Aynak project GIROA and the Consortium should:

- Amend the Aynak contract to incorporate provision for **updates to the environmental and social assessments**, for additional **assessments** of potential impacts on the **local economy, human rights and significant cultural sites**, and for **independent continuous monitoring** of compliance with contractual commitments on these issues.
- Ensure that the BFS, MDP and the Project Schedule take account of environmental, social, human rights, cultural and local economic issues and that they, together with all assessments, are made **public and accessible upon completion**.
- Publish details of the **current composition of the IAP and all reports produced on the Aynak project**. **Revise (and publish) the IAP's remit** to allow it to be **independent of GIROA so that it can exercise effective oversight**.
- **If the above recommendation is adopted, expand the remit and composition of the IAP** to provide independent oversight of social, environmental, human rights, cultural and local economy aspects.
- Continue to **publish full details of assessments** carried out both for the mine and the railway and other linked infrastructure.
- Incorporate a provision for **the Consortium payments from the Aynak project to be paid to a specified Afghan government account**.

Across the extractives sector, GIROA should:

- Ensure that **detailed assessments of environmental, social and local economic consequences of mining** are carried out before extraction, that these are published and that the community participates in the decision to proceed with extraction.
- Publish details of any agreement between the Ministry of Mines and NEPA on the **allocation of responsibility for supervising the mine, and publish details of any safeguards against conflicts of interest**

between the investment promotion and facilitation and the monitoring roles of the Ministry of Mines.

- Ensure that extractives companies are contractually obliged to **allow official monitors site access** and to provide **official monitors** with any **information or documentation requested within a specified and reasonable period**.
- **Publish all reports** produced by the IAP and any other **independent oversight bodies in relation to the extractives sector**.
- **Consider the use of an independent advisory panel for future projects**.

The international community should:

- Prioritise **building capacity for assessing and monitoring** existing projects over support for developing new projects.
- Provide **funding and technical support to train Afghan staff** to monitor Aynak and other mining projects, through the life of each project and during the post-closure period.
- Work with and support GIROA and the Consortium in **establishing or expanding the remit of the existing Independent Advisory Panel** to advise on economic, social, human rights, cultural, environmental and political aspects of the Aynak project. Ensure the findings of the panel are published in a timely and accessible manner.
- For new contracts, instruct internationally funded legal advisors to incorporate provisions which ensure that government and independent bodies can **access the information and physical sites they need to monitor each project effectively**.
- Provide **training and support to civil society, parliamentarians, local community groups** to improve their ability to oversee the activities of GIROA with respect: to local community engagement; to the identification, minimisation and mitigation of potential project impacts; and, crucially, to exploitation decisions.
- Incorporate **assessment and open and independent monitoring benchmarks** within their donor management and evaluation frameworks.

Conclusion

The significance of the Aynak project for Afghanistan's future is pivotal. Managed well, it could yield major economic and social benefits for years to come. Managed badly, it could seriously undermine long-term security and development, and set a poor precedent for much needed future foreign direct investment. As this analysis demonstrates, one of the foundation 'building blocks' for this project – its contract – needs to be strengthened. The GIRoA, the Consortium, and the international and local communities all have a role to play in ensuring the project becomes a truly 'win-win' for all concerned. President Karzai has made a strong stand for accountability and good governance through his recent decree mandating full contract transparency, and we urge him and the government he leads to continue the work necessary to fully realise these goals. **The first step should be the publication of the full and final Aynak contract and all associated agreements.**

Beyond Aynak, the pressure to find an answer to Afghanistan's post-transition funding gap is driving an expedited schedule of concession awards. Over the last year, a series of concession contracts have been agreed,^{ff} and more are set to follow in the coming months. At the same time, the Aynak project

demonstrates clearly the complexities of developing extractive industries in an environment of ongoing instability. It is crucial that these lessons are not lost under the pressure to bring in domestic revenues quickly. Conversely, if lessons can be learned, and processes strengthened, the knock-on impact for the national and private revenue would be positive. Now is the time for Afghanistan to build positively upon the experience it has gained through Aynak.

GIRoA has the opportunity now to chart a narrative for the future of Afghanistan post-transition. Building on the landmark commitments to good governance made at the Bonn and Tokyo conferences, GIRoA can work with its international partners to set the benchmarks essential to developing a sector which truly benefits the Afghan people. As the international community continues to transition out of Afghanistan, there is a golden opportunity to leave a positive legacy. By putting the extractives industries on the right path, Afghanistan can take advantage of international support and training to build Afghan capacity during this critical period and pave the way to an independent and prosperous future. Afghanistan and its partners should do all they can to make sure this happens.



President Karzai (front right) and then Chinese President Hu Jintao (front left) at welcoming ceremony in Beijing in honour of President Karzai's visit to China in June 2012. (Credit: AP/Press Association).

ff: Contracts awarded over the past 18 months include the Qara-Zaghan gold concession in Baghlan province, the Herat cement contract, Gadakhil chromite concession in Parwan province, the Angot oil field concession in Sar-e-Pol province and an oil contract for three blocks of the Amu Darya basin in north-western Afghanistan.

Appendix 1: Table of Aynak bids

Ministry of Mines comparative table of bids for the Aynak project including the Consortium's winning bid

Company	MCC [the Consortium]	Hunter Dickinson Inc.	Kazakhmys Corporation, LLC	Phelps Dodge Corporation, LLC	Strikeforce Limited Cyprus
Total Investment	2.9 Billion USD	1.7 Billion USD	2.2 Billion USD	0.9 Billion USD	2.4 Billion USD
Production Process (Phases)	All production Concentration, Smelting, and Cathode Copper to be Processed in Afghanistan	Initial Production of Concentration and Cathode Cu via SX/EW in Afghanistan, Potential for Proprietary Concentration Leach	All Production-Smelting, and Cathode Copper to be Processed in Afghanistan	Initial Production of Concentration and Cathode Cu via SX/EW in Afghanistan, Potential for Proprietary Concentration Leach	Production of Concentration in Afghanistan
Start of Production	Initial Heap Leach, SX/EW, Year Five, Based On REF Year Six	Year Seven	2 Years Heap Leach 4 Years Concentration	Year Six	Year Four
Maximum Royalty Percentage	19.5%	15%	18.1%	12.5%, Capped at 100 M USD/year	7,5%
Energy Production	400 Mw	100 Mw	350 Mw	15 Mw	Import Power from outside
Environment	World Bank Equator Standards	World Bank Equator Standards	No Commitment	World Bank Equator Standards	World Bank Equator Standards
Bonus to Government of Afghanistan in Millions	\$808 3 Installments	\$100 Multiple Installment	\$2 1 installment	\$243 Multiple Installment	\$238 Multiple Installment
Infrastructure (Railway Investment)	Yes	No	Yes	No	No

Appendix 2: Public information on Aynak contractual terms¹⁹⁴

Economic provisions

- Consortium committed to \$808 million in timed cash payments mapped to development benchmarks:
 - \$80.8 million at award in September 2008;
 - \$161.6 million payable upon approval of the bankable feasibility study; and
 - \$565.6 million upon commencement of commercial production.
- Maximum royalty percentage: 19.5%.
- Total company investment: \$2.9 billion.

Social provisions

The Consortium's commitments on social and infrastructure development in the project area include:

- *Resettlement and compensation plan:*
 - The Consortium is required to compensate local residents adversely affected by mine development activities at or in the vicinity of Aynak.
 - Compensation will be determined based on the applicable Aynak laws and internationally accepted principles.
 - The residents will be properly resettled in a location and in a condition that does not result in diminished of the resettled resident's standard of living or adversely impact the resident's livelihood.
 - Such resettlement shall be conducted in accordance with World Bank Resettlement Guidelines.
 - To address the impact of mine development and operations on surrounding villages and residents, the Consortium in consultation with government, will develop and finance an aid program established for the benefit of the surrounding villages and residents.
- *Local and regional benefits:*
 - In order to adequately address the social impacts of the project and to maximise and sustain the regional economic and social benefits which the project will generate, the Consortium is required to coordinate all

of its studies of the project's infrastructure requirements impacts with infrastructure studies undertaken by the Government with a view toward integration of the infrastructure of the Consortium's operations with that of the province, region and country.

- The Consortium will also assist and advise the Government in its planning of the infrastructure and regional development which will be useful to the project and for economic development in the region.

- *Housing and medical facilities:*
 - The Consortium shall provide housing facilities for its employees and their immediate families at a reasonable rate.
 - The precise number, type and location of such housing facilities shall be determined through social impact assessment prepared by MCC and in consultation with government.
 - The Consortium is also required to provide free medical care and attention to its employees and their families and to all Government officials working in the area covered by the contract.
 - The Consortium will establish staff and maintain adequate dispensary, clinic and hospital facilities.
- *Schools:*
 - The Consortium will provide, free of charge, adequate primary and secondary school education for the children of all employees, and residents of the area surrounding Aynak as specified in the social impact assessment.
 - The Consortium will construct adequate schools to provide primary and secondary education.
 - The Consortium will provide adequate nursery and kindergarten facilities for its employees' use.
- *Entertainment and shopping:*
 - The Consortium in consultation with concerned government officials will construct and fund the operation of adequate recreational activity centres such as gymnasiums and sports fields for the use of employees and local residents.
 - The Consortium is required to construct a market/shopping area for the use and convenience of employees and local residents.

- The Consortium shall provide employees and their families with special places to conduct their religious activities.
- *Employment of Afghan nationals:*
 - For Aynak project operations, the Consortium is required to employ Afghan personnel to the maximum extent possible.
 - This includes employing 100% Afghanistan nationals as unskilled labour.
 - Fixed percentages of all positions in each employment classification viz. skilled, clerical, technical and managerial will be held by Afghanistan nationals.
- *Training:*
 - The Consortium shall make arrangements for the training of local manpower^{gg} in order to improve their skills and enable them to be qualified as skilled, supervisory, technical and managerial positions in the project.
 - For this purpose, the Consortium will establish an adequate facility for vocational training.
 - The Consortium will help to establish and cooperate in a program of foreign scholarships for Afghan nationals and grants to educational institutions of Afghanistan.
- *Employee accident compensation:*
 - The Consortium will provide for the medical and rehabilitation costs for any employee working for the Consortium if he is injured while performing duties in the project.
 - Injured employees will be entitled to return to the same or similar positions following recovery from injury.
 - In the event that an employee is killed performing duties in the project, The Consortium shall be responsible for the payment of an adequate death benefit to the immediate family of the deceased employee.
- *Access road:^{hh}*
 - The Consortium will construct an access road from Main Kabul-Logar road to Aynak mine area.
 - This will help the local communities in their responsibilities to Logar and other areas.

Ancillary agreementsⁱⁱ¹⁹⁵

From May 2008 to August 2010, the Ministry of Mines with Gustavson's assistance negotiated with the Consortium and signed 5 ancillary agreements including contracts dealing with security, water, power and coal mines, other minerals and a railway.

- *Railway:*
 - The railway agreement commits the Consortium to build a railway servicing the Aynak project and many other parts of Afghanistan.
 - The agreement is predicated on the final feasibility study of the railway and an agreement to be negotiated on cost-sharing and shared-access issues.
 - The Consortium is committed to construct, at its expense, a railway associated with the project.
 - The railway line will help in better communication and economic development in the Aynak area thereby benefiting residents of the area.
- *Power supply:*
 - The Consortium will construct a 400 megawatt capacity coal fired plant to supply electrical power to the plant and to Kabul. This power supply will also help in electrification of the areas around Aynak.
 - The power and coal mining ancillary agreement memorializes the mandate for the Consortium to build and operate a 400 megawatt coal fired power plant and the coal mine to feed it.
 - Transmission lines will be constructed to deliver 200 megawatts to Aynak while the other 200 megawatts will be distributed on the national grid for use by rate payers.
- *Water supply:*
 - The Consortium will construct water supply wells and pipeline systems in the vicinity of the project to supply the project's fresh water requirements.
 - This will help to develop local water sources.
 - The Consortium will provide other water supply facilities including dams, pumping stations, purification systems and distribution lines. This will help to improve overall water availability situation to the villages in Aynak.

gg: It should be noted that the contract refers to "the training of suitable persons of Afghanistan citizenship" not "local manpower". It may be that it has been agreed post-contract to focus training opportunities on local community members but, if so, this should explicitly stated and details provided of who exactly is covered by the term "local manpower".

hh: There is no reference to an access road within the main Aynak contract that Global Witness has reviewed. Details of the agreement for the access road should be made public including details of the fee to be charged for this work, and any commitments to ensure that the local community has free and unrestricted access to the road.

ii: These ancillary contracts have not been made public, nor has Global Witness seen copies of them. Consequently, the public statements on what the terms of these ancillary contracts are cannot be checked.

Appendix 3: The Consortium relations with local community

In a letter dated 28 April 2012, the Consortium provided details to Global Witness of its relations with the community local to Aynak, as follows:

- The Consortium has carried out systematic consultation with the local community likely to be affected by project activities before, during and since the agreement of the Aynak Mining Contract. For example, the Consortium has authorized HBP to carry out ESIA for the Project, one important component of which is social effect assessment, including interview with residents from villages and tribes around Aynak mine, frequently calling for elders meetings to listen to local elders' opinions and suggestions on project progress, local employment and training etc.
- The Consortium is not contractually required to carry out human rights assessments for the project. However, the contracting parties have made specific provisions on project employee's safety, life, project environment protection, local employment etc.
- The Consortium and local communities get along harmoniously. No complaints in relation to the project from local communities have been received till present.
- The Consortium has met with members of the community where specific areas of local concern have arisen. For example, in relation to project activities impacting on a local cemetery.
- As per the Mining Contract, the Consortium is required to employ local staff during construction and production period both and different employment ratios are clearly specified in the Mining Contract for different periods. At present both parties have strictly performed Mining Contract.
- The number of the Consortium's current Afghan employees is about 260. They are employed as management personnel, translators, drivers, cooks, internal police and cleaners on 1 year contracts and will be yearly renewed, temporary workers are on 3 months' contracts. The Consortium will notice Afghan employees of contract termination in advance and process contract termination procedure according to Afghanistan labour law and related provisions.
- Until March 31, 2012, all together about 260 Afghan employees are employed on full time contract. The salary varies from 300USD to 2500USD as per complexity of work and technical or management requirements. Some of the employees are middle and high-level management personnel with higher salary. The Afghan employees at Aynak site are recruited from 29 tribes around the Mine, and the employees in Kabul are mostly Kabul citizens. They are employed as management personnel, translators, drivers, labourers, and helpers. As the project has not official started yet, the jobs available now are mostly temporary facility construction.
- The Consortium is currently providing training courses for Afghan staff to teach them technology, management, finance, production and Mandarin.
- The Consortium has carried out a full time basic technique-training programme on copper resource exploitation for 20 people for 3 months from July to October 2011, which is fully paid by the Consortium. The Consortium plans to train 90 persons in 2012, and the first class for 30 persons started on April 15, 2012. The beneficiaries are recommended by local government and tribal elders, and selected after interview by the Consortium. This training programme will be continuously carried out with the project construction progresses.
- The Consortium is currently preparing to provide training for 6 officials from MOM on environmental protection and assessment by sending them to Jiangxi Copper Company Limited to take professional training from China's related environmental protection department. The training is now being prepared and processed at present. The beneficiaries are selected by Afghanistan.
- The social package for the project includes the establishment of educational, medical, entertainment, facilities, and religious places which will be paid for by the Consortium. As per Mining Contract, the Consortium shall listen to local government and tribes' opinions before these facilities are constructed and the Consortium will gradually perform these obligations with full commencement of the project.
- The Consortium has provided necessary work safety protective appliances and medical care services for the Consortium employees. As for more educational, medical, entertaining and shopping facilities to be provided in the next phase, and allotment of these facilities, the Consortium will implement itemwise as per the Mining Agreement. The Consortium plans to establish one mosque or school for locals this year and is now in consultation with local government and elders.
- The Consortium respects and understands the government's efforts on cultural relics protection and is willing to do our best to provide assistance. In the earlier stage, we had provided necessary facilities and tools for cultural relics excavation such as containers, generator, camera, walkie-talkies, tents etc. to the workers and we had also provided accommodation and dining room for the experts.

Endnotes

1. Global Witness, *Getting to Gold: How Afghanistan's first mining contracts can support transparency and accountability in the sector*, April 2012. Available at http://www.globalwitness.org/sites/default/files/library/Getting%20to%20Gold_1.pdf.
2. World Bank, *Afghanistan in Transition: Looking Beyond 2014, Volume 2*, May 2012. Available at <http://siteresources.worldbank.org/AFGHAN-ISTANEXTN/Images/305983-1334954629964/AFTransition2014Vol2.pdf>. [Accessed: 19 June 2012].
3. Stanley, M. and Ekaterina, M., *Mineral Resource Tenders and Mining Infrastructure Projects Guiding Principles. Case Study: The Aynak Copper Deposit, Afghanistan*, September 2011, World Bank. Available at <http://siteresources.worldbank.org/INTOGMC/Resources/EIT122weboct17.pdf>. [Accessed: 5 July 2012].
4. State Council of the People's Republic of China, *Nine Principles on Encouraging and Standardizing Foreign Investment*, 25 October 2007. Unofficial translation available from http://www.kongo-kinshasa.de/dokumente/ngo/gw_gui_0311_en.pdf.
5. Institute for the Study of the Ancient World. *New Archaeological Discoveries in Afghanistan: Mes Aynak, Tepe Naranj and Buddhist Art of the Kabul River Valley*, November 2011, New York University. Available at <http://isaw.nyu.edu/events/archive/new-archaeological-discoveries-in-afghanistan-mes-aynak-and-the-buddhist-art-of-the-kabul-river-valley>. [Accessed: 13 August 2012].
6. Zelikow, P. et al., *The 9/11 Commission Report*, 2004, National Commission on Terrorist Attacks Upon the United States. Available at http://live.belfercenter.org/publication/1941/911_commission_report.html?breadcrumb=%2Ftopic%2F2%2Fnuclear_issues%3Fgroupby%3D0%26%3D%26filter%3D1983. [Accessed: 29 September 2011].
7. Shahrani, M., *Mining Investors' Forum for Afghanistan, Brussels. Outlook for the Mining Industry in Afghanistan*, [presentation], 26 October 2011. Available at <http://mom.gov.af/Content/files/Minister's%20Presentation%20in%20Brussel%20on%20Outlook%20for%20the%20Mining%20Industry%20in%20Afghanistan,%20Oct%202011.pdf>. [Accessed: 13 August 2012].
Ministry of Mines, *Mes Aynak Development and Progress Matrix, Activities and Progress to date*, July 2012.
8. This foreign aid figure relates to civilian and security-related aid but excludes expenditure on international military forces.
World Bank, *Afghanistan in Transition: Looking Beyond 2014, Volume 2*, May 2012. Available at <http://siteresources.worldbank.org/AFGHAN-ISTANEXTN/Images/305983-1334954629964/AFTransition2014Vol2.pdf>. [Accessed: 19 June 2012].
9. Ibid.
10. World Bank, *Afghanistan: Resource Corridor, Technical Summary* [presentation], July 2012. Available at <http://siteresources.worldbank.org/SOUTHASIAEXT/Resources/223546-1328913542665/8436738-1341156360475/Afghanistan-Resource-Corridors-Technical-Summary.pdf>. [Accessed: 28 July 2012].
Hormats, R.D., *The United States' "New Silk Road" Strategy: What is it? Where is it headed?*, 29 September 2011, US Department of State. Available at <http://www.state.gov/e/rls/rmk/2011/174800.htm>. [Accessed: 27 July 2012].
11. GfR Media and Information Center, *30 per cent of Afghanistan's soil mineral reserves worth three trillion USD*, [press release], January 2011. Available at http://www.gmic.gov.af/english/index.php?option=com_content&view=article&id=174:30-percent-of-afghanistans-soil-mineral-resources-worth-three-trillion-usd-&catid=38:news&Itemid=87. [Accessed: 19 June 2012].
Task Force for Business Stability and Operations, *Afghan Economic Sovereignty: Establishing a Viable Nation*, June 2010. Available at <http://www.defense.gov/news/d2010614slides.pdf>. [Accessed: 17 January 2011].
Shahrani, W., *Mineral Resources of Afghanistan, Driver for Regional Economic Development*, [presentation], June 2011. Available at <http://mom.gov.af/Content/files/Mineral%20Resources%20of%20Afghanistan%20Driver%20for%20Regional%20Economic%20Development.pdf>. [Accessed: 5 September 2011].
12. World Bank, *Afghanistan in Transition: Looking Beyond 2014, Volume 2*, May 2012. Available at <http://siteresources.worldbank.org/AFGHANISTANEXTN/Images/305983-1334954629964/AFTransition2014Vol2.pdf>. [Accessed: 19 June 2012].
13. Ibid.
14. DuPee, M., *Afghanistan's Conflict Minerals: The Crime-State-Insurgent Nexus, Combating Terrorism Center at West Point*, February 2012. Available at <http://www.ctc.usma.edu/posts/afghanistans-conflict-minerals-the-crime-state-insurgent-nexus>. [Accessed: 23 March 2012].
US Department of Defense, *Report on Progress Toward Security and Stability in Afghanistan*, November 2010. Available at http://www.defense.gov/pubs/November_1230_Report_FINAL.pdf. [Accessed: 4 July 2012].
Tolo News, *Chromite daily smuggled out of Afghanistan*, 5 September 2010. Available at <http://www.tolonews.com/en/business/458-tonnes-of-chromite-daily-smuggled-out-of-afghanistan->. [Accessed: 4 July 2012].
Pakistan Tribune, *Plunder of gold, uranium reserves continues unabated*, 8 September 2005. Available at <http://www.pajhwok.com/en/2005/09/07/plunder-gold-uranium-reserves-continues-unabated>. [Accessed: 4 July 2012].
15. Corbett, A., *Afghanistan Peace and Reintegration Program* [presentation], March 2012, Force Reintegration Cell, NATO ISAF HQ.
ISAF, *ISAF Reintegration Guide*, November 2010, Force Reintegration Cell, NATO ISAF HQ. Available at <http://info.publicintelligence.net/ISAF-ReintegrationHandbook.pdf>. [Accessed: 28 June 2012].
16. Mom.gov.af, *World Bank Support to Ministry of Mines and British Government's Department for International Development (DFID)* [online], undated. Available at <http://mom.gov.af/en/page/6821> and <http://mom.gov.af/en/page/1403>. [Accessed: 5 July 2012].
usgs.gov, *USGS Projects in Afghanistan: A Brief History*, [online], undated. Available at <http://afghanistan.cr.usgs.gov/background>. [Accessed: 5 July 2012].
tfbs.defense.gov, *About Us* [online], undated. Available at <http://tfbs.defense.gov/www/about.aspx>. [Accessed 19 August 2012].

- Consortium GIZ-IS/Projekt Consult, *Implementation of Capacity Building Measures in the Afghanistan Geological Survey*, undated. Available at <http://mom.gov.af/Content/files/Capacity%20Building%20in%20the%20Afghan%20Geological%20Survey.pdf>. [Accessed: 5 July 2012].
- Ellison, R., *Open report OR/11/038, Report on the BGS work in Afghanistan 2004-2008. Prepared for the visit of H.E. Minister Shahrani to BGS, 22 June 2010. British Geological Survey Project on Institutional Strengthening of the Afghanistan Geological Survey 2002-2008*, June 2010. Available at <http://nora.nerc.ac.uk/14493/1/OR11038.pdf>. [Accessed: 5 July 2012].
17. On 8 July 2012, the Afghan government and the international community met to set out their joint commitments during the 'transformation decade' of 2015 to 2024. The text of the Tokyo Declaration agreed at the conference is available at <http://president.gov.af/Content/files/Tokyo%20Declaration%20-%20Final%20English.pdf>. [Accessed: 8 July 2012].
 18. Office of the President, *Decree on the execution of content of the historical speech of June 21, 2012 in the special session of the National Assembly*, July 2012. Available at <http://president.gov.af/Content/files/Final%20Dari%20version%20of%20Decree.pdf>. [Accessed: 31 July 2012].
 19. Mof.gov.af, *Ministries of Finance and Mines partner for increased revenue and fighting corruption*, February 2011. Available at <http://mof.gov.af/en/news/529>. [Accessed: 5 September 2011].
 20. Ibid.
 21. Shahrani, W., *Natural Resource Charter, Presentation, Annual Technical Workshop Plenary Session* [presentation], June 2011.
 22. Shahrani, W., *Mineral Resources of Afghanistan, Driver for Regional Economic Development*, [presentation], June 2011. Available at <http://mom.gov.af/Content/files/Mineral%20Resources%20of%20Afghanistan%20Driver%20for%20Regional%20Economic%20Development.pdf>. [Accessed: 5 September 2011].
 23. Engel, N, *New excavations in Afghanistan, Mes Aynak*. 2011, DAFA Available at <http://nationalmuseum.af/images/stories/PDF/mes%20aynak.pdf>. [Accessed: 13 August 2012].
 Ministry of Mines, *Rapid Archeological Assessment of Aynak Ancient Sites* [online], 2011. Available at http://mom.gov.af/Content/files/Aynak_Archeological_Assessment-Final.pdf. [Accessed: 28 August 2011].
 24. Letter from MJAM to Global Witness dated 28 April 2012 confirming that the 'Aynak project is held by the joint-venture company MCC-JCL Aynak Minerals Company Limited (MJAM)'.
 25. On its corporate website, MJAM notes that President Karzai commented at the inauguration of the project that MJAM " ... was selected as a preferred bidder in (sic) transparent bidding process. The Contract was signed according to the laws of Afghanistan and international practices. See MCC.com.cn, *Aynak Project Forges Ahead Despite Difficulties* [online], 21 November 2009. Available at <http://www.mcc.com.cn:8018/english/ShowArticle.asp?ArticleID=43367>. [Accessed: 7 September 2011].
 Similarly, the Ministry of Mines website contains descriptions of the Aynak bidding process which emphasise its transparency and conformance with international best practice. Ministry of Mines, *Aynak Tender Process History* [online]. Available at <http://mom.gov.af/en/page/1401>. [Accessed: 20 July 2011].
 26. Yeagar, J., *Implications for Afghanistan and the West*, October 2009. Available at <http://www.scribd.com/doc/22004530/The-Aynak-Copper-Tender-Implications-for-Afghanistan-and-the-West> <http://www.washingtonpost.com/wp-dyn/content/article/2009/11/17/AR2009111704198.html>. [Accessed: 26 September 2011].
 Partlow J., *Afghan minister accused of taking bribe*, November 2009. Available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/11/17/AR2009111704198.html>. [Accessed: 26 September 2011].
 27. British Geological Survey, *Progress in Afghanistan: Aynak Copper Tender Commences*. [press release], 2006. Available at http://www.bgs.ac.uk/afghanminerals/docs/tenders/Aynak/Aynak_tender_announcement.pdf. [Accessed: 5 September 2011].
 28. This figure is based on the price of copper in September 2010.
 Ministry of Mines, *Note on Resettlement of People Affected by Mining at Aynak*, March 2010. Available at http://mom.gov.af/Content/files/Resettlement_of_People_Affected_by_Mining_in_%20Aynak.pdf. [Accessed: 28 June 2012].
 29. The Ministry of Mines has published on its website a *Comparative Table of Bidding Companies for (Aynak Copper Mine)*, which puts the value of MJAM's original proposed investment at \$2.9 billion. Available at <http://mom.gov.af/Content/files/List%20of%20Companies%20for%20Aynak.pdf>. [Accessed 7 July 2011].
 More recent statements, however, suggest that the capital investment may be as much as US \$5 billion. See, for example, the June 2011 London presentation by Minister Shahrani, available at <http://mom.gov.af/Content/files/Mineral%20Resources%20of%20Afghanistan%20Driver%20for%20Regional%20Economic%20Development.pdf>. [Accessed 5 September 2011].
 Adding in proposed investments in infrastructure and operations in connection with the project (railway building, coal mine exploitation and power plant and steel works construction) is reported to bring the total investment up to \$10 billion. Huasheng, Z., *China and Afghanistan: China's interests, stances and perspectives*, March 2012, Center for International and Strategic Studies. Available at http://csis.org/files/publication/120322_Zhao_ChinaAfghan_web.pdf [Accessed: 19 July 2012].
 30. Ibid.
 31. Plenary Meeting of Council of Minister Meets, *Bakhtar News Agency*, 13 September 2011. Available at <http://bakhtarnews.com.af/en/index.php?news=6507>. [Accessed: 20 September 2011].
 Report of rocket attacks and abduction threats confirmed in letter from MJAM to Global Witness dated 28 April 2012.
 China Daily, *Copper deal helps Afghan's future*, 21 September 2011. Available at http://www.chinadaily.com.cn/usa/china/2011-09/21/content_13745143.htm. [Accessed 26 September 2011].
 See also *Aftenposten*, "15.10.2009: Security and Social Issues at the Aynak Copper Mine", January 2011. Available at <http://www.aftenposten.no/spesial/wikileaksdokumenter/article3992389.ece>. [Accessed: 7 June 2011].
 32. Yam, P., *Jiangxi Copper hopes Afghan, Peru mines to start in 2014-2016*, 28 March 2012, Reuters. Available at <http://www.reuters.com/assets/printaid=USL3E8ES2M20120328>. [Accessed: 25 May 2012].
 33. The Sustainability Framework produced by the International Finance Corporation consists of: (1) the Policy on Environmental and Social Sustainability; (2) Performance Standards; (3) Guidance Notes; and (4) Environmental, Health and Safety Guidelines. The 2012 Edition of the Framework is available at http://www1.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+Sustainability/Risk+Management/Sustainability+Framework/Sustainability+Framework++2012/#AIP.

34. International Council of Mining and Metals, *Sustainable Development Principles*, 2003 – as clarified by subsequent position statements. Available at <http://www.icmm.com/our-work/sustainable-development-framework/10-principles>.
 35. The *Natural Resource Charter* is made up of 12 precepts for governments and societies on how best to manage the opportunities created by natural resources for development, and with suggested strategies to increase the prospects of sustained economic development for natural resource exploitation. Available at <http://naturalresourcecharter.org/>.
 36. The *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* were proposed by UN Special Representative John Ruggie and endorsed by the United Nations Human Rights Council in 2011. Available at <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>.
 37. International Bar Association, *Model Mine Development Agreement 1.0*, 4 April 2011. Available at http://www.mmdaproject.org/presentations/MMDA1_0_110404Bookletv3.pdf.
 38. The Voluntary Principles on Security and Human Rights is an initiative established in 2000 by governments, NGOs and companies to provide guidance to extractive companies on maintaining the safety and security of their operations within an operating framework that ensures respect for human rights and fundamental freedoms. Available at <http://www.voluntaryprinciples.org/principles/index.php>.
 39. OECD, *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*, 2011. Available at <http://www.oecd.org/dataoecd/62/30/46740847.pdf>.
 40. Environmental Law Alliance Worldwide. *Guidebook for Evaluating Mining Project EIAs*, July 2010. Available at <http://www.elaw.org/files/mining-eia-guidebook/Full-Guidebook.pdf>. [Accessed: 20 July 2012].
 41. These are the principles produced by the International Association for Impact Assessment, the global network on the use of impact assessment, available at www.iaia.org.
 42. Miranda, M. et al., *Framework for Responsible Mining: A Guide to Evolving Standards*, 19 October 2005. Available at http://www.framework-forresponsiblemining.org/pubs/Framework_20051018.pdf.
 43. Global Witness meeting with Minister Shahrani in April 2011.
 44. Global Witness meetings with Ministry of Mines staff and advisors in October 2011.
 45. Global Witness review of website of international advisor concerned, and exchanges with the advisor and with the Ministry of Mines, July and August 2012.
 46. Ministry of Mines, *Aynak Tender Process History and Executive Summary Regarding Tender Process of Aynak Copper*, [online], undated. Available at <http://mom.gov.af/en/page/1401> and <http://mom.gov.af/en/page/1392> respectively. [Accessed: 20 July 2011]. See Annex 1 to the Summary for the Comparative Table of Bidding Companies for Aynak.
 47. Ministry of Mines, *Executive Summary Regarding Tender Process of Aynak Copper* [online], undated. Available at <http://mom.gov.af/en/page/1392>. [Accessed: 20 July 2011].
- International Advisory Council on Sustainable Resource Development for Afghanistan, *Fairness Opinion on the Aynak Mining Contract*, 14 July 2009.
48. Rosenblum P. & Maples S., *Contracts Confidential: Ending Secret Deals in the Extractive Industries*, 2009. Revenue Watch Institute. See Pages 44 and 45 for background on BTC contract disclosure. Available at <http://www.revenuewatch.org/files/RWI-Contracts-Confidential.pdf>. [Accessed: 9 September 2011].
- Heller, P., *An Emerging Norm of Contract Transparency*, October 2011. Available at: <http://www.revenuewatch.org/news/blog/emerging-norm-contract-transparency>. [Accessed 29 June 2012].
- Pellegrini, M., *Promoting Contract Transparency*, December 2011. Available at: http://www.revenuewatch.org/sites/default/files/RWI_Parliamentary_Briefing_ContractTransparency.pdf. [Accessed: 29 June 2012].
- Revenue Watch Institute, *Revenue Watch Index. Transparency: Governments and the Oil, Gas and Mining Industries*, 2010. [Available at: http://www.revenuewatch.org/rwindex2010/pdf/RevenueWatchIndex_2010.pdf. [Accessed: 29 June 2012].
49. Revenue Watch Institute, *New Niger Constitution Includes Landmark Transparency Measures*, 5 November 2010. Available at: <http://www.revenuewatch.org/news/new-niger-constitution-includes-landmark-transparency-measures>. [Accessed: 29 June 2012].
- Ministry of Mines, *Summary of the contract for prospecting, exploration and exploitation of the Qara-Zaghan gold mine in Doshi district in Baghlan province between the Ministry of Mines and Afghan Krystal Natural Resources Company*, 16 January 2011. Available at <http://mom.gov.af/Content/files/Summary-of-QaraZaghan-Gold-Contract-En-16012011.pdf> [Accessed: 18 January 2012].
50. For further details, see *Global Witness, Global Witness welcomes DR Congo's decision to publish resource contracts* [press release], 3 June 2011. Available at <http://www.globalwitness.org/library/global-witness-welcomes-dr-congo%E2%80%99s-decision-publish-resource-contracts>. [Accessed: 8 September 2011].
 51. The *Act Establishing the Liberia Extractive Industry Transparency Initiative* was approved on 10 July 2009. It is available at <http://www.leiti.org/lr/doc/act.pdf>. [Accessed: 29 June 2012].
 52. Rosenblum P. & Maples S., *Contracts Confidential: Ending Secret Deals in the Extractive Industries*, 2009, Revenue Watch Institute. See Pages 44-45 for background on BTC contract disclosure. Available at <http://www.revenuewatch.org/files/RWI-Contracts-Confidential.pdf>. [Accessed: 9 September 2011].
 53. See Precept 2 (accountability) of the Natural Resource Charter. Available at <http://naturalresourcecharter.org/content/precepts/precept-2>. [Accessed: 13 August 2012].
 54. Ministry of Mines, *Qara Zaghan Gold Project Contract between Afghan Natural Resources Company and the Ministry of Mines*, 10 January 2011. See Article 14(1). Available at: <http://mom.gov.af/Content/files/QaraZaghan-Contract-2.pdf>.
- Ministry of Mines, *Summary of the contract for prospecting, exploration and exploitation of the Qara-Zaghan gold mine in Doshi district in Baghlan province between the Ministry of Mines and Afghan Krystal Natural Resources Company*, 16 January 2011. Available at <http://mom.gov.af/Content/files/Summary-of-QaraZaghan-Gold-Contract-En-16012011.pdf> [Accessed: 18 January 2012].
55. Ministry of Mines, *Mining for Sustainable Development of Afghanistan, Resettlement Action Plan*, January 2012. Available at <http://mom.gov.af/en/announcement/10786>. [Accessed 29 May 2012].
 56. Rosenblum P. & Maples S., *Contracts Confidential: Ending Secret Deals in the Extractive Industries*, 2009, Revenue Watch Institute. See Pages 44-45 for background on BTC contract disclosure. Available at <http://www.revenuewatch.org/files/RWI-Contracts-Confidential.pdf>. [Accessed: 9 September 2011].

57. MercoPress, *Peru announces 28bn dollars in mining projects despite growing social unrest*, 18 June 2012. Available at <http://en.mercopress.com/2012/06/18/peru-announces-28bn-dollars-in-mining-projects-despite-growing-social-unrest>. [Accessed: 5 July 2012].
58. Mof.gov.af, *Ministries of Finance and Mines partner for increased revenue and fighting corruption*, [online], 1 February 2011. Available at <http://mof.gov.af/en/news/529>. [Accessed: 5 September 2011].
59. Shahrani, W., Natural Resource Charter, *Annual Technical Workshop Plenary Session* [presentation]. June 2011.
60. For further information on elite capture of valuable contracts in Afghanistan, see The Recovery & Development Consortium, *Growth Diagnostic Scoping Study Final Report – Technical*, November 2008. Available at http://s3.amazonaws.com/zanran_storage/www.cowiprojects.com/ContentPages/810523786.pdf. [Accessed 26 September 2011].
61. The Republic of South Sudan, Petroleum Act 2012, Article 79.
62. Global Witness, *Rigged: The Scramble for Africa's Oil Gas and Minerals*, February 2012. Available at <http://www.globalwitness.org/rigged/index.html>. [Accessed 5 July 2012].
Global Witness, *Diamonds: A Good Deal for Zimbabwe*, February 2012. Available at http://www.globalwitness.org/sites/default/files/library/A%20GOOD%20DEAL%20FOR%20ZIMBABWE_0.pdf. [Accessed: 5 July 2012].
63. US Commission on Wartime Contracting, *Transforming Wartime Contracting. Controlling costs, reducing costs*, 31 August 2011. Available at <http://www.wartimecontracting.gov/index.php/reports>. [Accessed: 25 September 2011].
US House of Representatives Subcommittee on National Security and Foreign Affairs, *Warlord, Inc. Extortion and Corruption Along the US Supply Chain in Afghanistan*, June 2010. Available at http://www.cbsnews.com/htdocs/pdf/HNT_Report.pdf. [Accessed: 25 September 2011].
64. Global Witness meeting with Minister Shahrani in April 2011.
Global Witness meeting with Task Force for Business Stability and Operations in June 2012.
Mayer Brown, Afghanistan Mineral Tender Project Support. Increasing Global Presence/Executing a Transparent Tender Process [presentation], June 2011.
65. International Advisory Council on Sustainable Resource Development for Afghanistan (IAP), *Fairness Opinion on the Aynak Mining Contract*, July 2009.
66. Exhibit III to the Equator Principles of July 2006 has been updated this year to take account of amendments to the IFC Performance Standards which underpin the Equator Principles and which were updated and re-launched in January 2012. The current version of the Equator Principles is available at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2011/05/15/000333037_20110515234914/Ren-dered/INDEX/613970JPROP110e0only0900BOX358355B.txt.
The Equator Principles themselves are currently being updated, following a review of key thematic areas including human rights, reporting and transparency, stakeholder engagement and governance. For further details, see *About Equator Principles (EP III) Update Process and Timeline* at <http://www.equator-principles.com/index.php/ep3/process-and-timeline>.
67. MCC, *Social Responsibility Report 2010*, 31 December 2010. Available at <http://www.mcc.com.cn/UploadFiles/ZSSCWDBCQWS/2011/2/20111221406199711.pdf>. [Accessed: 18 July 2012].
68. FG Hemisphere Associates LLC v Democratic Republic of Congo and others [2009] 43 CACV. Available at http://www.360doc.com/content/11/10/13/22/747074_155878287.shtml. [Accessed: 17 August 2012].
69. The principle of absolute sovereign immunity in China was considered most recently on 7 June 2011 in the case of *Democratic Republic of the Congo v FG Hemisphere Associates LLC* (FACV Nos 5, 6 & 7 of 2010).
70. Ministry of Mines, *Mining for Sustainable Development of Afghanistan, Resettlement Action Plan*, January 2012. Available at <http://mom.gov.af/en/announcement/10786>. [Accessed: 29 May 2012].
71. Material taken from the World Food Programme Logar profile, in turn taken from the Ministry of Rural Rehabilitation and Development, *Provincial Development Plan, Logar Provincial Profile*. Available at <http://www.foodsecurityatlas.org/afg/country/provincial-Profile/Logar>. [Accessed: 14 August 2011].
72. Wiley, L.A., *Land Rights in Crisis: Restoring Tenure Security in Afghanistan*, March 2003, Afghanistan Research and Evaluation Unit. Available at <http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan016656.pdf>. [Accessed: 15 September 2010].
UNHRC, *National Report Submitted in accordance with paragraph 15(a) of the annex to Human Rights Council Resolution 5/1*, 24 February 2009. Available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/AF/A_HRC_WG6_5_AFG_1_E.pdf. [Accessed: 15 September 2011].
73. Material taken from the World Food Programme Logar profile, in turn taken from the Ministry of Rural Rehabilitation and Development. *Provincial Development Plan, Logar Provincial Profile*. Available at <http://www.foodsecurityatlas.org/afg/country/provincial-Profile/Logar>. [Accessed: 14 August 2011].
74. Integrity Watch Afghanistan, *Aynak Copper Mine, Opportunities and Threats for Development from a Sustainable Business Perspective*, August 2007. Available at <http://www.iwaweb.org/reports/PDF/TheAynakCopperMineAssessmentofThreatsAndOpportunitiesForDevelopment2008.pdf>. [Accessed: 14 July 2011].
75. China Daily, *Copper deal helps Afghan's future*, 21 September 2011. Available at http://www.chinadaily.com.cn/usa/china/2011-09/21/content_13745143.htm. [Accessed: 26 September 2011].
76. Ministry of Mines, *Mining for Sustainable Development of Afghanistan, Resettlement Action Plan, January 2012*. Available at <http://mom.gov.af/en/announcement/10786>. [Accessed: 29 May 2012].
77. Ministry of Mines, *Progress of Social Activities under SDNRP from September 2010 to February 2012* [online]. Available at <http://mom.gov.af/Content/files/Social%20Development%20Initiatives%20Under%20SDNRP.pdf>. Accessed: 20 March 2012].
78. Ministry of Mines, *Mining for Sustainable Development of Afghanistan, Resettlement Action Plan*, January 2012. Available at <http://mom.gov.af/en/announcement/10786>. [Accessed: 29 May 2012].
79. Ibid.
80. Ibid, Section 5.5 and appendices.

81. Ibid, Sections 3, 5 and appendices.
82. International Advisory Council on Sustainable Resource Development for Afghanistan (IAP), *Fairness Opinion on the Aynak Mining Contract*, 14 July 2009, p.8.
83. MJAM, *Aynak Project Forges Ahead Despite Difficulties* [online], undated. Available at <http://www.MJAM.com.cn:8018/english/ShowArticle.asp?ArticleID=43367>. [Accessed: 7 September 2011].
84. Equator Principle 5, Consultation and Disclosure, June 2006. Available at http://www.equator-principles.com/resources/equator_principles.pdf. [Accessed: 8 September 2011].
85. Environment Act 2005, Article 5 (17) and Article 22. Environment Law 2007, Article 5 (10) (Fundamental Principles) and Article 19 (1) (Public Participation).
86. Afghanistan supports the United Declaration on the Rights of Indigenous Peoples, adopted on 13 September 2007. This declaration explicitly recognises the principle of free, prior and informed consent for indigenous peoples.
87. UN Conference on Environment and Development, *Rio Declaration on Environment and Development*, 1992. Available at <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163>. [Accessed: 3 August 2012].
For further information on the measures which the People's Republic of China has adopted to encourage public participation on issues such as environmental protection, see china.org.cn, *Environmental Science and Technology, Industry and Public Participation*. Available at <http://www.china.org.cn/english/MATERIAL/170390.htm>. [Accessed: 3 August 2012].
88. United Nations Human Rights Council, *Statement of People's Republic of China at Human Rights Council session* [video], 30 May 2011. Available at: <http://www.business-humanrights.org/SpecialRepPortal/Home/ReportstoUNHumanRightsCouncil/2011#70979>. [Accessed: 23 September 2011].
89. MJAM letter dated 28 April 2012 responding to written questions put forward by Global Witness.
90. Nissenbaum, D., *Afghanistan mining wealth thwarted by delays*, June 2012. Available at <http://www.theaustralian.com.au/business/wall-street-journal/afghanistan-mining-wealth-thwarted-by-delays/story-fnay3ubk-1226395155692>. [Accessed 19 July 2012].
91. Aynak contract, Clause 28.
92. Ministry of Mines, *Mining for Sustainable Development of Afghanistan, Resettlement Action Plan*, January 2012, Section 8. Available at <http://mom.gov.af/en/announcement/10786>. [Accessed 29 May 2012].
93. Ibid.
94. MJAM letter dated 28 April 2012 responding to written questions put forward by Global Witness, and Global Witness meetings with community members in October/November 2011.
95. Bogere, H., *Uganda: Oil Disputes Should be Settled Locally – Attorney General*, 7 December 2011. Available at <http://allafrica.com/stories/201112081362.html>. [Accessed: 24 February 2012].
Namutebi, J., *Auditor General opposes London oil arbitration*, 27 March 2012, New Vision.
96. State Council of the People's Republic of China, *Nine Principles on Encouraging and Standardizing Foreign Investment*, October 2007. Unofficial English translation.
97. Aynak contract, Clause 16.
98. Aynak contract, Clause 21.
99. Aynak contract, Clause 20.
For taxation rules for 'Qualifying Extractive Industry Taxpayers' see Afghan Income Tax Law 2009, Chapter 12. Available at http://mom.gov.af/Content/files/Income_Tax_Law.pdf. [Accessed: 21 June 2011]
100. Aynak contract, Clauses 30 – 32.
101. Aynak contract, Clauses 24-28 and 39-40.
102. For further details, see Global Witness, *Heavy Mittal? A State within a State: The Inequitable Mineral Development Agreement between the Government of Liberia and Mittal Steel Holdings NV*, October 2006. Available at <http://www.globalwitness.org/library/heavy-mittal>. [Accessed: 19 June 2012].
103. International Advisory Council on Sustainable Resource Development for Afghanistan (IAP), *Fairness Opinion on the Aynak Mining Contract*, 14 July 2009, pp. 3-4.
104. Global Witness meeting with international advisors to the Ministry of Mines in June 2012.
105. Advice from legal/economic expert to Global Witness, October 2011.
106. People's Republic of China State-Owned Assets Supervision and Administration Commission of the State Council, *Guidelines on Fulfilling Social Responsibility by Central Enterprises*, 29 December 2007. Unofficial English translation.
107. Ministry of Mines, *Mining for Sustainable Development of Afghanistan, Resettlement Action Plan*, January 2012. Available at <http://mom.gov.af/en/announcement/10786>. [Accessed: 29 May 2012].
108. Brazier, J., *Global Insight: Afghanistan Promises Tighter Security at Chinese-Run Mine*, 11 July 2012.
109. UN National Contact Point, *OECD UK National Contact Point – Revised Final Statement. Specific Instance: BTC Pipeline*, 8 March 2011. Available at <http://www.thecornerhouse.org.uk/sites/thecornerhouse.org.uk/files/BTC%20Revised%20Final%20Statement%20-%20Embargoed%20until%208%20March-1.pdf>. [Accessed: 5 July 2012].
Corporate Responsibility Coalition, *Company failed to respond to alleged intimidation by Turkish security forces along its UK-backed Caspian Oil Project*, 9 March 2011. Available at <http://corporate-responsibility.org/bp-violating-human-rights-rules-says-uk-government/>. [Accessed: 5 July 2012].
110. Leigh Day & Co, *Peruvian torture claimants compensated by UK mining company*, July 2011. Available at <http://www.leighday.co.uk/News/2011/July-2011/Peruvian-torture-claimants-compensated-by-UK-minin>. [Accessed: 5 July 2012].
Tyler, K. and Chambers, R., *Rights, Regulation and Remedy: The Extractive Sector and Development*, 23 March 2012.

111. Ministry of Mines, 83 *illegal coal mines and tunnels were closed in Bamyan province* [press release], May 2012.
112. Global Witness, *Coming Clean: How supply chain controls can stop Congo's minerals trade fuelling conflict*, May 2012. Available at http://www.globalwitness.org/sites/default/files/120531_Coming%20Clean_lowres.pdf. [Accessed: 3 August 2012].
113. DuPee, M., *Afghanistan's Conflict Minerals: The Crime-State-Insurgent Nexus*, Combating Terrorism Center at West Point, 16 February 2012. Available at <http://www.ctc.usma.edu/posts/afghanistans-conflict-minerals-the-crime-state-insurgent-nexus>. [Accessed: 23 March 2012].
114. OECD, *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*, 2011. Available at <http://www.oecd.org/dataoecd/62/30/46740847.pdf>. [Accessed: 23 March 2011].
115. UNEP, *Afghanistan's Environmental Recovery. A post-conflict plan for people and their natural resources* [online], undated. Available at http://postconflict.unep.ch/publications/UNEP_afghanistan_lr.pdf. [Accessed: 5 July 2012].
- UNEP, *Afghanistan: Post-Conflict Environmental Assessment, 2003*. Available at <http://postconflict.unep.ch/publications/afghanistan-pcajanuary2003.pdf>. [Accessed: 5 July 2012].
116. Heilmann, J., *Sierra Leone Police Open Fire on Locals Protesting Mining Practices*, 14 December 2007, Voice of America. Available at <http://www.voanews.com/content/a-13-2007-12-14-voa41/400801.html>. [Accessed: 3 November 2011].
- Awoko Business, *Curfew in Konon as ... Police shoot nine*, 14 December 2007. Available at <http://www.awoko.org/2007/12/14/curfew-in-kono-as%E2%80%A6-police-shoot-nine/>. [Accessed: 3 November 2011].
117. Manson, K., *Sierra Leone halts mining after 2 die in diamond riots*, 14 December 2007. Available at <http://www.minesandcommunities.org/article.php?a=8351>. [Accessed: 3 November 2011].
- IRIN, *Government probes unrest in diamond-mining area*, 20 December 2007. Available at <http://www.irinnews.org/Report/75952/SIERRA-LEONE-Government-probes-unrest-in-diamond-mining-area>. [Accessed: 3 November 2011].
- Bagree, S. and Beckley, P., *Diamonds are for never*, 1 January 2009. Available at <http://www.newint.org/columns/currents/2009/01/01/corporations/>. [Accessed: 3 November 2011].
118. Peters, S.G., King, T.V.V., Mack, T.J., and Chornack, M.P., (eds.), and the U.S. Geological Survey Afghanistan Mineral Assessment Team, *Summaries of important areas for mineral investment and production opportunities of nonfuel minerals in Afghanistan: U.S. Geological Survey Open-File Report 2011-1204, 1,810 p. plus appendixes on DVD*, 2011. Available at <http://pubs.usgs.gov/of/2011/1204/pdf/02C.pdf> [Accessed: 20 July 2012].
119. World Bank, *Afghanistan in Transition: Looking Beyond 2014, Volume 2*, May 2012. Available at <http://siteresources.worldbank.org/AFGHAN-ISTANEXTN/Images/305983-1334954629964/AFTransition2014Vol2.pdf>. [Accessed: 19 June 2012].
120. US Geological Survey, *Availability of Water in the Kabul Basin, Afghanistan*, 2010. Available at <http://pubs.usgs.gov/fs/2010/3037/pdf/fs2010-3037.pdf> [Accessed: 20 July 2012].
121. Environmental Law 2007, Article 3 (*Implementing Agency*).
122. Stanley, M. and Ekaterina, M., *Mineral Resource Tenders and Mining Infrastructure Projects Guiding Principles. Case Study: The Aynak Copper Deposit, Afghanistan*, September 2011, World Bank. Available at <http://siteresources.worldbank.org/INTOGMC/Resources/EIT122weboct17.pdf>. [Accessed: 5 July 2012].
- Arlo, J., *Dumping System Harmful*, 5 July 2010, PNG Post-Courier (Australia).
- Evara, R., *Deep sea tailings bid*, 26 May 2010, PNG Post-Courier (Australia).
123. Environment Law 2007, Article 16 (*Approval Procedure*).
124. See the Mining Development Agreement between the Government of Liberia, China-Union (Hong Kong) Mining Co. Ltd and China-Union Investment (Liberia) Bong Mines Co.. Ltd dated 19 January 2009. Available at <http://www.mmdaproject.org/presentations/MMDA%20Liberia-China%20Union%20Investment-1.pdf>. [Accessed: 20 August 2012].
125. Ministry of Mines, *Sustainable Development of Natural Resources Program (SDNRP), Aynak Copper Mine. Compliance Monitoring Project. Project Overview*, May 2012. Available at http://mom.gov.af/Content/files/AYNAK_PROJECT_UPDATE_MAY_2012.pdf. [Accessed: 29 May 2012].
126. Environmental Law Alliance Worldwide, *Guidebook for Evaluating Mining Project EIAs*, July 2010. Available at <http://www.elaw.org/files/mining-eia-guidebook/Full-Guidebook.pdf>. [Accessed: 20 July 2012].
127. Ministry of Mines, *Sustainable Development of Natural Resources Program (SDNRP), Aynak Copper Mine. Compliance Monitoring Project. Project Overview*, May 2012. Available at http://mom.gov.af/Content/files/AYNAK_PROJECT_UPDATE_MAY_2012.pdf. [Accessed: 29 May 2012].
128. Ibid.
129. Ministry of Mines, *Aynak compliance monitoring project status report*, July 2012, para 2.2. Available at <http://mom.gov.af/en/page/5962>. [Accessed: 19 August 2012].
- Ministry of Mines, *Sustainable Development of Natural Resources Program (SDNRP), Aynak Copper Mine. Compliance Monitoring Project. Project Overview*, May 2012. Available at http://mom.gov.af/Content/files/AYNAK_PROJECT_UPDATE_MAY_2012.pdf. [Accessed: 29 May 2012].
130. Ministry of Mines, *Progress of Social Activities under SDNRP from September 2010 to February 2012* [online]. Available at <http://mom.gov.af/Content/files/Social%20Development%20Initiatives%20under%20SDNRP.pdf>. Accessed: 20 March 2012].
131. Information taken from project website www.ramunico.com and project updates released by minority project shareholder Highlands Pacific at <http://www.highlandspacific.com/ramu.html>.
132. Highlands Pacific, *Ramu Nickel Project – Update, Positive Supreme Court Decision* [release], 22 December 2011.
- The National website, Port Moresby, *Developers warn on viability of Papua New Guinea-China nickel project*, 20 July 2010, BBC Monitoring Asia Pacific.
- Barter, P (former regional member of Madang), *'Madang mine at risk'*, PNG Post-Courier (Australia), 23 June 2010.
133. Louis Medaing et al v Ramu Nico Management (MCC) Limited et al [WS NO 1192 of 2010] in the National Court of Australia.

134. Ibid.
135. Papua New Guinea Post-Courier, *Miner's deepsea waste disposal scheme to hold*, 22 March 2010.
136. Louis Medaing et al v Ramu Nico Management (MCC) Limited et al [WS NO 1192 of 2010] in the National Court of Australia. Highlands Pacific, *Ramu Nickel Project – Update. Positive Supreme Court Decision* [release], 22 December 2011.
137. Louis Medaing et al v Ramu Nico Management (MCC) Limited et al [WS NO 1192 of 2010] in the National Court of Australia
138. Ibid.
139. The National/BBC Monitoring, *Developers warn on viability of Papua New Guinea-China Nickel project*, 20 July 2010. Barter, P (former regional member of Madang), *Madang mine at risk!*, PNG Post-Courier (Australia), 23 June 2010. Highlands Pacific, *Ramu Nickel Project – Update* [release], 22 December 2011.
140. Based on August 2012 US dollar/PNG kina exchange rate of 1:0.486. Barter, P (former regional member of Madang), *Madang mine at risk!*, PNG Post-Courier (Australia), 23 June 2010. Highlands Pacific, *Ramu Nickel Project – Update Positive Supreme Court Decision*. [release], 22 December 2011.
141. Environmental Law Alliance Worldwide, *Guidebook for Evaluating Mining Project EIAs*, July 2010. Available at <http://www.elaw.org/files/mining-eia-guidebook/Full-Guidebook.pdf>. [Accessed: 20 July 2012].
142. The International Bar Association, *Model Mining Agreement 1.0*, 4 April 2011, Clause 26.0. Available at http://www.mmdaproject.org/presentations/MMDA1_0_110404Bookletv3.pdf. [Accessed: 1 June 2011]. Note that at the time of writing, the Model Mining Agreement is still being developed and may be further revised and updated.
143. Ibid.
144. Environmental Law Alliance Worldwide, 2010. *'Guidebook for Evaluating Mining Project EIAs'*, July 2010. Available at <http://www.elaw.org/files/mining-eia-guidebook/Full-Guidebook.pdf>. [Accessed: 20 July 2012].
145. World Food Programme, *Provincial Development Plan, Logar Provincial Profile* [online], undated. Available at <http://www.foodsecurityatlas.org/afg/country/provincial-Profile/Logar>. [Accessed: 14 August 2011].
146. Ministry of Mines, *Sustainable Development of Natural Resources Program (SDNRP), Aynak Copper Mine. Compliance Monitoring Project. Project Overview*, May 2012. Available at http://mom.gov.af/Content/files/AYNAK_PROJECT_UPDATE_MAY_2012.pdf. [Accessed: 29 May 2012].
147. Assumed to be the World Bank's Involuntary Resettlement bank procedure and operational policy 4.12, revised December 2001. Available at <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20064610~menuPK:4564185~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html>. [Accessed 14 August 2011].
148. IFC Performance Standard 5: Land Acquisition and Involuntary Resettlement. Available at http://www.ifc.org/ifcext/sustainability.nsf/Content/Publications_PS5_LandAcquisition [Accessed 14 August 2011].
149. IFC Handbook for Preparing a Resettlement Plan, 36, available at [http://www.ifc.org/ifcext.nsf/AttachmentsByTitle/p_resettle/\\$FILE/ResettlementHandbook.PDF](http://www.ifc.org/ifcext.nsf/AttachmentsByTitle/p_resettle/$FILE/ResettlementHandbook.PDF). This states that the *"two most critical concerns in selection of a resettlement site are location and community preservation ... Resettlement options should avoid breaking up communities because the maintenance of social networks linking members of the affected communities may be more successful to the adaption of those communities to their new circumstances ... Though community preservation is a primary concern, some members of a community may have other settlement preferences, including a preference not to remain part of the affected community. For this reason, all community members must be consulted and provided with appropriate options for resettlement."*
150. Ministry of Mines, *Mining for Sustainable Development of Afghanistan*, January 2012. Available at http://mom.gov.af/Content/files/Aynak%20RAP%2014th%20April%202012_.pdf. [Accessed: 29 May 2012].
151. Ibid.
152. Ministry of Mines, *Mining for Sustainable Development of Afghanistan, Resettlement Action Plan*, January 2012. Available at <http://mom.gov.af/en/announcement/10786>. [Accessed: 29 May 2012].
153. IFC, *Handbook for Preparing a Resettlement Action Plan*. Available at [http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_resettle/\\$FILE/ResettlementHandbook.PDF](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_resettle/$FILE/ResettlementHandbook.PDF). [Accessed: 20 July 2012].
154. Landay, J., *McClatchy's Jonathan Landay visits a desolate coal mining facility in Afghanistan*, [video], 15 November 2010, McClatchy/Video by Tish Wells, Available at: <http://www.youtube.com/watch?v=yu68IBQ0yZ4>. Accessed: 3 May 2012. Landay, J., *Factory, coal mine show connections matter most in Afghan business*, 14, November 2010, McClatchy. Available at: <http://www.mcclatchydc.com/2010/11/14/103393/afghan-business-model-connections.html>. [Accessed: 3 May 2012]. Nissenbaum, D., *Teenager Films Afghan Child Labor. School Documentary Project Seeks to Illuminate Open Secret: Young Boys at Work in Remote Coal Mines*, 14 July 2012, Wall Street Journal. Available at <http://online.wsj.com/article/SB10001424052702303640804577491511393159548.html>. [Accessed: 13 August 2012].
155. Mine Action Coordination Centre of Afghanistan, *Aynak copper mine predicted to create 8,000 direct jobs once landmines are cleared*, 27 August 2009. Available at www.macca.org.af/file.php?id=149. [Accessed: 13 August 2012].
156. Huffman, B., *Are Chinese Miners Destroying a 2,000-year-old Buddhist Site in Afghanistan?*, 17 May 2012, Asia Society. Available at <http://asiasociety.org/blog/asia/are-chinese-miners-destroying-2000-year-old-buddhist-site-afghanistan-images>. [Accessed: 8 July 2012]. Global Witness telephone meeting with Ministry of Mines advisor, July 2012.
157. Mine Action Coordination Centre of Afghanistan, *Aynak copper mine predicted to create 8,000 direct jobs once landmines are cleared*, 27 August 2009. Available at www.macca.org.af/file.php?id=149. [Accessed: 13 August 2012].
158. Global Witness, *We are People Already Sold*, [video], September 2011. Available at <http://www.youtube.com/watch?v=qxn5jfgED1w>. [Accessed: 29 July 2012].

- Similarly, in Liberia, local civil society has raised concerns over the state of social infrastructure provided by companies. Housing has been criticised as sub-standard, lacking indoor latrines, bathing facilities and electricity. Other concerns include the supply of clean water, and the state of educational facilities (teacher shortages, few and poorly equipped schools and some children unable to obtain IDs needed to attend schools). Samfu Foundation, *The Heavy Load – A Demand for Fundamental Changes at Bridgestone/Firestone Rubber Plantation in Liberia*, June 2008. Available at http://www.samfu.org/downloads/the_heavy_load_2008.pdf. [Accessed: 15 September 2011].
159. Global Witness, *We are People Already Sold* [video], September 2011. Available at <http://www.youtube.com/watch?v=qxn5jfgED1w>. [Accessed: 29 July 2012].
 160. Engel, N., *Mes Aynak: New excavations in Afghanistan*, June-July 2011, Afghan Scene.

Bezhan, F., *Aynak ore creates dilemma for treasure*, 15 February 2012, Asia Times. Available at http://www.atimes.com/atimes/South_Asia/NB15Df01.html. [Accessed: 13 August 2012].

BBC, *Mining threat to ancient Afghan monastery at Mes Aynak*, 13 June 2011. Available at <http://www.bbc.co.uk/news/world-south-asia-13717471>. [Accessed: 13 August 2012].

Heritage Daily, *Scrambling to preserve Afghanistan's heritage*, 7 June 2012. Available at <http://www.heritagedaily.com/2012/06/scrambling-to-preserve-afghanistans-heritage/>. [Accessed: 13 August 2012].
 161. DAFA, *Rapid Archaeological Assessment of Aynak Ancient Sites* [online], undated. Available at http://mom.gov.af/Content/files/Aynak_Archeological_Assessment-Final.pdf. [Accessed: 6 July 2011].

Speech of Dr Raheen, Minister of Information and Culture on 1 May 2012. Available at <http://www.bakhtarnews.com.af/eng/culture/item/2247-full-text-speech-of-dr-raheen-in-aynak-copper-mine-and-archeological-sites-meeting.html>. [Accessed: 19 August 2012].
 162. Engel, N., *New excavations in Afghanistan, Mes Aynak*, 2011. Available at <http://nationalmuseum.af/images/stories/PDF/mes%20aynak.pdf>. [Accessed: 29 July 2012].
 163. Ibid.
 164. China Daily, *Copper deal helps Afghan's future*, 21 September 2011. Available at http://www.chinadaily.com.cn/usa/china/2011-09/21/content_13745143.htm. [Accessed: 26 September 2011].
 165. Al Arabiya, *Aynak copper mine delayed: Afghan mining minister*, 5 December 2010. Available at <http://www.alarabiya.net/articles/2010/12/05/128565.html>. [Accessed: 1 November 2011].

Yam, P., *Update 1 – Jiangxi Copper hopes Afghan, Peru mines to start in 2014-16*, 28 March 2012, Reuters. Available at <http://www.reuters.com/assets/print?aid=USL3E8ES2SM20120328> [Accessed: 25 May 2012].

Ministry of Mines, *Initiatives on Protection of Cultural Antiquities at Aynak* [website], 17 July 2011. Available at <http://mom.gov.af/en/news/2253>. [Accessed: 25 July 2012].
 166. Teijgeler, R., *So Yesterday Was the Burning of Books – Wartime in Iraq* [lecture], 11 August 2005, Responsible Stewardship Towards Cultural Heritage Materias, Preconference of the IFLA Rare Books and Manuscript Section, Copenhagen. Available at <http://iwa.univie.ac.at/teijgeler.html>. [Accessed: 27 August 2012]
 167. Supple, S, *Memory Slain: Recovering Cultural Heritage in Post-war Bosnia*, 2005, UCLA Journal of Education and Information Studies. Available at <http://escholarship.org/uc/item/28c783b6>. [Accessed: 27 August 2012].
 168. Ibid.
 169. Riedlmayer, A, *Erasing the Past: The Destruction of Libraries and Archives in Bosnia-Herzegovina*, Harvard University, Middle East Studies Association Bulletin, July 1995. Available at http://www.openbook.ba/wenzel/ar_mela.htm. [Accessed: 27 August 2012].
 170. Ibid.
 171. Bernhardsson, M, *The Sense of Belonging. The Politics of Archaeology in Modern Iraq from Selective Remembrances. Archaeology in the Construction, Commemoration, and Consecration of National Pasts*, 2007, University of Chicago Press.
 172. Teijgeler, R (former Senior Advisor to the Iraqi Ministry of Culture), *'So Yesterday Was the Burning of Books' – Wartime in Iraq* [lecture], 11 August 2005, Responsible Stewardship Towards Cultural Heritage Materias, Preconference of the IFLA Rare Books and Manuscript Section, Copenhagen. Available at <http://iwa.univie.ac.at/teijgeler.html>. [Accessed: 27 August 2012]
 173. Kami, A, *In Iraq, a clash of treasures past, present and future*, 23 May 2012, Reuters. Available at <http://www.reuters.com/article/2012/05/23/iraq-antiquities-idUSL5E8GD00L20120523>. [Accessed: 27 August 2012]
 174. International Council on Mining & Metals, *Mining and Protected Areas, Position Statement*, September 2003. Available at www.icmm.com/document/43. [Accessed: 15 July 2012].
 175. Engel, N., *New excavations in Afghanistan, Mes Aynak*, 2011. Available at <http://nationalmuseum.af/images/stories/PDF/mes%20aynak.pdf>. [Accessed: 29 July 2012].
 176. World Bank, *Emergency Project Paper on a Proposed Grant in the Amount of SDR 32.8 million (US\$52 million equivalent) to the Islamic Republic of Afghanistan for a Second Sustainable Development of Natural Resources Project.*, 6 May 2011. Available at http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2011/05/15/000333037_20110515234914/Rendered/INDEX/613970PJPROP110e0only0900BOX358355B.txt. [Accessed: 25 May 2012].
 177. UNESCO, *Cultural Landscape and Archaeological Remains of the Bamiyan Valley*, [website], undated. Available at <http://whc.unesco.org/en/list/208>. [Accessed 27 August 2012].

Morgan, L., *The Buddhas of Bamiyan*, 3 May 2012, Profile Books.
 178. UNESCO, *Director-General condemns Taliban's crime against culture* [online], 12 March 2012. Available at <http://www.unesco.org/bpi/eng/unescopress/2001/01-38e.shtml>. [Accessed: 27 August 2012].

Rashid, A., *After 1,700 years, Buddhas fall to Taliban dynamite*, 12 March 2001, The Telegraph. Available at <http://www.telegraph.co.uk/news/worldnews/asia/afghanistan/1326063/After-1700-years-Buddhas-fall-to-Taliban-dynamite.html>. [Accessed: 27 August 2012].
 179. UNESCO, *Director-General condemns Taliban's crime against culture* [online], 12 March 2012. Available at <http://www.unesco.org/bpi/eng/unescopress/2001/01-38e.shtml>. [Accessed: 27 August 2012].
 180. Ministry of Mines, *Mining for Sustainable Development of Afghanistan, Resettlement Action Plan*, January 2012. Available at <http://mom.gov.af/en/announcement/10786>. [Accessed: 29 May 2012].

- Ministry of Mines, Sustainable Development of Natural Resources Program (SDNRP), Aynak Copper Mine. Compliance Monitoring Project. Project Overview, May 2012. Available at http://mom.gov.af/Content/files/AYNAK_PROJECT_UPDATE_MAY_2012.pdf. [Accessed: 29 May 2012].
- Ministry of Mines, Social Policy Guidelines for Mining Sector in Afghanistan, 2011. Available at http://mom.gov.af/Content/files/Social_Policy_Guidelines.pdf. [Accessed: 3 July 2012].
- Stanley, M. and Ekaterina, M., Mineral Resource Tenders and Mining Infrastructure Projects Guiding Principles. Case Study: The Aynak Copper Deposit, Afghanistan, September 2011, World Bank. Available at <http://siteresources.worldbank.org/INTOGMC/Resources/EIT122weboct17.pdf>. [Accessed: 5 July 2012].
- World Bank, Emergency Project Paper on a Proposed Grant in the Amount of SDR 32.8 million (US\$52 million equivalent) to the Islamic Republic of Afghanistan for a Second Sustainable Development of Natural Resources Project, 6 May 2011. Available at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2011/05/15/000333037_20110515234914/Rendered/INDEX/613970PJPROP110e0only0900BOX358355B.txt. [Accessed: 25 May 2012].
181. Stanley, M. and Ekaterina, M., *Mineral Resource Tenders and Mining Infrastructure Projects Guiding Principles. Case Study: The Aynak Copper Deposit, Afghanistan*, September 2011, World Bank. Available at <http://siteresources.worldbank.org/INTOGMC/Resources/EIT122weboct17.pdf>. [Accessed: 5 July 2012].
 182. Ministry of Mines, *Sustainable Development of Natural Resources Program (SDNRP), Aynak Copper Mine. Compliance Monitoring Project. Project Overview*, May 2012. Available at http://mom.gov.af/Content/files/AYNAK_PROJECT_UPDATE_MAY_2012.pdf. [Accessed: 29 May 2012].
 183. World Bank, *Emergency Project Paper on a Proposed Grant in the Amount of SDR 32.8 million (US\$52 million equivalent) to the Islamic Republic of Afghanistan for a Second Sustainable Development of Natural Resources Project*, 6 May 2011. Available at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2011/05/15/000333037_20110515234914/Rendered/INDEX/613970PJPROP110e0only0900BOX358355B.txt. [Accessed: 25 May 2012].
 184. Stanley, M. and Ekaterina, M., *Mineral Resource Tenders and Mining Infrastructure Projects Guiding Principles. Case Study: The Aynak Copper Deposit, Afghanistan*, September 2011, World Bank. Available at <http://siteresources.worldbank.org/INTOGMC/Resources/EIT122weboct17.pdf>. [Accessed: 5 July 2012].
 185. In June 2012, Global Witness published a report highlighting the dangers for individuals defending their human rights or the human rights of others in relation to natural resources. We found that there is an average of more than one killing a week world-wide of such individuals, including through targeted killings and violent clashes. For further details, see Global Witness, 2012. *A Hidden Crisis: Increase in killings as tensions rise over land and forests*, June 2012. Available at http://www.globalwitness.org/sites/default/files/library/A_hidden_crisis-FINAL%20190612%20v2.pdf.
 186. Global Witness, *A Hidden Crisis: Increase in killings as tensions rise over land and forests*, June 2012. Available at http://www.globalwitness.org/sites/default/files/library/A_hidden_crisis-FINAL%20190612%20v2.pdf.
 187. For further information, see the 'Making Forest Sector Transparent' project, see <http://www.foresttransparency.info/>.
 188. Ministry of Finance, *1390 National Budget*, 2011. Available at http://mof.gov.af/Content/files/1390_English_BudgetDocument_25th%20May%202011.pdf. [Accessed: 20 July 2012].
 189. Tangguh Independent Advisory Panel, *First Report on Operations Phase of the Tangguh LNG Project*, January 2011. Available at http://www.bp.com/liveassets/bp_internet/indonesia/STAGING/home_assets/downloads/t/TIAP_Report_2010.pdf. [Accessed: 26 September 2011].
 190. Stanley, M. and Ekaterina, M., *Mineral Resource Tenders and Mining Infrastructure Projects Guiding Principles. Case Study: The Aynak Copper Deposit, Afghanistan*, September 2011, World Bank. Available at <http://siteresources.worldbank.org/INTOGMC/Resources/EIT122weboct17.pdf>. [Accessed: 5 July 2012].
 191. Ministry of Mines, *Executive Summary Regarding Tender Process of Aynak Copper* [online], undated. Available at <http://mom.gov.af/en/page/1392>. [Accessed: 20 July 2011].
 192. Email from the Ministry of Mines to Global Witness, August 2012.
 193. Ministry of Mines email to Global Witness in August 2012 confirming that, 'in principle, any external request for meetings with the IAP should be subject to the prior approval of the Ministry of Mines'.
- Global Witness has also submitted requests to the World Bank, which funds the IAP, for a copy of its terms of reference but has been referred to the Ministry of Mines on this point.
194. Ministry of Mines, *Mining for Sustainable Development of Afghanistan, Resettlement Action Plan*, January 2012. Available at <http://mom.gov.af/en/announcement/10786>. [Accessed 29 May 2012]
- Ministry of Mines, Executive Summary Regarding Tender Process of Aynak Copper [online] undated. Available at <http://mom.gov.af/en/page/1392>. [Accessed: 20 July 2011].
- Stanley, M. and Ekaterina, M., Mineral Resource Tenders and Mining Infrastructure Projects Guiding Principles. Case Study: The Aynak Copper Deposit, Afghanistan, September 2011, World Bank. Available at <http://siteresources.worldbank.org/INTOGMC/Resources/EIT122weboct17.pdf>. [Accessed: 5 July 2012].
195. Ministry of Mines, *Aynak Tender Process History* [online], undated. Available at <http://mom.gov.af/en/page/1401>. [Accessed: 20 March 2012].
- Stanley, M. and Ekaterina, M., *Mineral Resource Tenders and Mining Infrastructure Projects Guiding Principles. Case Study: The Aynak Copper Deposit, Afghanistan*, September 2011, World Bank. Available at <http://siteresources.worldbank.org/INTOGMC/Resources/EIT122weboct17.pdf>. [Accessed: 5 July 2012].
- Ministry of Mines, *Mining for Sustainable Development of Afghanistan, Resettlement Action Plan*, January 2012. Available at <http://mom.gov.af/en/announcement/10786>. [Accessed: 29 May 2012].

Global Witness is a UK-based non-governmental organisation which carries out investigations and campaigns to prevent natural resource related conflict and corruption and associated environmental and human rights abuses.

References to 'Global Witness' in this report are to Global Witness Limited, a company limited by guarantee and incorporated in England (Company No. 2871809).

ISBN 978-0-9570101-9-2

Global Witness Limited
Buchanan House
30 Holborn
London
United Kingdom
EC1N 2HS
www.globalwitness.org

Cover illustration and design - www.NickPurser.com



But is Afghanistan's mineral wealth really the way out?

(Credit: Harley Schwadron courtesy of CartoonStock)