



Senator the Hon. Bob Carr
Minister for Foreign Affairs
 R.G. Casey Building
 John McEwen Crescent
 Barton ACT 0221 Australia

11th June 2012

Dear Minister Carr,

We are writing to draw your attention to the important role Afghanistan’s oil, gas and mining sector could play in stabilizing the country in the future, and to urge you to address this issue at the upcoming Tokyo Cooperation Conference this July. With proper management and effective public oversight the extractive industries can become an important economic driver in Afghanistan. As NGOs working on these issues, we believe the Conference represents a crucial opportunity to strengthen the foundations for a viable industry that benefits all citizens, promotes human development, and contributes to Afghanistan’s financial sovereignty.

The experience of other resource-rich countries such as the Democratic Republic of Congo, Cambodia, Iraq, Libya and Sierra Leone cautions that resource exploitation can exacerbate existing conditions of conflict, corruption, environmental degradation, unemployment and poverty. The accelerated pace of tenders in mineral resources in Afghanistan and limited capacity to monitor and regulate these concessions is thus a major source of concern. Minerals, precious gemstones, land, and timber were a critical source of war financing during the Soviet occupation, and later during the decades-long civil war. Today many mines in the country continue to be exploited by criminal smuggling syndicates and insurgency networks.¹ Weak state capacity to regulate mining operations can also directly fuel local grievances through 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.² Given this history and current conditions in Afghanistan, the pace, scale and approach to mineral sector development in Afghanistan can increase risks to the country’s stability and future economic growth.

The development of this major revenue-generating sector needs to be accompanied by better governance and oversight systems. The government and its international development partners have already recognised this through high-level political commitments to international best practice, transparency and accountability at Bonn and through the US-Afghan Strategic Partnership Agreement.³ As the latter emphasised, the role of the international community and its agents⁴ is to support “Afghanistan’s efforts to govern its natural wealth through an accountable efficient, effective and transparent framework that builds upon and surpasses international best practice”. This is a laudable symbolic statement

that nevertheless requires much follow-up and international support. At Tokyo, the international community in partnership with the Afghan government have the opportunity to:

- Endorse existing language which recognises the need to put transparency, accountability and international best practice standards at the core of extractive sector development.
- Establish a shared mutual accountability framework for the extractives sector. Such a framework should include specific, measurable and time-bound implementation benchmarks for these standards. Progress against these should be regularly monitored and results published.

As global and Afghan advocates for better extractive sector governance in Afghanistan, we wish to support the government and its development partners in the technical process of designing such benchmarks. To that end, we propose a set of “Four Core Objectives for Good Governance in the Extractive Sector” (appendiced) to guide any mutual accountability framework developed for the Tokyo Conference.

As noted at the Bonn conference, “Our shared goal remains an Afghanistan that is a peaceful and promising home for all Afghans, at the centre of a secure and thriving region; an Afghanistan in which international terrorism does not again find sanctuary and that can assume its rightful place among sovereign nations”⁵ Today Afghanistan’s mineral sector is also on the cusp of great transformation, but we should not forget its roots as the war chest for over thirty years of conflict and must ensure adequate safeguards are established. Thus it is critical for Afghanistan and the international community to agree on concrete benchmarks at Tokyo that will secure this valuable national asset for peace and development.

We look forward to working with you toward these shared goals.

Yours sincerely,

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Four Core Objectives for Good Governance in Afghanistan's extractives sector

The objectives set out below were developed by Afghan and international civil society organizations working to improve transparency and business practices for the country's extractive industries. They are intended to guide and support the establishment of the post-Tokyo mutual accountability framework between the Afghan government and its international partners. We believe they should form the basis of specific, measurable, achievable, realistic and time-bound governance indicators for the sector (which should be accompanied by process-based reform), and should be integrated into the Conference outcome documents. Given the current realities in Afghanistan and the state of sector development, a sustainable approach to implementation might consider prioritizing transparency and accountability - especially in the allocation of mineral rights and contracts initially - while establishing benchmarks for the progressive realization of the full objectives.

The objectives go beyond the current exclusive focus on revenue management and contract transparency in Afghanistan's oil and mining sectors. They draw from existing international standards⁶ and a range of industry best-practice as well as our own experience in Afghanistan.

Transparency and Accountability are cross cutting principles for extractive sector policies. In addition, *Community Empowerment*, *Minimizing Negative Social and Environmental Impacts* and *Project Site Security*, are areas that need particular attention given the context in Afghanistan.

1. Build & strengthen an accountable, efficient, effective, and transparent framework to govern Afghanistan's extractive sector.

Transparent management of oil, gas and mineral resources reduces corruption, increases domestic resource mobilization, and builds consensus on the use of extractive revenues for development. Extractive resources are public assets and decisions concerning their exploitation should be transparent to allow legislators and citizens to monitor whether the laws and regulations are being followed and to assess the quality of deals being made on their behalf. Transparency along the entire value chain - from the decision to exploit the resource through to the spending of accrued revenue - is essential. Such transparency also needs to be accompanied by the necessary institutional checks and balances to ensure government is held to account. The Afghan government should:

- Make all rules and regulations for natural resource licenses and concessions available in a public database, with clear definitions and explanations including all fiscal terms, property rights and social, cultural and environmental protections, site rehabilitation and local content requirements.
- Make public the fullest possible information on the terms of each concession granted, including all future and past public offering documents, lists of pre-qualified companies, successful and unsuccessful bids, contracts, the identity of the beneficial owners of companies, and other agreements signed with companies including technical, environmental and economic impact studies and workplans.
- Issue regular and detailed reports of resource-related revenues through the Extractive Industries Transparency Initiative (EITI) and through regular reports on the contribution to both budget and off-budget allocations. EITI reports should be in line with current international best practice⁷ and progressively expand report scope to cover innovations.⁸
- Ensure plans for a future mineral fund are based on a full technical assessment and public consultation. Such a fund should ensure clarity and consistency in rules, objectives and governance structures as well as transparency and accountability in all transactions.

- Ensure that corporate social investments at the community level are aligned to subnational development planning and do not bypass local governance structures.
- Ensure regular and free participation of parliamentarians, civil society and the media in the oversight of the natural resource sector. This could include systematic legislative and public hearings as well as establishing platforms for engaging civil society in the monitoring of contracts (particularly environmental and social aspects).
- Regularly monitor its performance on extractive sector transparency and progressively improve Afghanistan's assessment in indicators like the Revenue Watch Index (RWI).

2. Empower communities to have meaningful participation in decision-making.

Citizens have a right to be informed and empowered in decisions that affect their lives. Failure to integrate the concerns of local communities and ensure meaningful participation in decision-making can fuel grievances and, ultimately, undermine project sustainability. The Afghan Government, especially the Ministry of Mines should:

- Require, plan and budget for free prior and informed consultation⁹ with local communities before contracts are signed and throughout the lifetime of projects, including mine closure. Communities should be provided with expert advice, training and capacity development to understand all the potential benefits and costs.
- Ensure representation and meaningful participation by local communities, including women and youth, in any decision-making or oversight mechanisms for each project.
- Ensure that communities are provided with an adequate and accessible means to redress complaints against security forces or company bodies and other local concerns in a credible and timely manner.

3. Minimize negative social and environmental impacts.

When deciding whether or not to exploit, a government should take account of social, gender, cultural or environmental impacts and weigh these against the benefits of revenue generation. In some cases, and in some locations, it may be appropriate to restrict or prohibit project development or develop mitigation strategies. For example, in areas of significant national/international environmental or cultural or archeological importance, or areas of particular value for agriculture, fisheries, water, or for indigenous peoples. The Afghan government should:

- Ensure open independent assessment of the security, environmental, human rights, local economic and cultural impacts of exploration and exploitation before awarding major concessions. Findings should be published and public hearings held, including at the local community level, to ensure those affected are well informed.
- Publish both the decision and its rationale taking account of the impact and cost evaluations and assessments of government capacity.

4. Ensure project site security safeguards respect human rights and rule of law.

The security arrangements of projects, particularly those in the extractive industries sector can give rise to negative human rights impacts or predatory behavior. Such projects can provide opportunities for corruption and criminality as well as conflict when competing factions vie for control of the resource. Specific oversight and regulation is therefore needed for agents providing security for the sector. The Afghan government should:

- Ensure that policies to protect mine operations and their personnel reflect recognized international best practice guidelines, such as the Voluntary Principles on Security and Human Rights;

- Avoid military participation in provision of mining sector security needs. The Afghan government is responsible for protecting mine sites and pipelines as part of its investment agreements but should avoid, wherever possible, using military force to do so. Militarization would identify mines and the communities around them as a target for insurgents and could contribute to increased violence. Responsibility for security should remain with specially trained ANP units that are fully accountable under the civilian and criminal codes of Afghanistan for the use of force.
- Establish a mechanism, overseen by credible independent third-party to record and regularly publish the origins, sources and intensity of violence around extractive operations and the associated population centers.

In support of these recommendations, the international community should:

- Provide adequate, reliable multi-annual ongoing resources and training to enable the government, judiciary, Parliament, media and civil society to achieve these objectives.
- Publish information relating to funding according to International Aid Transparency Initiative standards.
- Facilitate independent assessment of government mineral management capacity (bidding processes, contract negotiations, etc.) and provide technical assistance and capacity building support against identified needs and government priorities.
- The International Advisory Committee, which assists the Ministry of Mines in the tendering process for contracts could make regular and timely public reports on any anticipated and concluded allocation of natural resources licenses.
- Support the EITI through technical and financial support to civil society and full participation of home companies into the initiative.
- Support auctions and competitive bidding processes and avoid undermining them by government-to-government deals that are outside of these parameters.
- Promote progressive standards of extractive company behavior and disclosure drawing on international best practice initiatives in the sector.⁶
- Monitor progress in commitments to transparency in the sector through tools such as the RWI Index.

¹ Afghanistan's Conflict Minerals: The Crime-State-Insurgent Nexus - Matthew DuPee, 14/05/12 – <http://www.ctc.usma.edu/posts/afghanistans-conflict-minerals-the-crime-state-insurgent-nexus> – Accessed 23/03/12.

² ISAF Reintegration guide – 22/10/10 – Force Reintegration Cell HQ ISAF. Also in presentation by Alistair Corbett of Force Reintegration Cell – ISAF HQ – on 5th March 2012 in London.

³ US – Afghanistan Strategic Partnership Agreement – 09/05/2012 – Clause 2.d. – <http://photos.state.gov/libraries/afghanistan/231771/PDFs/2012-05-01-scan-of-spa-english.pdf> - Accessed 14/05/12. The International Afghanistan Conference in Bonn – Conclusions Clause 23 – 05/12/11 – http://eeas.europa.eu/afghanistan/docs/2011_11_conclusions_bonn_en.pdf – Accessed 14/05/12.

⁴ We note especially the important investment promotion roles played by the development agencies of NATO members such as the US (particularly USAID and the US Department of Defence's Task Force for Business and Stability Operations) the UK (through DFID), Germany, Norway and Japan which have all contributed to mineral sector development.

⁵ The International Afghanistan Conference in Bonn – Conclusions Clause 23 – 05/12/11 – http://eeas.europa.eu/afghanistan/docs/2011_11_conclusions_bonn_en.pdf – Accessed 14/05/12.

⁶ These include the Natural Resource Charter, the UNHCR's Guiding Principles on Business and Human Rights, the Revenue Watch Index, the IMF's Guide on Resource Revenue Transparency, the Voluntary Principles on Security and Human Rights the Extractive Industries Transparency Initiative, the IFC's Sustainability Framework, the ICMM's Sustainable Development Principles, the Model Mine Development Agreement being developed by the International Bar Association, the IAIA guidelines and principles, Convention 169 of the ILO, the OECD Guidelines for

Multinational Enterprises, and the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High- Risk Areas, among others.

⁷ This includes requirements for regular annual reporting; setting levels of materiality appropriate to ensure adequate coverage of the sector; all data uses international accounting/auditing standards to ensure data reliability; ensure coverage of various payment types including in-kind payments; provide detailed explanation of discrepancies; include coverage of revenue flows from state owned enterprises; provide disaggregation by mineral, company, revenue stream, project; provides well defined terms such as currency rates used, the price of any product received or sold by government and, references prices for commodities; and ensures publication in all national languages. See: **What Makes a Good EITI Report? Revenue Watch Institute 2011**
<http://data.revenuwatch.org/eiti/about.php#goodreport>

⁸ Including package/barter deals, commodity-backed loans, social or community payments and sub-national payments.

⁹ For Reference see the Equator Principles requirement for free, prior and informed consultation.