Getting the foundations right: Amendment of the mining law and its fundamental weaknesses

Sayed Ikram Afzali, Executive Director, Integrity Watch Afghanistan

Fixing the gaps in Afghanistan’s mining law is absolutely critical to reducing the massive corruption, revenue loss and conflict around the sector which have made it a source of harm as much as of hope for the Afghan people. And during the last couple of years, the Afghan Government has been working to amend it. But that effort has not been without its problems.

The process itself has been one issue. Civil society organizations have been able to input into the law multiple times – which has been very welcome. However, the consultation process has sometimes felt like more of a “box-ticking” exercise than a meaningful engagement. Rather than a sustained and substantive discussion on the key issues – which would help to expose and address weaknesses on all sides, including among our own proposals – there has been a series of more or less one-way opportunities to input into six successive drafts. Each one has been starkly different from the others, with little clarity about where the changes were coming from and why, and avoidable mistakes popping up several times. That has led to frustration for everyone involved.
Despite these weaknesses, there have been some significant improvements so far – such as the publication of contracts as a condition for their validity, and a shift from a contract-based to a license-based system to manage the sector. The government deserves real credit for these changes, some of which put it ahead of many more developed countries. But there are still some fundamental weaknesses that, if not addressed, could greatly increase the risks for corruption and conflict.

As the government puts it, the amendments of the mining law are around four major priorities: (1) institutional arrangements for decision-making, (2) the bidding process, (3) classification of licenses, and (4) introducing fixed royalties. There are arguments for and against putting fixed royalties in the law itself, and there are limitations in the classification of the licenses (notably in that they put artisanal mining under small-scale mining). But the major weaknesses are related to institutional arrangements and inadequacy of measures to ensure transparency – which unfortunately was not among the four core priorities.

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The institutional arrangements vests enormous power in the hands of the President and the High Economic Council (HEC). The proposed Mining Technical Committee (MTC) is assigned the responsibility of technical evaluation of all the bids and applications for licenses. The MTC would be composed of representatives of Ministry of Mines and technical experts hand-picked by the President. A late amendment has set out some safeguards in the appointments process, but recent reports suggest a selection committee has been proposed to the President consisting entirely of government representatives, without any representation from civil society or other independent actors. The MTC would therefore be open to political interference.

The HEC for its part is open to political influence as well. Since it is not defined in law, the President can in theory pick all members of the HEC without constraints. The National Procurement Commission (NPC) and the National Procurement Authority (NPA) have been given an oversight function which are again not independent from the government and are prone to political influence. Therefore, in the absence of an independent institution, the whole process is at risk of political influence and abuse. An Independent Mining Regulatory Commission based on the model of independent Access to Information Commission would minimize political influence in giving away mining concessions and ensure apolitical regulation of the mining sector.

Although some very welcome transparency measures have been taken into account such as mentioning beneficial ownership and publication of contracts, there are still major loopholes in the definition of terms
and transparency mechanisms. The beneficial ownership definition is not based on the standards adopted by the Afghan Extractive Industries Transparency Initiative (EITI), that the government has committed to implement. Publication of the business registry has not been mentioned either, although the government has made this committed in several forums including the London Anti-Corruption Summit in 2016. And an ombudsman for complaints has been included, but has neither powers nor independence. A requirement in the current law for companies to take part in EITI has been removed.

Perhaps the most important missed opportunity is in the transparency of payment and production data. We had proposed that the government simply require all mining-related payments to be made through a designated sub-account of the main treasury account, and for the sub-account statement itself to then be published. That would provide a uniquely powerful guarantee for the publication of the fundamental source data on revenues from individual mining contracts. It would require minimal changes and very little capacity, but would make publication automatic, and in a form where the data is comprehensive, detailed, and very difficult to falsify.

So far the government has neither provided a convincing argument against the proposal, nor has it come up with an equivalent alternative. They have proposed a coding system which, while it is certainly worth considering, would quite possibly take years to implement, would be more vulnerable to technical errors, and would require more capacity. Coding has been unable to prevent mismatches in data provided by Ministry of Mines and Ministry of Finance, or major data gaps in the EITI reports. We don’t object to this or any other reporting measures – but the single account is desperately needed as a foundation and a backstop guarantee. Everything in our experience shows how easily both lack of capacity and direct corruption can undermine transparency otherwise.

At the moment, mining is the second largest source of funding to the armed opposition, while the loses to the government budget are estimated in the hundreds of millions of dollars. Afghanistan cannot afford to be unambitious about the new legislation: to have any chance of reforming the sector, we need to be ruthless about putting in the strongest possible protections. Amendments such as those suggested above are critical to ensure much needed transparency and effective governance. We welcome the effort the Afghan government has made, but if they want to build a solid foundations for the sector, they need to address the weaknesses that remain.

Also read our other spotlights on extractives:
On August 16, Integrity Watch Afghanistan and Transparency International (TI) held a joint forum on fighting corruption through the implementation of Sustainable Development Goals (SDGs) at Government Media and Information Center. Representatives from civil society, donor community including GIZ, Minister of Economy and other government officials participated.

Delivering his remarks, Mustafa Mastoor, Minister of Economy emphasized on the implementation of SDGs and said, “the current failure in security sector is directly related to the existence of widespread corruption in the sector.” According to H.E. Mastoor, ethnic discrimination and lack of ownership and leadership of Afghans are the primary reasons that corruption prevails.

Mr. Carsten Schmitz-Hoffmann, Country Director for GIZ regarded corruption as an obstacle to economic growth and development. Mr. Hoffmann highlighted the necessity of working together and stated that, “A vibrant and strong civil society is important in the fight against corruption. One cannot make it alone. We strongly believe in cooperation among all stakeholders in the fight against corruption.”

Speaking at the forum, Sayed Ikram Afzali, Executive Director of Integrity Watch Afghanistan, reminded the audience of the wastage of billions of dollars by the Afghan government and the international community in the last decade and a half. According to Mr. Afzali the wide-spread corruption questions the commitment of the international community against corruption and accountability to their tax-payers at home. “To ensure the trust of people and renew commitment in the fight against corruption, the international community along
with Afghan government should ensure that the stolen money invested in Dubai, Istanbul, London and other cities are returned to Afghan people,” he added. He stated that all the three branches of the government not only did not fulfill expectations of people in the fight against corruption but benefited from corruption and they themselves were captured by corruption networks. He criticized the government for politicizing the fight against corruption and not creating an independent anti-corruption commission. Mr. Afzali accused the parliament of corruption and stated that members of Parliament stuffed a huge sum of money into their pockets. He emphasized that such people should be prevented from running again for the parliament.

The forum followed by two panel discussions through which speakers presented their views and answered questions by the floor on SDGs in Afghanistan and reducing the level of corruption.

In the first panel discussion, illicit financial flow, recovery of stolen assets, substantial reduction of corruption, the effectiveness of anti-corruption institutions and access to information were discussed. Yama Turabi of Special Anti-Corruption Secretariat of High Council on Rule of Law and Anti-Corruption explained the five pillars of government anti-corruption and said, that remarkable actions have been taken in the security, justice sector, civil services, financial arenas and sound political leadership. In response to a number of questions that the government has not done enough, he urged the participants to manage their expectations. “In a country that is plunged by war and corruption is widespread we should wait for the impact of reforms.”

Answering another question on complaint mechanisms, he added that Civil Service Commission and Attorney General Office hold hearing sessions every week while Ministry of Internal addresses the problem through the radio station.

In the second panel Mr. Ashraf Rasooli, Advisor to the Ministry of Justice criticized the government for rejecting the anti-corruption law despite the efforts of a group that worked on the law for two years. Further, he questioned the independence of the High Council on Rule of Law and Anti-Corruption and stressed on establishing independent anti-Corruption agencies based on international standards. Mr. Naser Timory, Head of Advocacy and Communications at Integrity Watch, stated that there is no independent anti-corruption agency in Afghanistan. He criticized the merger of all anti-corruption agencies into the Attorney General Office and stated, “The president can remove the Attorney General any time he wishes. That is why the Attorney General Office is not independent based on the global standards.”

SDGs are a set of aspiring goals set out by members of the United Nations to achieve peace and development all over the world by 2030. Goal 16 is focused on peace, justice and strong institutions that is dealing with reducing substantial amount of corruption, taking measures to stop illicit follow of financial assets and creating effective anti-corruption agencies.
Community in Kabul prevents medicine theft by a medic

Wahidullah Azizi and Ali Ahmad Mashalafrooz, Integrity Watch Afghanistan

The local community in Kamari district of Kabul stopped a medic while trying to steal medicines worth of more than $7000 from the clinic near Kabul. The government provides free medicines to all public health facility that is used in the treatment of the local population. The medic who also In-Charge of the clinic tried to take away a considerable number of drugs using his car’s trunk.

Since its establishment five years ago, Kamari Basic Health Center has come short of providing services to the residence of the district mainly due to widespread corruption in the clinic and lack of accountability by the doctors. Despite raising their voice against the ongoing misconduct at the clinic services but fall on deaf ears. For instance, despite having Gynecology and obstetrics section in the clinic, it has not been used for once.

The law enforcement agencies arrested the medic and locals demand legal actions against him. However, to our surprise Kabul Health Director has transferred the alleged medic to another clinic while locals demand his suspension and prosecution of the physician. Community representatives and Integrity Watch met with the Director and he said that the case has been referred to the Ministry and they wait for actions against him.

Despite spending a good chunk of money on the health sector during the past decade and a half by the international community and the Afghan government, the status of public health in the country remains in shambles. Afghans continue to go abroad looking for treatment of basic diseases while it could have been taken care of inside the country. Integrity Watch has surveyed 184 health facilities in the country where it found mismanagement and corruption resulted in compromising the quality of health services in the public healthcare centers.
After demand by the society and the success of Community-Based Monitoring programs, Integrity Watch started monitoring of public health delivery in Kabul with the aim of expanding the program into the provinces. According to the program launched last month, eight volunteers trained by Integrity Watch will monitor the service delivery in six public healthcare centers.

Kapisa civil society conducted its first ever social audit

Rasool Ehsany and Mashouq Safai, Integrity Watch Afghanistan

In August 2018, Kapisa Integrity Network conducted its first social audit in the province. Three dozens of civil society activists and ordinary citizens participated in the social audit of Mahmood Raqi’s Municipality Service Center. The initiative was taken after the group met earlier this month to institutionalize social accountability and access to information culture in the province.

Trained by the Integrity Watch, the audit committee conducted a technical inspection of the building and assessed its services. The preliminary findings point at irregularities including changes in the design of the building, lack of construction of toilets for staff as per the design, and lack adherence to procurement
regulations. Other issues were related to the use of the center such as assigning thirty chairs instead of fifty-four for the clients. The Network has shared the findings with the Municipality and will follow up on the issue highlighted in the social audit report. The construction of the center was funded by UNDP and was completed in 2016.

Social audit is a process of reviewing official records and determining whether state reported expenditures reflect the actual money spent on the ground. Integrity Watch has held training on social audit for the provincial integrity networks in several provinces and facilitated exposure visits of those networks to Sri Lanka and the Philippines on social audit in August 2017 and June 2018.

Ghulam Sakhi Rahimi, Acting Mayor of Kapisa cooperated with the group throughout the process and stated that “Access to information is the right of people and we are ready to hear their feedbacks. Such initiatives by the public make government accountable and lay a foundation for effective and strong institutions.”

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Provincial Integrity Networks are voluntary platforms of civil society activists to promote transparency, accountability, and integrity at the local level. Integrity Watch facilitated the creation of these platforms in Nangarhar, Herat, Balkh as well as Parwan, Kapisa, and Bamyan in early 2015. The networks independently take the initiative, and where needed, Integrity Watch facilitates its operations. The networks comprised of three dozen activists divided into several specialized committees including access to information and public complaints.
People and officials discuss municipal services in Herat

By: Wahidullah Azizi, Integrity Watch Afghanistan

In July 2018, municipality officials and citizens gathered in Herat to discuss the most immediate issues facing their city. In the dialogue that was facilitated by Integrity Watch Afghanistan, more than a hundred people participated. The participants including members of civil society, representatives of communities and members of the Provincial Council, shared their concerns and views about the delivery of municipal services in Herat. Lack of consultation with citizens regarding prioritizing public projects and lack of participation of people in the budgeting process is the major issue highlighted.

Herat is one of the major cities of Afghanistan. According to “Citizens Report Card 2017” survey by Integrity Watch Afghanistan 64% of citizens in Herat were satisfied from the municipal services. Herat’s Municipality performed well in the management of public park and greenery and solid waste management. On the other hand, citizens gave low scores regarding the availability of parking lots, bus stands and wastewater drainage. The scorecard encourages municipalities to compete with each other for better positions while raising understanding of people at the same time.

Opening the ‘Integrity Dialogue’, Sayed Ikram Afzali, Executive Director of Integrity Watch Afghanistan said, “ Despite securing the second position only 6 in 10 people were satisfied with the services. There is a need
for people to involve in the process of budgeting and selection of public projects.” Can expectations of citizens be meet if we do not have elected representatives in Municipality?” He asked. Despite clear provisions in the law and commitment by the National Unity Government, no Mayor has been elected so far. Having elected Mayors boosts accountability and results in improving services delivery to citizens.

Herat Municipality has no Mayor and has been running by Acting Mayors. However, that is not the only issue the Municipality is facing, already in the half of the fiscal year, the central government in Kabul has approved no budget for the Municipality of Herat resulting in many essential services not provided for the citizens.

A panel of related stakeholders including a member of Provincial Council, City Council, member of Provincial Integrity Network (PIN), Integrity Volunteer and, representative of Herat Municipality responded to questions raised by the participants.

Integrity Watch facilitated a series of ‘Integrity Dialogues’ where people and official share a platform to discuss issues most concerning them such as delivery of justice and municipality services. In July and August 2018, Integrity Watch facilitated the conduct of Integrity Dialogues in Mazar-e-Sharif, Kapisa, Parwan, Herat, and Bamiyan. The Dialogues aims at engaging public and officials in a civic discussion with a long-term impact of more openness and accountability on the government part.