Cover Page

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THE PLUNDERERS OF HOPE?

Political economy of five major mines in Afghanistan

Prepared for

Integrity Watch Afghanistan

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ACRONYMS

AEITI	Afghanistan Extractive Industries Transparency Initiative
AFs	The Afghan currency, Afghani
AGS	Afghan Geological Survey
AISA	Afghanistan Investment Support Agency
CEO	Chief Executive Officer
CDC	Community Development Council
EITI	Extractive Industries Transparency Initiative
ESIR	Environment and Social Impact Report
Firoza	Turquoise
IFRS	International Financial Reporting Standards
ILO	International Labour Organization
IMC	Inter-Ministerial Commission
LME	London Metal Exchange Price
MoI	Ministry of Interior
Meshrano Jirga	The Upper House of Afghan Parliament
MoMP	Ministry of Mines and Petroleum
MoF	Ministry of Finance
MP	Member of Parliament
MRRD	Ministry of Rural Rehabilitation and Development
NATO	North Atlantic Treaty Organization
NEPA	National Environment Protection Agency
USGS	The United States Geological Survey
Wolusi Jirga	The Lower House of Afghan Parliament

EXECUTIVE SUMMARY

Afghanistan's mineral resources are seen as a sector with the potential to generate large revenues for the state over the next few decades and thus help finance state functions and development of the country. However, the growing clout of politically connected individuals may lead to use of these resources for personal enrichment, carrying the risk of derailing the development process.

The topic of this study is the political economy and conflict implications of underground mineral resource exploitation in Afghanistan. The study consists of detailed case studies of five mining operations, contracted by the Government of Afghanistan (and represented by the Ministry of Mines and Petroleum, [MoMP]) to various Afghan companies.

The five mines included in this report, which have been awarded to politically connected individuals and families are as follows: Ghori Cement, QaraZaghan Gold, Kohi Safi Chromite, Nuraba and Samti Gold, and the West Garmak Coal mines. Table E1 below provides basic summary information about the five case studies. The mining operations are at different stages in their life cycles, with contracts from a period of years from 2007-2012.

Table E1: Basic Information about the Five Mining Projects

Company Name	Mine Name	Product	Province	Year of Contract	Area	Deposit Size	Royalty Rate (USD)
Afghan Investment Company	Ghori Cement (Karkar and Dodkash Coal)	Cement and Coal	Baghlan	2007	216 hectares	Unknown	$1.04/ton of cement; $8/ton of coal
West Land General Trading	Nuraba and Samti Gold	Gold	Takhar	2008/2012	14 km^2	Nuraba: 800 kg; Samti: 31 tons (impure)	20 percent of LME
Afghan Krystal Natural Resources	QaraZaghan Gold	Gold	Baghlan	2011	1,257 hectares	Unknown	26 percent of LME
Hewad Brothers	Kohi Safi Chromite	Chromite	Parwan	2011	54 km^2	Unknown	26 percent based on $210/ton
Khoshak Brothers	Western Garmak Coal	Coal	Samangan	2012	1250.5 hectares	Unknown	$21/ton

Source: Case studies

While using the case study approach to gain in-depth insights into what has been actually happening on (and under) the ground, the report also captures patterns and trends across the mining sector. The author is aware of and has studied a number of other mines, the experiences of which reinforces and confirms the generalizations that can be drawn from the five case studies in this report.

Main Findings

Specific findings in this paper are organized under eight headings (corresponding to stages in the contracting and implementation processes), to present the information and findings in a simplified format for easy understanding.

Tender documents. The tender documents prepared for most of the case study mines were drafted in a way that gave a certain edge to the final winner; moreover, in some respects certain aspects of the contracts were in clear breach of the Mineral Law of Afghanistan.

Tendering process. Exertion of political influence, which started in each case before the tender documents were issued, continued through the long-listing and short-listing period.

Bid submission and evaluation. Sharing of information with the winning companies pre-tendering is reflected in the proposal of each company, with the exception of Ghori Cement, which was awarded to the winning company even though other bids were better. Promises of huge royalty payments, ambitious commitments for extraction of minerals sometimes in absence of exploration data, and promises of employment opportunities for Afghans alongside other revenue generation seemingly trapped state officials into selecting the winning bidder.

The contract itself and any contradictions with the law. The Ghori Cement contract, awarded before the Mineral Law of Afghanistan was promulgated, was signed with AIC for a period 49 years—much longer than what is now allowed under the Mineral Law. The Mineral Law of 2010, under its "Eligibility Article," prohibits politicians, state, and government officials from acquiring any mining contract, whereas in all five case studies there appear to be examples of beneficial ownership on the part of such persons, though often hidden.

Meeting legal requirements of the Mineral Law. The 2010 Mineral Law of Afghanistan, the Environment Law of Afghanistan, and the new Mineral Law (2014) make it mandatory for mining companies to conduct a social and environment impact study. All five contracts allowed each operator between one and three years for exploration, Social and Environmental Impact Assessment, a feasibility study, environment protection plans, etc. Mine operators in all cases are required to first submit their exploration plan to MoMP for approval, after which they are expected to submit their findings and the various studies mentioned above, all before an exploitation license is granted. At the time of this report, none of the five companies has fulfilled any of these legal and contractual requirements. Mine safety also has been largely ignored by the companies, which tend to subject their employees to unfairly long working hours and low wages.

Contract implementation. The most serious breaches and violations have happened at the implementation stage. Some companies prepared neither their exploration reports nor their environment and social impact assessments. In sum, the five companies have been extracting resources (see Table E2) without providing necessary documentation to the MoMP, without obtaining the Ministry's permission for exploitation, and without paying any of the required royalties and taxes.

Table E2: Status of each operation per timeline in the contracts and actions on the ground

Mine	Company Name	Exploration	Extraction	Closure
Ghori Cement	Afghan Investment Company		The company is extracting	
QaraZaghan Gold	Afghan Krystal Natural Resources And Afghan Gold and Mineral[1]	The company should be exploring	The company has extracted	The company has closed operation
Kohi Safi Chromite	Hewad Brothers Company	The company should be exploring	The company is extracting	
Nuraba and Samti Gold	West Land General Trading	The company should be exploring	The company is extracting	
Western Garmak Coal	Khoshak Brothers Company	The company should be exploring	The company is extracting	

Source: Case studies

Changes in contracts after they were awarded. Changes have been made to contracts after they were signed, without following the stipulated procedures or providing public transparency. This represents a continuation of the exertion of political influence that was evident in earlier stages.

Monitoring by MoMP and NEPA. MoMP and the National Environmental Protection Agency (NEPA), which are mandated to regulate and monitor mining operations, have failed in executing their responsibilities.

MoMP has failed to carry out its regulatory responsibilities in all of these cases. The inspection department has failed to inspect the operations of each company and assess its production level or the installation of equipment and gear for the safety of workers and operation. There have been incidents of explosions, thus there have been human losses and revenue loss to the government. A rough calculation of revenue losses to the state due to unpaid royalty and surface rent from all five companies totals over US$50 million per year.

Lack of accountability for failure to meet contract requirements. The Mineral Law defines clear red lines in terms of violations, but it does not say much about penalties. Some contracts state that there will be penalties in certain situations, but the penalties are not defined. The law and contracts mention circumstances for cancellation and ineligibility, but in actuality there has been no significant case thus far for which this has happened.

Relationships and conflict with local communities. Contractual provisions for funding by companies for social development in the areas around the mines, as well as for responding to complaints and grievances of local communities, have not been followed by the companies. On the contrary, sometimes conflicts have been precipitated or exacerbated due to mining activities.

[1]AKNR was a company registered in 2010 with AISA and it is owned by Sadat Mansoor Nadiri who is currently the Minister for Urban Development. The company has also transferred its rights over QaraZaghan to Afghan Gold and Mineral Company without the public being informed, but both of the companies are active and owned by Sadaat Mansoor Nadiri, according to the database of AISA.

Revenue losses to the state. Extractive industries are widely seen as a source of revenue for the state, and the primary reason for awarding these five mining contracts was to generate revenues for the government. However, corruption and use of political connections have led to estimated losses of around Afs3 billion (over US$50 million) annually only from two sources of revenue (royalty and surface rent). The study could not capture the amount of other taxes evaded by each company. Table E3, below, shows the estimated losses attributable to royalty and surface rent.

Table E3: Estimated royalty and rent due from each company annually

Company	Promised/Estimated Production	Royalty Due in $	Surface Rent in $
Hewad Brothers (chromite)	130,000 tons	7,098,000	67,500
AIC (coal)	1,000,000 tons	8,000,000	300,000
AIC (cement)	438,000 tons	455,520	1,000,000
AKNR (gold)	1,628 kilograms	17,883,898	31,425
Khoshak Brothers (coal)	88,110 tons	1,894,365	31262.5
WestL and General Trading (gold)	1,700 kilograms	15,591,040	15,000
Total		**53,663,572**	**1,430,175**

Note
The calculations are based on author's compilation based on information in each contract (including royalty rates in table E1), production levels promised or estimated in company bid proposals, and international websites. The price of gold for these calculations is taken as $45,856 per kilogram (based on http://www.usagold.com/dailyquotes.html at 9:30 PM, July 28th 2014).

The price of coal used is $90 per ton (taken from traders involved in the coal trade). The AKNR did not find much gold at the site and applied for cancellation of license. The promise from the AKNR that it would produce 1628 kg Gold was a trap that must have led to an over-estimation of revenue from the mining sector, and thus allocation of revenue for development.

Source: Case studies

Communications with the concerned companies

Following production of the first draft of this report, Integrity Watch sent both soft and hard copies of the relevant sections of this report to each of the concerned companies in June, 2015 for their responses or comments. Of the five companies, only two replied with comments – the Chief of Khoushak Brothers Company in June, 2015 and the Executive Director of Afghan Gold & Minerals Company (AGMC) and Afghan Krystal Natural Resource Company (AKNR) in July, 2015. The comments of these two respondents are summarized at the end of the sections in this report dealing with those two companies. In addition, in September, 2015, Integrity Watch sent emails and letters to all five companies requesting face-to-face meetings for the author, together with a representative from Integrity Watch, with a senior management representative of each of the five companies in order to review and discuss

the findings in this report. None of the five companies responded in any manner to the latter meeting request.

Recommendations

The recommendations are based on the analysis and findings reported in the chapters on the individual case studies, which also have been summarized earlier in this chapter.

Ministry of Mines and Petroleum. The government should build a strategic vision for the development of the mining sector and must avoid being trapped by a quest to generate quick revenues without putting effective institutions and proper regulations in place. Without a long-term vision, Afghanistan will not be able to develop the sector nor bring development to society.

The MoMP needs to amend the Mineral Law which was recently approved by the Wolusi Jirga and signed by the President. The new Mineral Law is weak and does not have the provisions necessary to guard against corruption; therefore, it cannot bring stability to the in-chaos mining sector of the country. The Mineral Law and regulations should define more specific penalties for companies and individuals who either deviate from the terms of the contract or resort to illegal extraction.

The Afghan government needs to recentralize the licensing system for precious minerals, as the former minister's plan to decentralize the licensing system to provincial mining departments has led to massive corruption and secrecy, under which contracts for extraction have been awarded without any resulting revenue coming to the government.

Tender documents must make it mandatory for bidders to disclose the beneficial ownership of each company and all of its shareholders. This is essential to avoid the phenomenon of hidden owners, shareholders, and beneficiaries, including senior government officials and members holding political leadership positions.

The tendering, short-listing of each bid, bid evaluation, and negotiation should be carried out by a team of experts with clear benchmarks and accountability, immune to political interference. The final contract agreed with the winning company should squarely reflect the promises mentioned in the proposal submitted in response to the tender document. The bidding process must be transparent, and all proposals must be shared with Afghan citizens within ten days of signing the final contract with a winning entity. This is essential to safeguard against political interferences.

There should be clear definitions of the various activities in the mining sector (for example, exploration versus exploitation), and companies need to be regularly monitored as to whether their activities conform to the activities stipulated in their contracts.

The Ministry of Finance (MoF) in collaboration with the MoMP. The MoMP and MoF should develop a joint mechanism for collecting revenues on due dates from each company and then share this information on collections with the public. The MoMP and MoF should create a joint team to assess and monitor the activities of each company at each stage.

The Customs Department of the MoF should be provided a copy of each mining contract and should track the exports of each company so that these can be cross-checked against contractual requirements.

The MoF and MoMP should work on developing a mechanism to project the revenue expected from each mine (according to the contract provisions) and monitor actual collection of revenue, thus allowing shortfalls and delays in revenue collection to be reviewed.

Community consultation must be a necessary requirement, and mine operators and the government must inform citizens and engage them in an informed manner. The Community Development Agreement, which is a legal requirement in Afghanistan, must be localized and implemented, as it is a sound way to both inform and empower local people through dialogue.

National Environment Protection Agency. The NEPA should independently and proactively require companies to turn over to it the required Environmental and Social Impact Report (ESIR) and subsequently assess the ESIR before issuing an exploitation permit. The decision in each case should be published on the NEPA's website.

The inspection department of the NEPA should clearly define the processes involved in mining operations and regularly monitor and inspect adherence to the same by mining operators. This would help encourage companies to follow standard procedures and reduce risks of incidents.

The NEPA should carry out thorough environmental baseline studies of the environment in areas where mines are located, which will enable them to assess the environment management plans of mine operators in an informed manner.

Ministry of Public Works. The Ministry of Public Works must observe the implementation of the companies' work-related procedures. The social development expenditures and activities of each company must be monitored and evaluated against the commitment in each contract, as well as the requirements of ILO conventions to which Afghanistan is a signatory. The Ministry must also implement minimum standards on work safety and water usage.

Ministry of Interior. The police force deployed to protect mining sites from subversive elements must not interfere in disputes between communities and companies over rights-based issues. Police units guarding mining sites need to be trained in Human Rights Issues and other international standards before deployment. Their interference in favor of the company must be a punishable act.

Ministry of Women Affairs. The Ministry of Women Affairs must do its own assessment of mining's impact on women and report on how to avoid or mitigate the negative impact and/or capitalize on any positive impacts.

Afghan Civil Society. The Afghan Civil Society has to educate itself more on natural resource governance, revenue management, and the social and environmental impact of mining in order to be effective in its informational, advocacy, and mobilization work on all aspects of mining. Change in the sector needs consistent and synergistic efforts to ensure they are captured and discussed in timely manner. More research may help capture trends and make policies more specific and responsive.

International Partners. The international donor community needs to encourage the MoMP to develop its plans for the sector and then to provide targeted funding to stakeholders in the sector. Some exploration conducted by the public sector may also be helpful in curbing tendencies of mining companies to engage in exploitation under the guise of exploration. This may also help clean mining companies to invest more in midstream mining activities, which includes the development of a mine site rather than sinking capital in risky upstream activities.

The international community should help the government develop the sector rather than promoting overly rapid extraction in the short run. Nurturing good governance must play an important role in this regard. Moreover, international partners may help both in drafting good strategy for governance of the sector and in providing technical and financial support for capacity building and strategy implementation.

INTRODUCTION

Afghanistan has a wide range of natural resources. It has several potential hydrocarbon sites in the north and the south of the country. Its minerals include a range of metals both ferrous and nonferrous, as well as some strategic metals, which may give Afghanistan an advantage in attracting international investment. Platinum, gold, silver, copper, iron, chromite, tantalum, uranium, and Bauxite have serious potential for economic exploitation.

The country also has massive deposits of precious stones, including rare white, orange, and green onyx stones, among over 60 other varieties. Afghanistan is additionally home to a blue stone, which was discovered in Badakhashan by German geologists and named Afghanite. Afghanistan's emeralds, rubies, spinal, tourmaline, aquamarine, amities, some versions of sapphires, turquoise, and the royal blue lapis lazuli have charmed gemstone markets and dealers alike.

The British geologists who visited Afghanistan in the 1880s discovered sites with many mineral resources across its geography. The Russians, Germans, and Italians carried out searches, discovering and mapping a number of sites bearing minerals. They prepared several hundred maps of various sites, but the Russians carried out more systematic and continuous work for many years, producing the first set of accurate data about minerals in Afghanistan. The USGS carried out an aerial survey that, besides identifying new sites, confirmed the sites identified by the Russians as potential mineral sites worthy of exploration and undergoing a feasibility study[2].

Afghanistan's mineral resources are seen as a sector with the potential to generate large revenues for the state over the next few decades and thus help finance state functions and development of the country. However, the growing clout of politically connected individuals may lead to use of these resources for personal enrichment, carrying the risk of derailing the development process.

Out of over 300 mining and hydrocarbon contracts awarded so far, a great majority may have been exploited by local strongmen under the protection of warlords or awarded through political influence in exchange for cash, election favors, or other various kinds of support. Therefore, this research was commissioned to study the political economy and conflict implications of underground mineral resource exploitation in Afghanistan. This research looks at five large and medium-sized contracts selected from among over 30 similar cases, most of which have been awarded to local businesses.

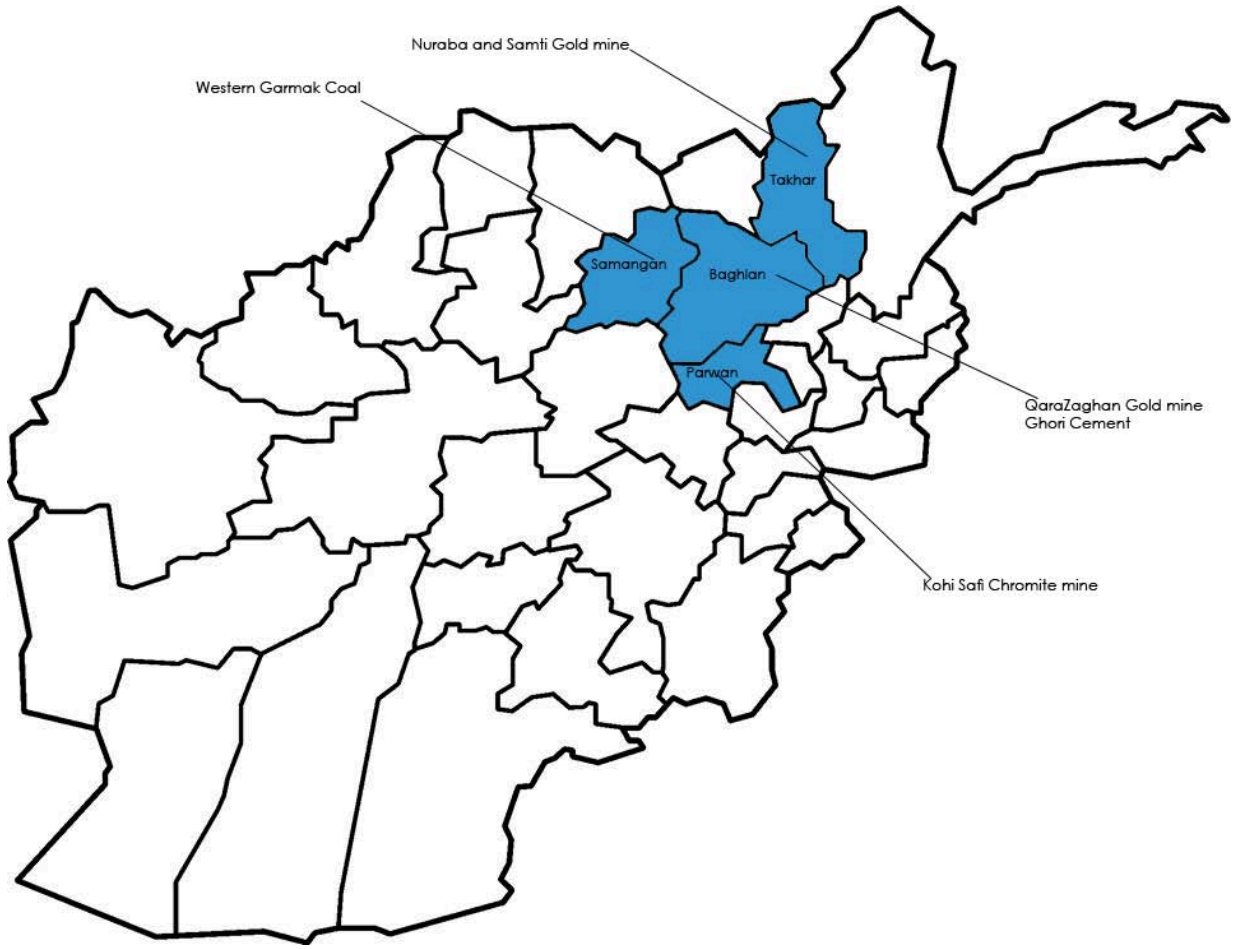
The research required in-depth interviews with a diverse set of people in order to understand the political nexus and hidden beneficial out comes of some of the projects. The methodology also included desk research to understand the existing and applicable laws, regulations, policies, standards, the five contracts and reports for both identifying deviation and violation during the contracting phases as well as during the project implementation. The research involved tracing documents to authenticate the findings to accurately reflect and validate the claims in this report.

[2]United State Geological Survey (http://www.usgs.gov/newsroom/article.asp?ID=3280#.VBU6sRbg-d8)

The trend set by the current investment in the sector may have a negative impact on the development of both the national economy and the mining sector in Afghanistan**. A key research question was whether the Afghan political elite has positioned itself to exploit an open market economy in the fragile environment of Afghanistan to entrench its interests and sustain its grip on both the state and the economy.**

The five mines included in this report, which have been awarded to politically connected individuals and families are as follows: Ghori Cement, QaraZaghan Gold, Kohi Safi Chromite, Nuraba and Samti Gold, and the West Garmak Coal mines. Map 1 shows the geographical locations of the mines.

Map 1: Locations of the five mines under this research



METHODOLOGY

The study consists of detailed case studies of five mining operations, contracted by the Government of Afghanistan (and represented by the Ministry of Mines and Petroleum, [MoMP]) to various Afghan companies. The methodology also included desk research to understand the existing and applicable laws, regulations, policies, and standards, as well as the five contracts and reports for identifying both deviation and violation during the contracting and projecting implantation phases. The research involved tracing documents to authenticate the findings in order to accurately reflect and validate the claims in this report.

The research for this study included 70 in-depth key informant interviews with a diverse set of stakeholders and resource persons in Kabul, Parwan, Baghlan, Samangan, and Takhar provinces. The objective was to better understand, *inter alia*, the political connections and beneficial ownership of the mining companies, how contracts were tendered and awarded, and how contract implementation and operations were actually occurring on the ground, as well as to determine the attitudes of local people toward the mines and what the perceived benefits and costs were to them. Starting from a small number of interviews initially, "snowball"[3] sampling was used to identify further key informants for the research.

In addition, documentary evidence was carefully reviewed and incorporated into the analysis, including (1) the contracts for all five mines (which are in the public domain); (2) the relevant laws, regulations, policies, standards, etc.; (3) available reports on the mines conducted by the government, companies, or others; and (4) press and media accounts where relevant. The data-analysis process started early during the data collection phase as a means of informing the question guide and highlighting emerging themes.

While using the case study approach to gain in-depth insights into what has been actually happening on (and under) the ground, the report also captures patterns and trends across the mining sector. The author is aware of and has studied a number of other mines, the experiences of which reinforces and confirms the generalizations that can be drawn from the five case studies in this report.

Following production of the first draft of this report, Integrity Watch sent both soft and hard copies of the relevant sections of this report to each of the concerned companies in June, 2015 for their responses or comments. Of the five companies, only two replied with comments – the Chief of Khoushak Brothers Company in June, 2015 and the Executive Director of Afghan Gold & Minerals Company (AGMC) and Afghan Krystal Natural Resource Company (AKNR) in July, 2015. The comments of these two respondents are summarized at the end of the sections in this report dealing with those two companies. In addition, in September, 2015, Integrity Watch sent emails and letters to all five companies requesting face-to-face meetings for the author, together with a representative from Integrity Watch,

[3] Snowball sampling is a non-probability sampling method, whereby the next subject is identified through the current interviewees. The sample group grows like a snowball as one move ahead in identifying more informants for research.

with a senior management representative of each of the five companies in order to review and discuss the findings in this report. None of the five companies responded in any manner to the latter meeting request.

1. GHORI CEMENT

Ghori Cement, a state-owned enterprise located in Pul-e-Khumri, the capital city of Baghlan Province, was a large project developed during the 1980s with a daily capacity of 1,200 tons.It was built with technical and financial support from the former Czechoslovakian government. The enterprise was privatized and signed over to the Afghanistan Investment Company on September 14, 2006. The contract was for a period of 49 years[4], which was decided under the Mineral Law of 2005, passed by presidential decree[5]. The Mineral Law of 2009 allows contracts for only up to30 years, with the possibility of extension through specific procedures defined in the Mineral Law. The Ghori contract also explicitly allows the transfer of rights[6]. However, article 7 of the same contract states, "If the company starts the operation ahead of the mentioned period in item (2) of this article, leaseholder is responsible to pay rental rights in proportion to production amount (on the basis of three million tons per year that would be US$0.33 per ton or its equivalent in Afghanis) from the start of operation."[7]The capacity of the enterprise in 1980s was 438,000 tons per ton during peak.

The Afghanistan Investment Company has several important shareholders, including Mahmud Karzai (former President Karzai's brother),Haji Haseen Faheem (brother of the now deceased first Vice President Marshal Qaseem Faheem), and Ghafar Dawi and Obidullah Ramin(members of the Wolusi Jirga), among others. The contract bears the signature of Sher Khan Farnood, the CEO of AIC and the former chairman of Kabul Bank, who was jailed for misappropriation of the money deposited in Kabul Bank, as well as former Minister of Mines and Petroleum Ibrahim Adel[8].

1.1. Obligations under the contract

The first paragraph of the Ghori Cement Contract reads, "This contract is between Islamic Republic of Afghanistan Ministry of Mines and Afghan Investment Company (AIC) for the purpose of leasing Ghori No. (1 and 2) Cement factories and construction of a new factory next to other ones, under the following term and conditions."[9]

Ghori Cement Enterprise was a big project in the region and had two producing plants functioning beginning in the 1980s. Unit Two seemed to have run out of parts and remained dysfunctional during the 1990s,whereas Unit One continued to produce until and after it was handed over to AIC in 2006.

Under the contract, AIC agreed to invest an initial capital of US$45 million, both to rehabilitate the existing Factory 1 and 2 which had 330 and 1,000 tons of daily production capacity, respectively. Additionally, AIC's investment would mobilize more capital to build a new factory (3) with a 3,000 tons-

[4]http://MoMP.gov.af/Content/files/Mineral%20Contracts/new_MX-2301N_20121013_183416_lr.pdf
[5] Interview with former Deputy Minister of MoMP, dated January 31, 2015
[6] Article 6 of the Ghori Cement Contract with AIC
[7] Article 7 of the Ghori Cement Contract with AIC
[8] The old contract signed between the MoMP and the Afghan Investment Company dated September 14, 2006
[9]Ibid

per-day production capacity, by the end of the third year of the contracting period (2009). AIC agreed to take six months to complete the technical study to ascertain the capacity and resources of the enterprise and two and a half years to rehabilitate Factory1 and Factory 2, according to the Ghori Cement Contract[10]. AIC is also required to pay US$1.0 million per annum as rent for the existing property of the Ghori Cement Enterprise and US$1.5 million as a guarantee for completion of both Factory 1 and 2. The company also committed to payment of US$500,000 for environmental protection. Finally, AIC committed in their contract to making social investments through the building of clinics, sports clubs, a recreational and cultural center, a library, and a kindergarten for the workers and local inhabitants.

The Karkar and Dodkash coal mine were packaged with Ghori Cement and contracted to AIC according to former Minister of Mines Ibrahim Adel[11]. Adel further added that factory 3, which was to be built with a 3,000 tons-per-day production capacity, was mandatory under the contract signed with AIC and that noncompliance should have led to pressure on the company to honor its contractual commitments or face cancellation of the contract. AIC was obligated to pay a royalty on 4,400 tons of cement per day by the end of the third year. Former Minister Adel added that Afghanistan needs four million tons of cement every year, whether produced domestically or otherwise. This was the purpose of privatizing the Ghori Cement Enterprise. Reporter Jonathan S. Landay for *McClatchy DC* corroborated this fact, noting that Afghanistan's cement market is dominated by Pakistani cement[12]. Afghanistan imports its cement either from Iran or Pakistan. The company is also to pay US$1.04 per ton as royalty on the cement, which is fixed permanently and thus favors the company.

The company, according to a former official of the MoMP who read AIC's proposal, committed to invest US$12 million in the Karkar and Dodkash coal mine but has not done anything in that regard until now[13], despite the fact that Article 6of the Coal Contract with AIC mentions this investment stipulation[14]. The company is to extract one million tons of coal per year from the Karkar and Dodkash mines with which to run the country's cement factories. The researcher found a production report from AIC which showed a month's production of 4,140 tons of cement, for which it had used 1,262 tons of coal. This means that with one million tons of coal, the AIC could produce 3,280,507 tons of cement. The Ghori Cement Plant and its production capacity were built by Czechoslovakian experts based on the coal reserve in Karkar and Dodkash[15]. Cement Enterprise was to produce cement internally to cater to the huge local demand, according to Adel[16]. There have been allegations of nepotism and corruption surrounding the deal, however.

The Afghan Investment Company has been awarded two additional coal mines, and they now extract coal for market as a commodity and no longer use it as raw material. Ghori Cement is hardly visible in

[10]Op cit cement Ghori contract dated September 14, 2006
[11] Interview with Ibrahim Adel, former Minister of Mines, January 6, 2014
[12]Jonathan S. Landay, *McClatchyDC*, November 14, 2010
[13] Interview with former official of the MoMP who requested anonymity due to security reasons, dated January 24, 2014
[14] Article 6 of the Coal Contract with AIC (http://mom.gov.af/Content/files/Mineral%20Contracts/new_MX-2301N_20121013_183327_lr.pdf)
[15] Interview with a senior engineer who sought anonymity, dated January 7, 2014
[16] Ibid

the market, while coal from Karkar and Dodkash is used by factories in Pakistan (which dominate the Afghan cement market).

In this light, it is imperative to highlight some of the weakness regarding the way the contract for the Ghori Cement was drafted:

- This contract is for two different activities—namely coal mining and cement production—along with the assets of the Ghori Cement Enterprise. There are confirmed reserves in both coal mines, as they had been exploited in the past. Coal is offered to AIC as a raw material for cement production for a royalty of US$8 per ton, whereas other companies extracting coal for trading in open market pay up to US$35 per ton as royalty. The AIC managed to get the coal for a very low rate, due largely to political influence.
- The exploitation ceiling on coal is one million tons per year from Karkar and Dodkash, which seems to be sufficient for two times the production of cement at peak times by all three units of AIC, when operational, but without any checks to avoid the sale of coal in an open market.
- Article 10 of the contract discusses technical and economic studies of the mines, which had already been explored and estimated by Russians in the past.
- Article 19, which deals with financial obligations in very loose terms, discussion-time monthly payments of dues without mentioning the due date within the month, for example.
- Article 2 of the Contract for Cement on the website of the Ministry of Mines explicitly mentions the third factory for cement production. This is to underline that building Factory 3 is mandatory under the contract[17].
- Article 31 prohibits the sale of property but does not mention renting out the property for purposes other than the production of cement.

1.2. Project implementation

The AIC, according to a senior official of the company, currently produces 1,200 tons of cement per day; one of the kilns of factory 1 is functional and the second Kiln is under repair, while factory 2is functioning at full capacity[18]. There is no data on the actual production of cement by the AIC, and factory 3 was never built. According to an AIC senior official, the company has built two clinics, one located close to the Karka rand Dodkash mines and the other next to the cement factory. It has also built two playing fields, one of which is next to the cement factory and the other is reportedly being used exclusively by the governor of the province[19].

Operations of the company highlight deviations from its commitment in the contract. A senior member of the mining department in Baghlan, on condition of anonymity, confided the following:

[17] Contract for Ghori Cement (http://mom.gov.af/Content/files/Mineral%20Contracts/new_MX-2301N_20121013_183416_lr.pdf)
[18] Email response to questions sent to Abdul Wakil, an officer of Ghori Cement, dated December 14, 2013
[19] Responses from the AIC to a questionnaire, dated December 14, 2013

> *Karkar and Dodkash, and later the Ahan Dara and Khord Dara coal mines in Baghlan, were given to AIC by the former Minister of MoMP as a source of raw material along with the forest next to the mine. These two mines were given without the MoMP putting any tender for this or inviting bids and this illegal acquired. But there is no contract in the database of MoMP for the new mines*[20].

Former officials of the MoMP say that the company is not allowed to trade coal from Karkar and Dodkash in the open market[21].

In actuality, however, the company did extract coal from Karkar and Dodkash, subsequently selling it in the open market to traders. Moreover, the company extracted timber and, instead of using it for coal mine shafts, sold it in the open market at commercial price[22].

Another official who worked at Ghori Cement Enterprise for a longtime said that factory 1 of the enterprise was functional from the 1980s, including at the time it was handed over to the AIC. AIC extracted 48,000 tons of coal in 2007."[23]There are also supporting documents showing that the AIC had a production of 4,140 tons of cement (in September 2007) and used 1,263 tons of coal in its production[24]. The project was already generating revenues for the state before the handover and was bringing profit to the company from day one[25].The AIC thus owes payment to the state for rent and royalties since 2006. Another senior official of the MoMP said that the government secretly gave a three-year tax holiday to the AIC, even though the cement factory was a producing asset and AIC did not invest much in it.

The AIC, according to senior officials of the government, did not spend funds on factory 1or the allocated US$16 million for factory 2, despite the fact that it needed only an additional 25 percent (US$4 million) for rehabilitation. This seems to be a case of inflating the investment cost on the part of the company, since this cost was recoverable from the revenues generated from the sale of the cement. It is a typical way to artificially increase the cost so that the company can deduct more from the profit and thus pay less tax.

The AIC, which claimed to have initial capital of US$45 million for the project, almost went bankrupt in 2012. *Tolo News* reported in early 2012 that the company was facing bankruptcy[26]. A source with contacts close to the senior shareholders of AIC shared that the company had only US$10 million in capital and thought they would be able to mobilize more capital in order to operate the huge project. The company reportedly complained about government noncooperation in trying to secure a loan. AIC's contract, which states that it will invest US$45 million in the project, thus seems to have been a ploy to win the bid.

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[20]http://mom.gov.af/en/page/1384 (dated January 30, 2015)
[21] Interview with a senior official of the MoMP who sought anonymity, January 6, 2014
[22] Interview with a senior officialof the MoMP, dated November 13, 2013
[23] Author's interview with a senior official of the Ghori Enterprise who sought anonymity
[24] Documents related to daily production from September 2007
[25] Interview with senior engineer based in Baghlan, dated December 20, 2013
[26]*Tolo News* 2012, "Ghori Cement Plant Faces Bankruptcy," dated May 12, 2012 (accessed December 24, 2013, http://www.tolonews.com/en/business/6196-ghori-cement-plant-faces-bankruptcy)

On March 6, 2010, the company took US$11 million loan through Azizi Bank for rehabilitating factory 2, which it has not repaid. *Pajhwok Afghan News* explained the following:

> *As much as $4,500,000 by Bank-i-Milli-Afghan, $2,200,000 by Afghan United Bank, $2,185,750 by Pashtany Bank, while the rest $2,000,000 amount of loan was paid by the Azizi Bank [sic].*
>
> *The documents by Bank-i-Milli-Afghan show the $4,500,000 loans under the series number 80107 on 06/03/2010 were paid to AIC and the agreed contract said its interests could be started from December 2010 but nothing could be paid in return.*
>
> *Through a letter dispatched in 2010 and 2011, Bank-i-Milli Afghan requested Mahmud Karzai and Haseen Fahim to return the due installments along with its interest keeping in view the agreed contract.*
>
> *Another letter by Bank-i-Milli Afghan issued after consultation and authorization of Azizi Bank, noted the $4,500,000 loans paid to AIC under series number 80107 by Bank-i-Milli-i-Afghan, on behalf of rests of Banks, Azizi Bank asks the AIC to act according to the contract agreement and return the loans along its monthly interests[27] [sic].*

The company was supposed to build factory3 in three years but did not do so, and at that point the project was tendered again by the MoMP to other investors[28]. This is a breach of Article 11 of the contract. Official sources from the AIC, however, say the company spent US$30 million to make factory 1and factory 2 functional, which contradicts the account of the senior official of the enterprise quoted above. Factory 3, with 3,000 tons-per-day capacity, was an important factor in the government's decision to award the contract, but the AIC has not honored this portion of the agreement. Landay mentions the following in his report:

> *A U.S.-funded study estimated the cost of modernizing the Soviet-era cement plant at more than half a billion dollars, but the trio raised only $22.25 million in cash. Stockholders borrowed as much again from the Kabul Bank, in which Mahmoud Karzai and Abdul Haseen Faheem are partners. Even so, President Karzai's cabinet approved 49-year leases on the state-owned plant and mines in 2006[29].*

The contract is still valid even as the MoMP tendered factory 3 to other investors, but the AIC came back and said it would build factory 3. This action is likely a means to avoid sharing coal resources for the factory, as AIC has been generating hundreds of millions from its sale coal mines that were originally given to it as raw material for the cement factory.

Sources that sought confidentiality said that the management of the AIC was approached by a consortium of Pakistani cement producers and agreed on payment of a commission in return for their agreement that the AIC would not build Factory 3, thus allowing Pakistani cement to continue

[27] *Pajhwok Afghan News*, Mahmud Karzia, Haseen Fahim, "Yet to return due bank loan," dated December 9, 2013 (http://www.mines.pajhwok.com/news/mahmud-karzai-haseen-fahim-yet-return-due-banks%E2%80%99-loan)
[28] Interview with a long-working senior mining engineer from the Ghori Enterprise, dated December 14, 2013
[29] Op cit, Jonathan S. Landay, 2010

dominating the Afghan market. This account was confirmed by another senior businessman, who said that Mahmud Karzai and Haseen Faheem both get a certain percentage as commission on every truck of cement that comes to Afghanistan from Pakistan and Iran[30]. Yet another businessman said that external cement producers are paying the AIC a certain commission for not building Factory 3.This suspicion was further underpinned by the account of a senior official of the MoMP, who said, "The allegations of commission is highly likely because the company did not build [the] factory and reduced the quality of the cement so much that few people want to buy it now."[31]The account of a commission being paid to Mahmud Karzai and Haseen Faheem was also corroborated by a high senior official of the MoMP.

Mahmud Karzai subsequently sold his share of the AIC to the owner of Azizi Bank in the first quarter of 2011, apparently to repay his loan to Kabul bank[32].It is important to highlight that Mahmud Karzai securedaUS$11 million loan for AIC through Azizi Bank. This close contact and support from Azizi Bank to the AIC is underpinned by a partnership between them in Onyx Construction, which is one the biggest firms building townships and commercial and residential towers. This, in turn, generates questions about the bidding process for the project, especially in light of the fact that Hotak Group, which was one of the losing bidders for the Ghori Cement contract, belongs to Azizi Bank[33].

Senior officials who have been privy to the proposal of the AIC and who felt that political influences were used in the run-up to the contract say that the Ghori Cement Enterprise contract was awarded through political connections and that the senior leadership of the government was used to provide pressure in this regard. Several names of very senior leaders in the government during that time came up during the research process. Another source who sought confidentiality said that the senior officials of the MoMP, in fact, gave AIC a signed blank contract, and that the AIC filled in the content with its own pen and returned it to the MoMP. The author authenticated this allegation after personally examining a copy of the blank contract for Ghori Cement. The contract was filled with blank spaces throughout the document and at the end bore signatures of the Minister of Mines and Sher Khan Farnood.

Since Afghanistan imports four million tons of cement from Pakistan and Iran every year, Ghori Cement arguably was privatized to produce cement domestically to reduce imports of outside cement. The former capacity of Ghori Cement was 1,200 tons a day and the incentive to increase its capacity to 4,400 tons of cement per day would have brought down annual cement imports to approximately 2.4 million tons.

Some of the favors granted to AIC border on flagrant violation of even the most basic standards. The first instance of a breach happened when AIC took over the enterprise and asked for three years to prepare the feasibility study, even though the management of Ghori Cement handed over a plant that was already producing 48,000 tons of cement annually. As mentioned, there are documents showing that the company was producing between 4,000-5,500 tons of cement in a month. The management of

[30] Interview with a businessman who had close contacts with the shareholders of the AIC, dated January 22, 2014
[31] Interview with a senior official of the MoMP who sought anonymity, dated January 9, 2014
[32] Afghan Biographies
(http://www.afghanbios.info/index.php?option=com_afghanbios&id=39&task=view&total=3055&start=54&Itemid=2)
[33] Table of competitors for the Ghori Cement Enterprise shared by the MoMP, dated 1384-85

the company in response to a query said that it started production in 2011-12.AIC showed no production from 2006 to 2009 and therefore paid no royalty, thus denying the state revenues which it had previously received before the enterprise was privatized.

1.3. Violations and breaches

Factory3 as promised under the Ghori Cement Package: Building factory3 with a 3,000 ton-per-day production capacity was one of the most critical contractual commitments of the AIC. The management of the AIC blames the government for not helping the company secure a loan for the project. In their proposal, the company stated that the AIC was registered with a capital of US$45 million dollars. The contract, under Article 11, states that the company would invest US$140 million in the existing and new units[34]. The inclusion of this serious financial commitment mentioned in the proposal appears to have been a means to outcompete the best competitors by offering more commitment, investment, and revenues for the state, but little was done in actuality. It seems the commitment to factory 3was an enticing element of the proposal for the evaluating team representing the Government of Afghanistan. The combined capacity of the three cement factories, as promised in the contract, would have led to large-scale domestic production of cement and thus would have saved hundreds of millions of dollars in cement imports for the country. The government has now tendered the project for factory 3 again, without penalizing the AIC for not honoring its commitments. The MoMP has not shared its decision on whether it will allow the company to take over the assets of Ghori Cement without honoring its obligations in regard to factory 3. According to Ibrahim Adel, the former Minister of Mines, if factory 3 was not built, the contract should have been revoked[35].

Violations of employees' rights: At the time of contract signing, the company took over all assets of the Ghori Cement Enterprise, as well as those of the people working there. Dispute resolution is an important contractual obligation.

Employees of the AIC say that they were better off working with their former employer, the Ghori Cement Enterprise. Some of the employees of the company complained about the salary they receive, noting that they receive Afs 6,000 per month, which is not sufficient for meeting their daily household needs[36].The Ghori Cement Enterprise used to pay Afs 20, 000 per month when managed by the government.

Subsequent to signing the contract, AIC forcefully retired over 1,000 of the Ghori Cement Enterprise employees, without compensation, including some who had worked there for 30 years and were owed pensions.[37]The illegally retired employees protested in order to pressure the company to pay them pensions and compensation. The AIC commits in the contract that it will resolve disputes to the

[34]Op cit the Ghori Cement contract
[35] Interview with Ibrahim Adel, former Minister of Mines and Petroleum who signed the Cement Ghori Contract, dated November 12, 2013
[36]Op cit*Tolo News* 2012
[37] Interview with former Deputy Minister of Mines, dated January 31, 2015

satisfaction of the parties within 60 days[38].The AIC also has deviated from its commitment with regard to conflict-resolution. Sources closely following the AIC say that the company tried to use force to intimidate the employees and finally gave up when it realized that pressure and opposition were growing stronger[39]. Senior officials of the mining department in Baghlan province said that Rasool Khan, a member of the Provincial Council who was later assassinated in a suicide blast, vigilantly pressured the AIC to pay pension to the retired employees, and they were finally paid after many protests and complaints[40].

The issues highlighted here are well documented by the MoMP, including how the terms of the contract were violated by the company. These documents were all shared with the Economic Committee of the Government of Afghanistan, which is presided over by the Second Vice President of Afghanistan, through circular number (607/826) on 7/2/1390(or 2011). Subsequently, the Inter-Ministerial Commission (IMC) held a meeting with the AIC to resolve the issues. The decision following the complaint was made by the IMC but was not shared with public.

Development promises and deviation: The development projects the company promised have not been carried out as stipulated in the contract. The old clubs, which were assets of the Ghori Cement Enterprise, were reconstructed and shown as social investment projects of the AIC. One of the playing fields, which the AIC claims it built for its employees, is reportedly used exclusively by the governor of the province. Clinics, libraries, and recreational and cultural centers were included in the contract as opportunities for improvement of capacities, but most of them have not materialized.

Renting property of the enterprise: Article 31 of the contract prohibits the company from selling the property of the enterprise. The company must pay US$1.0 million annually as rent for the cement factory and assets, as well asUS$300,000 for the land and assets in the Karkar and Dodkash coal mines. Though the company was exempt from taxes for three years, nevertheless it is supposed to pay rent for the use of land and assets[41]. However, according to the report of 1390(or 2011-12) shared by the MoMP with the AEITI Secretariat, the AIC did not pay royalty, rent, or other dues[42]. The royalty for the extraction of coal, the production of cement, and for rent of the property since 2006 has not been paid by the AIC to the government. In addition, the company has rented property of the former enterprise to other private entities in return for rental payment, which is in violation of the terms of the contract[43].

Investment cost inflation: The company has inflated the cost of the investment it made in the existing plants of Ghori Cement Enterprise. Sources working with AIC say that the company spent US$16 million to make the second plant functional, whereas the official information shared by the AIC officers in response to a query states that they spent US$30 million[44]. The investment is cost recoverable and the

[38] The Ghori Cement Contract 2006
[39]Op cit senior official of the MoMP who sought anonymity
[40] Interview with a senior member of the mining department in Baghlan Province who sought anonymity due to sensitivity of issues, dated December 23, 2013
[41] Article 11, subsection 2.Ghori Cement Contract
[42] Data sheet shared by the MoMP with the AEITI, August 2013
[43] Article 31 of the Ghori Cement Contract (http://mom.gov.af/Content/files/Mineral%20Contracts/new_MX-2301N_20121013_183327_lr.pdf)
[44] Interview with an engineer employed by the AIC, dated December 12, 2013

company must have deducted the extra US$14 million from the revenues generated by the company from the sale of the cement, thus siphoning off taxable money into private accounts. The company still does not produce 1,200 tons of cement per day, according to a former senior MoMP official[45], and therefore claims of a US$30 million investment are questionable.

Contract re-engineered: There have been amendments made to the contract that were not shared with the public. The lack of performance by the AIC was recognized by the MoMP and was duly shared with the IMC. Instead of penalizing the company for noncompliance with the terms of the contract, though, the company was awarded the contract for the Ahan Dara and Khord Dara coal mines, and the contract for the Karkar and Dodkash coal mines was separated from the main Ghori Cement contract. Employees of the company confided that under the new terms of the contract, the AIC is allowed to trade coal in the open market. The open market rate for unrefined coal from Karkar and Dodkash is US$90 per ton, according to coal traders in Kabul. The company, according to the amended contract, is allowed to extract one million tons of coal per year from Karkar and Dodkash, which would generate US$90 million annually in revenues for the company. The quantity of coal extracted from Ahan Dara is not known currently.

Financial Breaches: AIC operated one of the cements plants from the day it took over but paid no royalty to the state, according to senior officials of the MoMP who refused to be identified. The AIC was supposed to use the coal it extracted as a raw material in the production of cement, but instead it sold the coal on the open market and thus siphoned away revenues without paying dues to the government. To date there has been no inspection of the project, and an accurate calculation of the company's production while operated by the AIC is not available.

1.4. Conclusion

Ghori Cement Enterprise initially appeared to be a promising first privatization move of the government, but deeper investigation has revealed that a small group of politically connected individuals came together to capture the enterprise and the resources.

McClatchy, a US-based newspaper which has published a report on the Ghori Cement project, quoted then-Governor of Baghlan Province Abdul Majid as saying, "The factory was handed over to people who are mafia."[46]The *McClatchy* report further states that four people said, "The Company was leased because of its top officers' political connections." Another senior officer of the MoMP is quoted as saying that the deal was wrong. The officer stated that Mahmud Karzai and other AIC shareholders began lobbying senior MoMP officials for the Ghori and Karkar leases. The quest for taking over Ghori was rebuffed by former Minister Mir Mohammad Sediq, and subsequently he was fired and replaced by Ibrahim Adel, who awarded the contract within days[47].

[45] Interview with former senior official of the MoMP, dated November 24, 2014
[46]Landay, Jonathan S., 2010, "Factory, coal mine show connections matter most in Afghan business, "*McClatchy* online (accessed on www.mcclatchydc.com/2010/11/14/103393/afghan-business-model-connections.html#storylink=cpy)
[47]Ibid

The company has committed breaches and violations on several occasions and compromised on critical terms of the contract without being subjected to inquiry or pressure to implement the contract per the agreed terms. Moreover, the royalty rate being paid for coal is far below that paid by other coal mine operators. The blank contract for the enterprise that was completed by the AIC, which had no previous experience in mining, illuminates the interplay of political actors with state institutions that allows the illegitimate capture of state resources and rent from natural resources by political cronies.

The use of political connections and networks is evident not only in the draft of the contract, during the proposal evaluation, and during the awarding of the contract, but also during the implementation of the project. In conclusion, Ghori Cement is a case of political intervention from the highest level in a state function where the competition is over-securing rents for the state. Ghori Cement produced rent for politically connected individuals and families to further cement their political positions through the exploitation of economic resources.

2. QARAZAGHAN GOLD

The QaraZaghan Gold Mine is located in the Nekpia Valley in the Doshi District of Baghlan province. Nekpians comprise around 10,000 families in the area, and QaraZaghan has around 150-160 villages. The valley is predominately inhabited by the Ismailia community. One local resident, Ali, is reported as saying, "I started mining when I was about 12." Ali is now in his late thirties. He continues, "We would find tiny flakes of gold, or we would crush rocks and then wash the powder to pan out little grains." Ali's knowledge of the landscape and its history of small-scale "artisanal" mining is a valuable asset for the Afghan-owned company that in 2011 won the license to dig for gold in QaraZaghan .

The contract for the Gold Mine in QaraZaghan was awarded on January 10, 2011 to the Afghan Krystal Natural Resource Company (ANKR), which is owned by Saadat Mansoor Nadiri, son of the spiritual leader of the Ismailia sect, Sayed Mansoor Nadiri. Sayed Mansoor Nadiri is a well-known powerbroker and often demonstrated political acumen to survive and thrive under different regimes while turmoil engulfed his contemporaries during the war.

2.1. Obligations under the contract

The contract for the gold mine is for 13 years, of which six months were allocated for preparation, two years for exploration, and ten years for exploitation[48]. The contract obligates the AKNR to pay US$100,000 as a financial guarantee for environmental and social protection. The AKNR will also invest US$50 million in the mine, and it has to submit the preparation plan within six months of signing the contract. The company, under its contract, is required to provide a Technical Exploration Plan, Financial Plan, and Environmental Action Plan. These plans will become the basis of the exploitation plan. The exploration license is contingent upon the acceptance of the exploration plan by the MoMP. The AKNR is also supposed to conduct an Environment Social Impact Report and submit this report to the MoMP and NEPA. The Government of Afghanistan is responsible for providing security for the mine. The contract leaves room for amendment under Article 25, and the other party is defined to be the MoMP.

Article 27, subsection 3 states that the AKNR shall not perform any illegal act in the area specified in this contract. The MoMP also grants the company the right to use water without detailing the circumstances and obligations of the company, nor obligating the company to recycle water for use by local people. Article 31 makes it obligatory for the company to spend US$50,000 for social development, but there is no mention of when and how often this amount should be invested.

2.2. Political nexus during contracting

There were three companies bidding for the QaraZaghan mine contract: Afghan Krystal Natural

[48]http://MoMP.gov.af/Content/files/Sumary-of-QaraZaghan-Gold-Contract-En-16012011.pdf

Resources, Kam Khyber Resources, and Gold Star. The AKNR was selected for the final round of negotiations because, as the comparative scoring table shows, the company got 86.79 points, whereas Kam Khyber Resources scored 79.08 points and Gold Star was given 72.63 points.

Table 1: Comparisons of Bid Scores in the Tender of the QaraZaghan Gold Mine

Name	Investment in million	Annual Production	Royalty	Social Service	Environment	Score
AKNR	US$50	1.628 tons	26%	US$ 50,000	US$50,000	86.79
Kam Khyber	US$20	500 kg	25%	US$ 12million	US$40,000	79.08
Gold Star	US$1.0	Estimate after study	15%		13% of gross income	72.63

Source: MoMP.gov.af/Content/files/Sumary-of-QaraZaghan-Gold-Contract-En-16012011.pdf

The table shows that the AKNR came out ahead of the other two bidders in the overall scoring. It is imperative to look at the estimated annual production of each company, the royalty rate, and development and investment for the local people. The AKNR stated that it will produce 1,628 kg of gold annually, while Kam Khyber committed to500 kg and Gold Star did not mention any estimate of annual production, instead making it contingent on the exploration study. The amount of investment, annual production, rate of royalty, and commitment to environmental protection were clearly the factors by which the AKNR edged out the two other bidders[49]. The precision with which the AKNR, the winning company, expressed its annual production of gold from the mine, as well as the agreement to pay a royalty of 26% on the gold based on the London Metal Exchange price, showed its confidence and certainly helped give it the winning bid. Sources privy to the evaluation of the companies' proposals said that Gold Star submitted a more realistic proposal and asked for a six-month exploration period, whereas the AKNR stated that it would start production after signing the contract[50].

The first contradiction appears in comparing the information in the above table and the terms of the QaraZaghan contract. Sources in the evaluation IMC said that the company pressured the Ministry of Mines and Petroleum through some MPs and other government officials to get the contract[51].

Dusko Ljubojevic, a South African geologist working for Afghan Gold and Minerals is reported as saying in 2011, "We know from the locals that there is gold and our own studies show good potential—now we need to explore further."[52]

2.3. Violations and breaches

There are several instances of serious breaches and violations committed by the company. These easily could have prompted state intervention; however, the company has been insulated from legal moves against it, reflecting its political power and connections. Some of the violations and breaches are discussed below:

[49] http://MoMP.gov.af/Content/files/Sumary-of-QaraZaghan-Gold-Contract-En-16012011.pdf
[50] Interview with a senior official of the MoMP who did not want to be named, dated December 13, 2011
[51] Interview with a senior official of the MoMP who sought anonymity, dated December 12, 2011
[52] Op cit report by *News Desk*

Exploration and exploitation: Article 10 of the contract with the AKNR states the company will stipulate its production after the feasibility studies, and Article 3 of the contract gives the AKNR six months for preparation and two years for exploration. However, as shown in the comparative table listing the important commitments and score sheet of the companies, the AKNR committed to produce 1,628 kg of gold in the first year. Why was AKNR given time for exploration after explicitly stating its annual production in the proposal? During the negotiation of the contract, the company managed to secure 30 months for preparation and exploration[53].A senior official sitting in the IMC admitted to being pressured by two ministers to make the AKNR the winner[54].

According to a CNN report on the QaraZaghan Gold contract, Nadiri said to his would-be partner in the QaraZaghan gold mine, Ian Hannam, "I'm one of the first Afghans that has actually won a gold license." Hannam's eyes reportedly lit up. Nadiri, it turned out, already had a little gold mine in Baghlan province. His family had run a tiny artisanal operation there, even minting some coins, for years. Sayed Sadaat Mansoor Nadiri talked about having a license for the gold mine way back in 2008. A source said that in 1990 Sayed Mansoor produced gold coins which bore his face from gold extracted at the site. He won the legal rights to it in formal bidding in 2008. To develop the site, he needed technical advice, equipment, and capital[55]. The contract was officially signed in January 2011, despite the fact that Sadaat Mansoor Nadiri told Ian Hannam that he had secured the contract in 2008. A senior government official said, "it was a political trade for the vote the president got in the 2009 presidential election."[56]

Many different sources have reported that Nadiri had been extracting gold from the site since the early 1990s. Extraction in QaraZaghan started 30 years ago by local artisanal miners. They applied very traditional means to extracting small amounts of gold, and this continued for four to five years until Nadiri was informed. He contacted a group of Iranians who sent engineers from the Khomeini Foundation to help Nadiri with the extraction and processing of gold[57].Sayed Mansoor Nadiri brought the machinery for processing to Kihan Valley, which is 25 km from the QaraZaghan area. At this point, gold ore was transported to Kohan for processing. After turning the gold into coins, Nadiri would take it out of the country. One source said that "there were 150-200 people working in the mine during that time only in QaraZaghan, but in Kihan they had more people working in different components of the process. There were around 1,000 people working in extraction and processing."[58]

Many interviewees observed that the Nadiri family has been exploiting the mine since 1994. During a field visit to the area by the author, four different sources said that the company had extracted gold from the mine in the 1990s and early 2000s. A man who sought not to be named for security reasons shared, "I worked with Sayed of Kaihan [Sayed Mansoor Nadiri] to extract gold for three years. He extracted gold there for 20years. It was during the Taliban regime when I worked with them. At the time

[53] Part three of the QaraZaghan Gold Mine Contract

[54] Interview with senior government official who was present at the evaluation of the bids for QaraZaghan but sought anonymity, dated February 20, 2014

[55]Bundler, James, 2011. "J.P. Morgan's hunt for Afghan gold," CNN (Accessed on January 25, 2014, http://management.fortune.cnn.com/2011/05/11/jp-morgan-hunt-afghan-gold/)

[56] Interview with a senior government official who sought anonymity, dated September 7, 2011

[57] Interview with a local resident of QaraZaghan who asked not to be named, dated August 15, 2014

[58]Op cit a young NGO worker

I was a student at KalanGozar School, in the QaraZaghan area, and I used to study half-day every day and extract gold for Sayed Mansoor for free during the rest of the day. I, along with many others, used to do the laborious work, while the gold ore purification was assigned to two trusted people who were called Mirza Nazar and Hillal Amar."[59] Another man who identified as working with Sayed Mansoor Nadiri as a supervisor during the 1990ssaid that Nadiri used to extract gold from QaraZaghan and send it to Kaihan, where it would be refined and sent across the border to Nadiri's gold shops in Tajikistan[60].*Pajhwok News* reported that an official of the Ministry of Rural Rehabilitations and Development (MRRD) stated that local people had reported at least one kg of gold extraction from the site everyday by a powerful man[61]. A source well connected with the Nadiri family said that every woman in the Nadiri family had up to 10 kg of gold. Another sources said that Sayed Mansoor has ten gold shops in Tajikistan[62]. The information about the extraction of gold was confirmed by yet another man from the valley, who further stated that Nadiri misused the respect people had for him and made his disciples to work for him for free in the gold mine[63].

The installations put in place at QaraZaghan during the past five years



[59] Interview with a young NGO worker from Sarband Village of QaraZaghan who sought not be named, dated September 22, 2013

[60] Interview with a former commander of Nadiri who sought not to be named, dated December 15, 2012

[61]Fiazi, Freshta, 2014, "Gold Mines of Afghanistan are awarded in non-transparent ways and are subject of illegal extraction," *Pajhwok News*, Kabul, dated February 25, 2014

[62] Interview with a resident of QaraZaghan who did not want to be named, dated September 21, 2013

[63] Interview with an Arbab from QaraZaghan who did not want to be named due to fear of repercussion, dated October 20, 2013

Photo: J. Noorani

The AKNR purportedly has been carrying out exploration for the past three years. The author read a copy of the exploration report submitted by the AKNR on September 21, 2012. Multiple sources said that at some time in 2013, the mines were transferred from the AKNR to Afghan Gold and Mineral, but there was no communication about this. In its database, the Afghanistan Investment Support Agency shows both Afghan Gold and Mineral and the AKNR as valid companies[64], and the contract remains in the name of the AKNR.

This matter was further discussed with geologists who had worked on the site in the early 1980s, who said that the report submitted by the AGM is merely a translation of the reports made by Russian geologists during the1980s. Sources said that, in its reports, the AGM stated that it conducted 50 drillings during exploration. The exploration report submitted by the AGM also indicated that, as of September 21, 2012, the company had invested US$9.8 million[65].A commentary report made by senior officials of three main departments of the MoMP regarding the exploration report submitted by AGM shows complete dissatisfaction of the methods used to explore the site and analysis of the samples. The MoMP commentary points toward fraud having been committed during that stage. The company managed to get a two-year extension for its exploration activities in mid-2013 without the public being informed[66]. The AKNR (AGM) submitted an unbeatable proposal in which it said it would produce gold within six months of contract signing, but it failed to produce a real exploration report.

The Afghan government and some officials have information about gold extraction from the site by the AGM, but a senior official explained that he was instructed by provincial officials not to interfere in the project. It was further reported that the MoMP sent inspectors from Kabul who bypassed the Department of Mine in Pul-e-Khumri and directly reported to the Minister of Mines, who then prepared reports in favor of the company[67]. A senior official of the MoMP who was close to former Minister Wahidullah Shahrani said that on several occasions the minister doctored reports of inspectors who had written that the AGM was extracting gold[68]. An official of the inspection department said, “Shahrani would insult us when we would mention our observation of gold extraction from site. Shahrani would say, ‘you guys are useless and do not know how to write a report.’ He would write a report that would show no extraction from the site.”[69]

There are many mining companies across Afghanistan that are owned by powerful warlords who have inducted their militia with the MoI and then managed to deploy them at the mine sites where they are extracting resources. These former militias are put into police uniforms and are on the payroll of the state, but they serve the warlords. This militia is essentially used to bully the local communities and silence them through the presence of armed men. Security provision to citizens is an important function of the state mandated by the “social contract,” and “coercive power” remains a monopoly of the state,

[64] http://www.aisa.org.af/onlinedirectory/
[65] Exploration Report Submitted by the AKNR, dated September 21, 2012
[66] Interview with senior officials of the MoMP in Baghlan who did not want to be named, dated September 13, 2013
[67] Interview with a senior official of the Department of Mines in Baghlan, dated September 22, 2013
[68] Senior official of the MoMP who sought anonymity, dated January 26, 2014
[69] Senior inspection officer who sought anonymity, dated April 24, 2014

but in this instance, the company acquired coercive power to protect its illegal activities from a legitimate quarter of citizens. The security for the gold mine was provided by Nadiri's men, and several local residents of QaraZaghan spoke about how they were bullied and suppressed by the armed men guarding the site.

A CNN report further stated the following:

> *Ian Hannam has engaged with oligarchs and mercenaries and separatist groups such as Kurds to mint money. The Nadiri family has a long history of being part of conflict and human rights violations. Nadiri has currently deployed 80-100 of his own armed men through the MoI structure to protect the mine, while in reality the men are used to bullying local people.*[70]

Breach in payment: The company has been extracting gold under its exploration license. During the exploration phase, mining companies' are supposed to conduct exploratory drillings, take samples from several spots within a site, and analyze these samples to inform their exploitation plan in order to estimate the amount of minerals that can be extracted. In the exploration phase a company incurs cost to complete the studies, as this phase can often take years. As mentioned, the AKNR was given two years for exploration in their contract, and then was also given a two-year extension. However, the AKNR has been extracting gold from QaraZaghan all along, without paying any royalties to the state or any other taxes.

Most recently, the company applied for cancellation of its license after three years of exploration, saying that there is no gold at the site. A team of MoMP officials visiting the site claim there is no gold and all the machinery has been removed from the site[71]. Gold extraction has occurred in the area and has been observed by witnesses, but these actions have been shrouded in mystery, and the MoMP officials who visited the site and declared it to have no gold conceal the true story.

Coercion and conflict: Article 32 of the QaraZaghan Gold contract states that the company will have to resolve conflicts within 60 days[72]. However, there are many instances in which the company has been accused of coercing local people. For example, the company did not consult the local communities before it started operating the mine. A resident of the region shared this experience, "The Company has not consulted people nor has it done anything for the people to improve their lives. Some people are used as spies by Sayed Mansoor Nadiri to keep an eye on his opponents, and if his opponents do not stop opposing Sayed Mansoor, he can eliminate them too."[73]There are 80-100 hardcore Nadiri loyalists providing security at the site, but they are enrolled in MoI. One Nadiri loyalist, Sayed Zaman, was appointed chief of intelligence in the district. The security chief of the mine is also a Nadiri loyalist. A local resident said, "Sayed Daqeeq, the security chief of the mine, once took a local married woman and gang raped her, and charged foreigners working on the site of the QaraZaghan Mine to be involved too. People protested against the company. Sayed Mansoor shrewdly suppressed the case through local

[70]Bandler James, 2011, 'J.P. Morgan's hunt for Afghan gold',Fortune May 11, 2011
[71] Interview with senior official of the AGS, dated August 12, 2014
[72] Article 32 of the QaraZaghan Gold Mine
[73] Interview with GulNazar, a resident of QaraZaghan, dated September 20, 2013

elders who told the victim's family that they were poor and Sayed Mansoor could harm her further. The victim's father and husband were both given employment in the project, the family was paid 350,000 Afs, and the case was suppressed."[74] The account was confirmed by another local resident named Khan Mohmmad, though many others denied talking about it, as they felt it was an issue of honor[75].

The whole security apparatus present in QaraZaghan was loyal to Sayed Mansoor and protected the illegal extraction of gold from the site. The company has projected its power through the guards and has used them to coerce and suppress local opposition to the project. A local elder said, "The mine is close to agricultural land where women and girls work. Elders from the community requested the company employ local men to provide security, as local residents were sensitive to outsiders coming to the region. Instead the company guards were told to fire on the emissaries, and the company informed the Ministry of Interior that people have revolted against the company. Subsequently two residents of the area, Nor Ali and Fizali, were handcuffed and jailed for 10 days. The Kaihan had forced 200-300 people to work for him for free to extract gold from the site until the mid-2000s.[76]" A man who stood to protect the right of a woman who had a land dispute with Nadir said, "Kaihan (Sayed Mansoor) got me arrested through a plot to take revenge for my standing with the woman. Many influential people called him to let me go, but he did not, and in response he told the local elders that he would let me off the hook if I got two sheep and went to him, kissed his hand, and apologized."[77]Another example is that of Delawar, a resident of QaraZaghan whose house was located on the planned road the company wanted to build. He lost his property without receiving any compensation from the company[78].

The AGM seems to be a bullying people rather than listening to their concerns and addressing them in a timely manner. This behavior is in violation of international standards and UN guiding principles on Human Rights for businesses.

Social development realities*:* Article 31 of the contract commits the company to spend US$50,000 toward social development. The contract also makes the company commit to recruiting Afghans and training them for the project. Members of the local CDCs said that Sadaat Mansoor Nadiri, along with the former Minister of Mines, promised many projects but delivered little. Table 2 shows the projects promised and the projects delivered according to local members of the CDCs[79].

Another source said that the company has provided a bus for female students to be transported to and from the school. Even in this case, the total investment of the company for social development of the people likely does not exceed US$25,000.

Local people also commented that the company has not trained anyone from the region for the project. The company is accused of recruiting only people who are loyal to Sayed Kaihan, and the rest of the people are considered supporters of the Agha Khan and therefore not eligible for jobs with the project.

[74] Interview with a local resident of QaraZaghan who sought anonymity due to security concerns, dated August 15, 2014
[75] Interview with Khan Mohammad, a resident of QaraZaghan, dated January 30, 2015
[76] Interview with one of the Arbabs from the QaraZaghan area whose name is withheld for security reasons, dated October 14, 2013
[77] Interview with a local elder who sought anonymity, dated October 15, 2013
[78] Interview with Delawar resident of QaraZaghan, dated April 27, 2013
[79] Focus Group Discussion with the members of CDCs in QaraZaghan, dated April 27, 2013

Table 2: Promises and Delivery to Local Communities

Promised Project	AKNR implemented project
Water hand pump for potable water	Two hand pumps
Protection wall along the river	An incomplete protection wall along the river
Construction of modern and well equipped school	Construction of building for security personnel
Mosque	Construction of security checkpoints
Clinic for nearby villages	Security guards for only the people loyal to Sayed Mansoor
40 toilets for the village	Recruitment of people only during extraction
Compensation to people	No compensation
Road	No Road
Employment for local people	Only local loyalists

Source: Qara Zaghan Baseline Study conducted by Integrity Watch 2013

2.4. Conclusion

The AKNR has been accused of using political connections and reciprocal favors to get the QaraZaghan contract, even before the tender was issued for the mine. The extraction of gold during the exploration phase, the granting of an additional two-year extension of the exploration period, and deduction of royalty from the corporate tax all demonstrate the undeniable favors given to the company. The AKNR has closed down operations at the mining site, and the MoMP reported there is no gold, while the exploration study is criticized internally by the MoMP as lacking and as having served as a cover for extraction. The failure of the MoMP to deal with the deviations of the company from the Mineral Law and the terms of the contract further underlines the strong political nexus of the company with warlords and other government officials in Kabul.

The gold mine in QaraZaghan that was given out to the AKNR (which was later transferred to Afghan Gold and Mineral) has been exhausted, and the company now seeks cancellation of the contract. The MoMP has already agreed to revoke the contract due to the supposed lack of gold found at the site. This is an egregious violation of the Mineral Law and the contract.

2.5. Company Comments

In a letter to Integrity Watch dated July, 2015, the Executive Director of AGMC and AKNR stated the following:

- "AKNR was registered with the government of Afghanistan on 13 October 2010 by Sayed Sadat Naderi. On 10 January 2011, AKNR won the contract no G001-89 of Ghara Zaghan Gold Mine. Realizing interest and benefits of foreign investment in Afghanistan mining sector, AKNR partnered in joint venture with a foreign company and registered the joint partnership under AGMC on 25 May 2011. Upon approval of the Ministry of Mines, ownership of QaraZaghan Gold Mine was transferred from AKNR to AGMC."

- “The objective behind the above joint venture was as follows:
- To ensure long term domestic investment in Afghanistan in accordance with national and international laws and standards.
- To combine Afghan labour with technical and professional abilities of foreign professional workers.
- To establish a modern and accurate financial reporting system.
- To establish good relations with local people.”
- “Considering the cycles of work on a mine which are exploration, identification of resources, development and utilization, the AGMC received exploration license on May 2011 and started its actual work. We implemented the following technical phases during the three year exploration of the project: geo-physics, geo-chemical, drilling, and mineral analysis.”
- “The exploration ended in April 2014. Two months after completion of the project, we submitted the final report to the Ministry of Mines and Petroleum and requested the termination of the contract.”

In regard to specific contentions in the report, the Executive Director of AGMC and AKNR submitted the following comments:

- “Extractive activities: The research claims that we have been engaged in extractive activities during this time. In response, I want to insist that neither AKNR nor AGMC have been engaged in extractive activities.”
- “Extraction after completion of contract: AKNR and AGMC have closed down their activities in April 2014. I further insist that none of our companies are engaged there.”
- “Transfer of contract without permission from the government: As mentioned earlier, AKRN transferred the ownership of the contract to AGMC upon approval from the Ministry of Mines and Petroleum and based on article 22 of the Mining Law (2010).”
- “Financial Losses incurred to the Government of Afghanistan: We have paid the rent of the mine which was USD 31,425 without any delay on an annual basis to the government. The approval can be reached at the Deputy Finance and Administration of the Ministry of Mines and Petroleum. Regarding the royalty fees, it should be mentioned that since we were not engaged in extractive activities, therefore, we are not obligated to pay a royalty.”
- “Obligations under the contract: Your research claims that we were obligated to invest USD 50 million in the mine. In response, I should tell you that no such article exists in the contract. Still we spent USD 50,000 on social development in the mining area.”
- “Political Circumstances:
    - It is absolutely untrue that we have put pressure on the Ministry of Mines.
    - What has been quoted from CNN regarding the mine is false information.
    - That there was extraction before our companies started its work, is not related to us.
    - Regarding 1,628 kg of gold referred to in our Proposal, it should be mentioned that that was an estimation based on technical studies. The exact amount would be determined whenever actual extraction takes place.”

- “Although the data and information provided in your research regarding identification of capacity of the mine are referenced based on our company report, they are still false. For exact numbers, you have to refer to the original report.”
- “Threats: We reject your claim that we have used force against local people. In fact, we have done a lot to improve the life of the local people. For example, 80 per cent of the security force hired at the mining area were local people registered with the Ministry of the Interior. The local people were from three villages: Jemsayed, Qarazaghn, and Sar Band which are close to the mining area.”
- “Social development: The report claims that we have not spent the USD 50,000 as agreed in the contract on social development. In response to that it should be mentioned that we have spent more than that amount because we were committed to the social development and improving the life of local people.”

3. KOHI SAFI CHROMITE

The contract for the Kohi Safi chromite mine was signed on March 19, 2011 with Hewad Brothers Company. Article 3 of the contract states a duration of 18 years, with the first three years devoted to survey and exploration and the next 15 to extraction pending the approval of the MoMP[80].The contract allocates 54.122 $km^2$of mineral bearing land to the Hewad Brothers Company, which is almost twice the area given to the company that received the contract for the Aynak copper mine in Logar province. The contract area falls in two districts of Parwan province, namely Kohi Safi and Bagram, and the population living in the area contracted to Hewad Brothers for chromite extraction totals 42,000people according to an official who worked with the district administration in the recent past. However, the contract mentions only Kohi Safi as the area allocated for mining.[81]A senior geologist of the Afghan Geological Survey who had knowledge of the mines said that the chromite compound from Gadah Khel has Titanium, Vanadium, and Bauxite as well.[82]

The contract contains very loose language with loopholes seemingly provided to allow more benefits and an exit for the company. The definition of chromite in section 1.3 is somehow very broad, which leaves room for extraction of other metals present in the chrome ore, thus negating the provision of the2009 Mineral Law with regard to discovery of more than one mineral in a given area. The law states that materials containing chromite should be labeled as chromates. A reading of the contract leads to questions about several of the articles, and additional field research regarding the contract and mine operation identified many instances of gross breaches and violations by the company.

Article 3, subsection 4 of the contract underlines that any unjustified delay in the implementation of the exploration work without the agreement of the MoMP may result in the mineral rights being returned to the MoMP.

Sources from the Afghan Geological Survey said that the company analyzed the samples in Pakistan and that they are not acceptable to the Afghan state. Hewad Brothers has submitted an exploitation and exploration plan but it has yet to be approved by the MoMP, according to a senior official of the ministry[83].

The contract carries an article encouraging prevention of conflicts in a timely manner. However, the locality around the mine has already seen conflict, which has led to deaths of vulnerable people from communities living around the mining area[84].

[80] The GadehKhel Chromite contract (http://MoMP.gov.af/Content/files/Mineral%20Contracts/File_206_Gahah_Khail_Chromite.pdf)
[81] Gaheh Khel Chromite contract
[82] Interview with a senior geologist of AGS who sought anonymity, dated January 28, 2014
[83] Interview with a senior official of the MoMP who requested not to be named, dated January 23, 2014
[84] Interview with Nabi, a local resident of NoumanKhile, dated September 13, 2014

Members of the community protested against the mine, and in response the company recruited local people to protect the mine. The first batch of 15 people were recruited from Naz Dara, and people from Jala Qala felt discriminated against. The elders of Jalal Qala told the company that they should be employed as guards as well. The Hewad Brothers Company handed over the security to people of

Jalal Qala after the discussion. Two months after the change in guard, six former guards of the company from Naz Dara were killed in a targeted act of violence.

Table 3: Victims Targeted and Killed[85]

Name	Father	Resident of
Gul Zaman	Abdul Satar	Naz Dara
Jabar	Abdul Satar	Naz Dara
Ahmadullah	Inzargul	Naz Dara
Noorullah	Zafar Khan	Naz Dara
Ahmad Ali	Rahmat Khan	Naz Dara
Ahmad Khan	Rahmat Khan	Naz Dara

In 2012, the victims were traveling to purchase goods for Eid. They were pulled from the vehicle in which they were traveling and killed in front of other passengers. The elders of Naz Dara believed these six individuals were killed by people of Jalal Qala who had earlier protested with the company and asked for employment as guards. Two months later, Jalal Qala resident Mullah Salam was waylaid and assassinated, along with Mullah Kabir. Subsequent to these events, Hewad Brothers disarmed the local people with the help of local police and brought 40 well-armed men to protect the mine.

These factions have tried to resolve the conflict informally, bypassing the mediatory or interventionist role of the Afghan government, but they have not succeeded. Moreover, the company is alleged to have paid some protection money to insurgents when locals protested at behest of General Raziq[86]. This sort of protection money to insurgents will further empower them and could play a role in destabilizing the situation, adversely affecting security and thus weakening the writ of the state.

The company is also alleged to have purchased illegally extracted chromite ore from other parts of Afghanistan, crush the extracted minerals, and transport them to Pakistan, where it has a license to operate a mine, thus manipulating the legal provision for enrichment. The company at times purchased upto 3,000 tons of chromite ore[87].The Afghan government is already struggling to stop illegal mining and smuggling of chromites out of Afghanistan, and such actions by the company undermine the government's anti-chromite smuggling efforts. This may also increase illegal extraction and lead to massive leaks in the legal economy, in addition to associated losses of government revenues.

There are several instances of breaches committed by the mine operator, but the MoMP seems to have neither forced the company to implement the terms of the contract nor collected the royalty, rent, taxes, and other dues.

[85] Interview with a local teacher who confided due to security risk to his life, dated February 12, 2014
[86] Local resident who sought anonymity, dated February 12, 2014
[87] Interview with a local chromite trader who had a deal with Hewad Brothers for supply of chromite ore, dated December 15, 2014

The company commenced extraction from the site in the first week after it was awarded the contract. Article 25, subsection 2 states, "In no event may the Exploration work become Exploitation work unless the Holder of the Mineral Exploration License has obtained an Exploitation License in accordance with the provisions of this Law."[88] The company did not conduct exploration on the ground but rather prepared the exploration report and shared it with the government, which, according to officials of the Afghanistan Geological Survey, has yet to be approved. There are also several other instances of breaches by the company, which are imperative to mention and are outlined in more detail below:

3.1. Violations and breaches

Hewad Brothers has committed serious violations and breaches during the three years since the company's contract was awarded. Some of these violations should have triggered immediate and strong state interventions to avoid further death and damages to the local people and the mines.

Extraction during the exploration stage: Article 4 stipulates that the company must have prior approval from the MoMP before it starts exploitation, which is a normal standard. According to the existing contract and the agreed timeline therein, Hewad Brothers' operation on the site should be in its final phase of exploration, and at this point the company should be compiling its studies and sharing them with the MoMP. However, interviews with residents of Gadah Khil village found that the company started extraction within a week of signing the contract[89]. The company uses an excavator and extracts 8-12 truckloads of chromite concentrate per day, each of which carries 25-30 tons of ore[90]. A truckload of chromite ore with 45% chromite sells for US$35,000 in Karachi[91]. During operation, the company generates up to US$350,000 every day.

The company brought in Pakistani engineers sometime in March 2011 to identify chromite-rich sites for exploitation, and the company has followed their instructions[92]. For the last two years, the company has been extracting, crushing, and exporting chromite ore to Pakistan without any restriction or examination of what is being exported[93]. This ore apparently includes other valuable minerals as well. The current price of Titanium in the international market is US$6,000 per ton, while that of Vanadium is US$25,000/ton, and ferrochrome (the end-product of chromite ore) is US$2,420/ton[94].

The company, according to some of its employees, initially spent three months collecting chromite ore from the surface of the Gadah Khel and Nouman Khel regions of Kohi Safi, transporting the materials to its crusher in Kabul. The company then dug out chrome rock from the Gadah Khel and Nouman Khel sites for a year, resulting in 1,800-2,000 truckloads of chromite.

[88] Mineral Law of Afghanistan 2010
[89] Interview with a local resident of Gadah Khile, December 10, 2013
[90] Interview with a former government employee who is also resident of the area and has been following the company closely, dated January 9, 2014
[91] Interview with a local trader with an understanding of chromite market in Pakistan, dated November 20, 2014
[92] Ibid
[93] Interview with senior geologists of Afghan Geological Survey who sought to not be named, January 27, 2014
[94] http://www.infomine.com/investment/aluminum/

Exploited site at Gadah Khel (March 2014)



Photo: J. Noorani

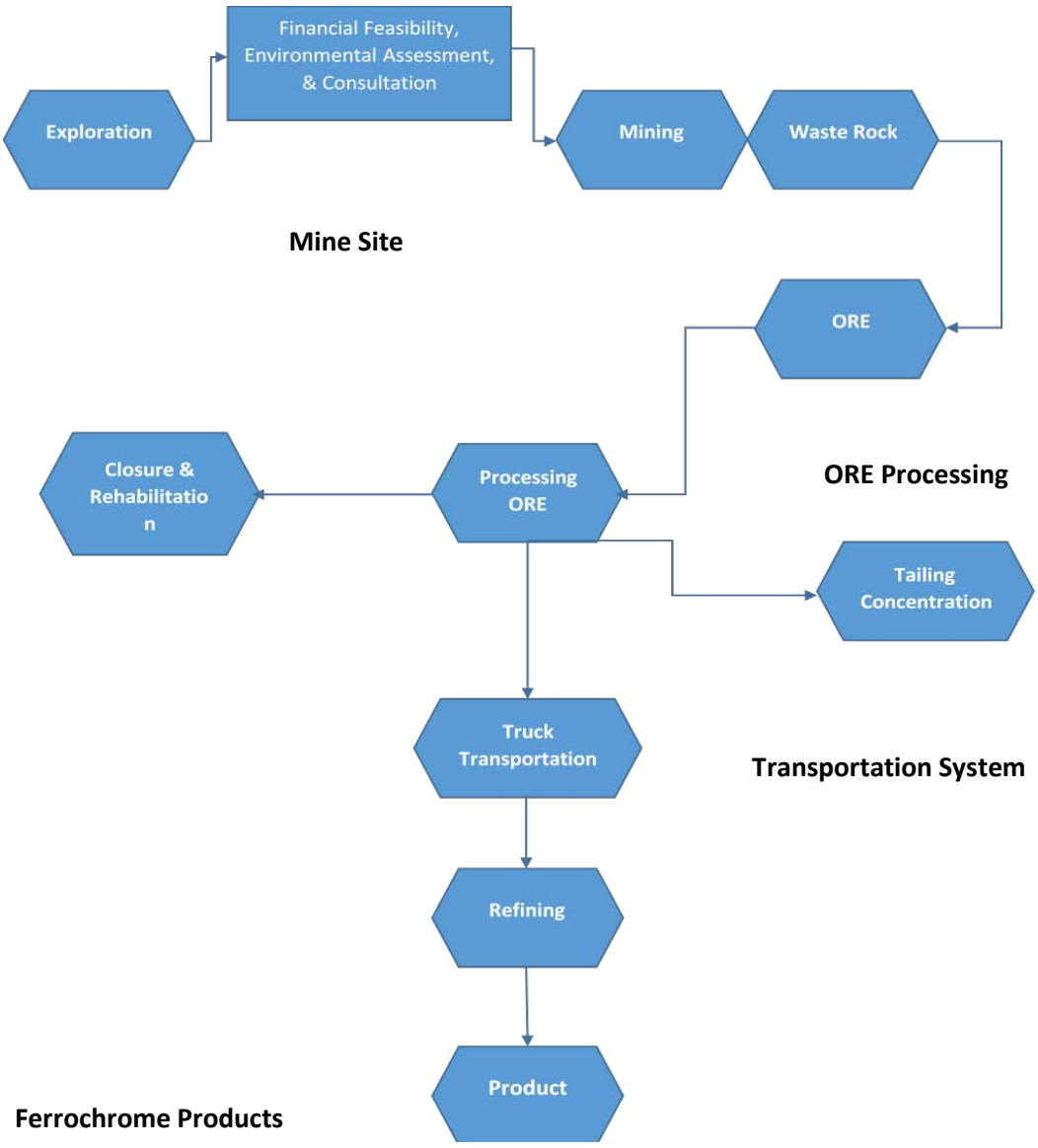
Photograph of Hewad Brothers' Chromite Crushing Facility in Kabul



Photo: J. Noorani

The company has established a small plant with four crushers in Kabul, which are used for powdering the chromite ore. The powdered ore is then transported to Karachi, a city in Pakistan, via Torkham. There, the powdered ore is processed into ferrochrome, which is a final product prepared from chromite ore with a concentration of 40% or above. The process is carried out in an enclosed electric arc furnace at a temperature of 1,700 degrees Celsius. This results in melted ferrochrome, which is called Matte[95]. The different stages of processing chromite are shown in Figure 1.

Figure 1: Stages of Chromite Processing



Source: www.quarryplantprice.com/plant/chromite-ore-refining-process-flow-diagram.html

[95] Chromite Mining Processing (accessed on 23, January 2014 http://www.cliffsnaturalresources.com/EN/aboutus/GlobalOperations/chromite/Documents/Chromite_Mining_Process.pdf)

The company, according to Article 7, subsection 8 of the contract signed with the Afghan Government, is required to process extracted chromite ore in Afghanistan to 60% purity, which corresponds with the "Processing Ore" point 4 in figure 1, which shows the process, instead, the company is merely crushing the chromite ore without declaring the rest of the content and is then exporting it.

The company deployed excavators within the first week following contract signing without completing an exploration or feasibility study or an Environment and Social Impact Study, as required[96]. The company employed eight local residents to collect the chromite rock and load it into trucks.

The company had support from within the senior leadership of the MoMP. A senior officer of the MoMP stated that former Minister Wahidullah Shahrani had instructed some geologists to help the company with its work, despite knowing that the company was illegally extracting and exporting chromite from the site during the exploration stage[97].

When asked about the processing of chromite ore in Afghanistan, senior official sources from the MoMP admitted that the company does not have the technical capacity to process chromite ore in-country because chromite ore processing requires chemical treatment to separate the impurities and purify the metal to 60%. Establishing such a plant in Afghanistan would require a large investment, as well as technical capacity, experience, and human capital[98]. The company has merely put in place a few crushers to powder the ore for export. Thus, the original contract provision for the processing of chromite ore was unrealistic and doomed to fail in the absence of a significant investment by the company, which shows no signs of materializing.

Nonpayment of dues: The Extractive industry is recognized to be a specialized and complicated sector with massive initial capital investment requirements and long gestation periods for returns and profits to investors. Resource rents and excess rents are major points of attraction for stakeholders, and much of the competition revolves around these aspects. A responsible state would seek to maximize its share of the rent from mining, while a mining operator would invent ways to increase its profits—a contest that often leads to corrupt practices by mining companies.

Article 5 of the contract talks about the financial plan of the company, but without specifics of the plan for investment. It is mandatory for mining companies to submit a detailed, multi-year financial plan to the host government detailing mine development. Before the operator breaks ground to extract minerals, study and approval of the financial plan must take place. This is to ensure against cost-inflation during the investment or development phase. Hewad Brothers commenced extraction without submitting a financial plan and without gaining approval of the government.

Article 13 of the contract obligates the company to maintain its accounts according to standards set by the International Financial Reporting Standards (IFRS), which are the accepted international standards. It was also required to share its work plan and expenditure, as well as report accidents and incidents related to its activities.

[96] Interview with senior official of the MoMP who sought anonymity, dated early 2014
[97] Interview with senior geologists who sought anonymity dated, January 28, 2014
[98] Interview with a senior official of MoMP who sought anonymity, dated January 9, 2014

The company has agreed to pay a royalty rate of 26% on impure extract at the international price. Some sources within the MoMP say that the rate for royalty is fixed at the base price of US$210 per ton of chromite ore for the year 2013[99]. The price of chrome changes, but the company is charged a royalty at the lowest base price of chrome. The price of Matte on the international market is US$2,420per ton, however. The records with the MoMP Cadaster show that the company had been extracting chromite ore from the sites for three years. When accessed in March 2014, MoMP records showed that the company had extracted 5,050 tons of chromite from the site since the contract came into effect, but this figure is based on limited inspection. A senior official of the MoMP said that the company would pay export duties on one truck and take ten trucks across border, an act that was facilitated by border police and custom agents[100].

Article 21 of the contract covers rent for use of land. The same records showed that no rent has been paid for the land[101]. MoMP records also show nonpayment of royalty for mine production until late 2014, and no surface fee for the 54 $km^2$the company has contracted for mine operation and other liabilities. The Office of Medium Tax Payers of the Ministry of Finance has issued a signed letter[102] stating that the Hewad Brothers Company is nonfunctional, while the author of this report, on the same day the letter was issued by the MoF, observed full-scale operation at the factory run by Hewad Brothers in Kabul. This means that the company is paying no royalty, rent, or taxes, and that there are connections with officials of the Ministry of Finance too.

Officials of the Cadaster expressed helplessness because one of the hidden beneficiaries also protecting the company is reportedly one of the country's most powerful warlords. Sources from within the MoMP said that the company has been pressuring the government through this person to bring down the base price for calculating royalty from US$210 to US$170 per ton[103]. This price reduction was achieved by the company in mid-2014 through those interventions, and Hewad Brothers is paying royalty based on a fixed price of only US$170[104]. The reason some officials cited for this is that transportation cost is deducted before royalty is charged. However, there is no precedent in the country to deduct the transportation cost before calculating royalty payments.

The company defies the rule of law and continues to put pressure on state and government officials not to ask for payments. The warlord referred to above has placed his brother as the police chief in the area where the factory for crushing chromite is located; this seemingly ensures further protection of the illegal activities of the company. It constitutes a sheer invasion of state institutions by oligarchs to protect their illegal operations and plunder national wealth.

Senior officials of one department of the MoMP that has access to information said that Hewad Brothers have also been buying illegally extracted chromite from Logar and Maidan-Wardak provinces, and that

[99] Interview with an official of MoMP, dated March 10, 2014
[100] Interview with a senior official of MoMP who sought anonymity, dated January 14, 2015
[101] Interview with an official of the MoMP who sought anonymity, dated Feb 15 2014
[102] Letter numberR-81168 dated16-4-1392 issued by MTO and signed by Subanullah Fahimi
[103] Interview with official of the MoMP who did not want to be named nor have the date of interview shared for fear of being traced
[104] Interview with senior official of the MoMP who wanted to remain anonymous, dated September 15, 2014

the chromite ore from Logar contains platinum. The file holding the documents related to the Hewad Brothers' dues is getting thicker, while the company continues to defy the writ of the state and its commitments in the contract. The former Minister of Mines and Petroleum would often tell his officials not to pursue the company for payment of dues. Article 20 of the contract states the company has to pay its dues, but there is no time period established within the contract, reflecting contractual weaknesses and loopholes[105]. The company has to make all payments and dues to the Afghan Government, but until now it has paid around US$2,900 as a tiny penalty for nonpayment of royalty but has not paid the actual owed royalty itself[106]. The company's operation has left a 200mx70mx60m pit in a mountain in Gadah Khel and a 10x20x20 pit in the Nouman Khel side of the mountain bearing the mine. Hewad Brothers then exploited the QalaJala and Naz Dara site for a year and, according tolocal residents who refused to be named for their security, the company extracted 700 truckloads from Naza Dara. The company is now extracting from the GadahKhel site again, and since their return have extracted on average 2-4 truckloads every day from the Am Cheena area.

Based on numerous sources of evidence, Hewad Brothers has been operating the mines for several years but has not cleared its dues. The annual extraction of the company roughly reaches 50,000 tons. However, the company has not paid any royalty to the state for its extraction over the past three years. The price of ferrochrome internationally is US$2,420 per ton. In the past three years the company has roughly extracted about 120,000-140,000 tons of chromites from different sites in Kohi Safi and, except for a small custom duty payment, the company has withheld payment to the government. A rough calculation of the revenue the company generated comes to around US$50-60 million. The company committed to pay a 26% royalty on chromite ore at an ore price of US$210 per ton. Based on this price and the agreed royalty rate, the amount of royalty the company owes to the government is US$7,098,000. Senior officials of the MoMP, upon enquiry, responded that the company is still exploring, while some officials who sought anonymity said that former Minister Shahrani came under pressure and relaxed the payment and inspection procedures for the company[107]. Senior officials of the MoMP, on the condition of anonymity, shared that the former minister allowed Hewad Brothers Company to purchase even the illegally extracted chromites from the rest of the country and thereby monopolize the sector[108]. A trader who did not want to be named said a chromite trader recently approached the powerful warlord partnering with Hewad Brothers to seek assistance in acquiring a permit for chromite ore extraction from the Mohmmad Agha and Babus areas of Logar province, with which he would supply the Hewad Brothers' factory in Kabul. The warlord approached Minister Akbar Barikzai, who was reported to have immediately given the trader a permit[109].

The MoMP is aware of the extraction and nonpayment of royalty and rent by the company but takes no remedial steps. In sharp contrast to the reality on the ground, the company has recently submitted an application for extension of the exploration period. The AEITI Secretariat fails to identify or carry out an assessment to bring the company under the EITI reporting.

[105] Op cit contract
[106] Op cit interview with a senior official of the MoMP who did not want to be disclosed, dated January 23, 2014
[107] Two senior officials of the MoMP who sought anonymity, dated January 14, 2014
[108] Senior official of the MoMP who sought anonymity, dated April 16, 2014
[109] Interview with a trader who did not want to be named, dated September 10, 2014

Environmental law violation: The Mineral Law of Afghanistan (2010) clearly mentions that mining operations must be preceded by a mandatory Environment and Social Impact report (ESIR). The Mineral Law makes completion of the ESIR an important condition for issuing the exploitation license[110].Hewad Brothers has not completed any ESIR, even though it has been carrying out extraction operations for some time. One of the mines, which has been exploited for the last three years in Gadah Khel, is located beneath the village. The project has displaced local residents, and it seems they were paid some amount of informal compensation. There is no grievance redress mechanism established for members of the local communities to discuss their concerns arising from the project. These are clear violations of both the Mineral Law and the Environment Law of Afghanistan.

3.2. Environmental and Social Impact

The prospect of a mine's success causes a proportional increase in the stake of local communities and people living around the mine sites. There are many contracts in which companies are obligated to recruit from local communities.

There are some articles in the Koh-i-Safi contract which underline the social and environmental obligations of the company. Article 18 of the contract indicates the obligations of the company with regard to environment and touches on social impact and consultations with local people very briefly.

Article 4 of the contract binds the company to pay about US$1 million dollars as a financial guarantee to the government for the environment and safety of workers. Subsection 4 within the same article obligates the company to spend US$20,000 on the development of local communities or villages living in proximity to the mine.

The company has not submitted any expenditure budget to the MoMP for approval. An observer in the region said that the company has not spent anything on the development of the communities in Gadah Khel[111]. While visiting the site, the author observed that there was no visible developmental project executed by the company.

Article 14 of the contract states that the company has to recruit Afghan citizens and train them for employment in the project. But the contract fails to bind the company to a specific commitment, and there are no numbers or timeline specified. Eight Afghans from local communities are employed by the company in very low-skilled, labor-intensive slots, and they get paid US$300 per month[112]. The company has built nothing for the local communities so far as part of its contractual obligations. In fact, the community has been threatened with use of force if efforts are taken to try and stop the project.

Article 26 of the contract provides for dealing with conflicts and obligates the company to resolve any conflict within 60 days[113]. Mine operators often create a grievance redress mechanism, which international standards promote as providing an opportunity to prevent overt conflict and address

[110] Article 30 of Mineral Law of Afghanistan 2010
[111] Interview with a local social activist, dated January 23, 2014
[112] Op cit interview with former government official who was stationed in the Kohi Safi and sought anonymity, dated late 2013
[113] Op cit the contract for chromite in GadahKhel 2011

stakeholder concerns in a timely manner and within a mutually agreed upon framework. A local elder said that the community was not consulted before the company started extraction. Another local man stated that when he went to the mine operator (Hewad Brothers) to ask for compensation for his damaged property, the operator instead threatened him.

Hewad Brothers has not only failed to set up any grievance redress mechanism but also failed to designate contact points with the local people in order to seek their views on the development of the mines, despite the fact that Article 18 of the contract binds the company to do so. The company additionally failed to consult local people on extraction and its impact. The company has instead used coercion and force to suppress members of the local communities who have been protesting against the project. There are several powerful figures whose names came up during research, and they seem to have been influencing the extraction and conflict around the mine.

3.3. Politics in the shadow of history

Kohi Safi was a strategic locality during the 1980s and early 1990s, which threatened the Bagram Airbase while the Russians were occupying Afghanistan. Fighters from Hizb-e-Islami, Jamiat-e-Islam, and Dawat-e-Islami groups were present in the region. Some of the former Jihadis still carry clout in the region, and some powerful politicians now use or revive the same actors to contest chromite extraction.

Conflict surrounding the mine has involved two main factions of powerful individuals and networks. Hewad Brothers is supported by a powerful warlord who is part of his own separate network. Opposing the current mining operator is an ANA general who has been asking for a share in the profit. The conflict was intensified and led to a Jirga to resolve it. The Jirga was led by senior members of the government, Wolusi and Meshrano Jirgas, which decided that Hewad Brothers would pay 10% of the profits from extraction to the ANA general. But the agreement did not last. This event shows the involvement of senior-most leadership in the mining sector despite knowing that their involvement is extra-legal.

3.4. Divide and dispute

The literature on mine development repeatedly underlines the risks of conflict over natural resources in the absence of a sound legal framework and institutions, transparency, efficient collection of revenues, and allocation of the same supported by strategic vision.

The conflict over the mine has recently taken a bloody turn locally. Local community members have protested the mine operation by the company, and the company has recruited local people from other communities to protect the mine. The first batch of 15 people were recruited from Naz Dara, and people from QalaJala felt discriminated against. The elders of QalaJala told the company that local people from their community should be employed as guards as well. Hewad Brothers handed over the security to people of QalaJala after the discussion. Two months after the change in guard, six people, all of whom were former guards from Naz Dara that were employed by the company, were killed in a targeted attack.

In 2012, the six victims were traveling to purchase goods for Eid. They were all pulled out of their vehicle and killed in front of other passengers. The elders of Naz Dara felt that these individuals were killed by people of QalaJala who had earlier protested the company, asking for employment as guards. Two months later, a resident of QalaJala was waylaid and assassinated along with another man close to his house in the Bagram district. Subsequent to these events, Hewad Brothers disarmed the local people with the help of local police and brought in 40 well-armed private militia to protect the mine. Hewad Brothers moved to Naz Dara again to extract chromite rock, and it armed the people of the village to provide security. A group of insurgents then attacked the mining site in Naz Dara in the second week of August, killing two guards of the mining company, injuring another, and taking all of their weapons. The insurgents also sent a warning to the company to withdraw from the area, as there was now open conflict between the villagers of QalaJala and Naz Dara. Jalal Qala has around 180 families, while Naz Dara has around 130 families. Jalal Qala has support from the insurgents, but Naz Dara finds itself caught in the middle and left on its own[114].

The people of Naz Dara may drift toward powerful warlords to protect their lives. However, it is very clear that the company demonstrated greed and naiveté during its extraction operations, and its inexperience and heavy-handedness has fueled a conflict between communities triggered by employment opportunity-seeking. Article 17 of the contract dictates that it is the obligation of the company to pay compensation when there is a death or injury as result of its operations, but the amount is not specified.

The dispute over accrual of rents from the mine between individuals of the two above-mentioned factions manifested itself in another local protest. The warlords sent his emissary to the local protestors and agreed to pay six of the leaders of the protestors US$600 per month to allow the operation. This led to division within the community but did not stop others from protesting. The protest continued, and sometime back a landmine blew up a truck at the mine that was carrying guards deployed by Hewad Brothers, leaving ten dead and four injured[115]. This incident was widely reported among local and international media outlets[116]. The governor of the province blamed the attack on the Taliban, but they did not take responsibility for it[117]. The owner of the company also said it was not the Taliban. Officials of the company, according to local sources, contacted the Taliban shadow governor for the province, Mullah Manaf, and paid him protection money to balance the power

3.5. Conclusion

The chromite mine in Kohi Safi is one of the biggest operations in Afghanistan, covering 54 $km^2$of area. Paradoxically, this was awarded as a medium-sized contract. It is widely acknowledged among the officials of the MoMP that an important local warlord has a major share in the mine. He is a member of

[114] Interview with a resident of Kohi Safi who sought anonymity, dated August 22, 2014
[115] Ibid
[116] Afghan Voice Agency 2013, *Roadside bomb kills 8 Afghan mining company workers in Parwan,* Afghan Voice Agency, September 1, 2013 (accessed online: January 23, 2014: http://www.ava.af/vdcaumn0.49neu1gtk4.html)
[117]AneKomnenic, 2013, *Eight mining workers killed in Afghan bomb blast*, Mining.com, September 1, 2013

the Wolusi Jirga, despite the fact that the Mineral Law of Afghanistan of 2010 prohibits members of the Wolusi Jirga from obtaining mining contracts[118]. The contract was awarded under duress or extra-legal incentives, and as the executive and guardian of the Mineral Law, the MoMP has failed in carrying out its constitutional duties. The terms and commitments in the contract have not been honored, and payments due to the government from the company have not paid. Therefore, the existing mining operation is illegal, and activities of the company have created fault lines among communities that have led to deaths of local people. The company is also buying illegally extracted chromite from Logar and MaidanWardak for processing and illegal export. The company has changed some terms of the contract, resulting in an increase in company profits while cutting the government's share. Overall, this is a case of private interest merged with the interest of the political elite not only to capture the mine but to harvest large rents while blatantly violating several laws of the country.

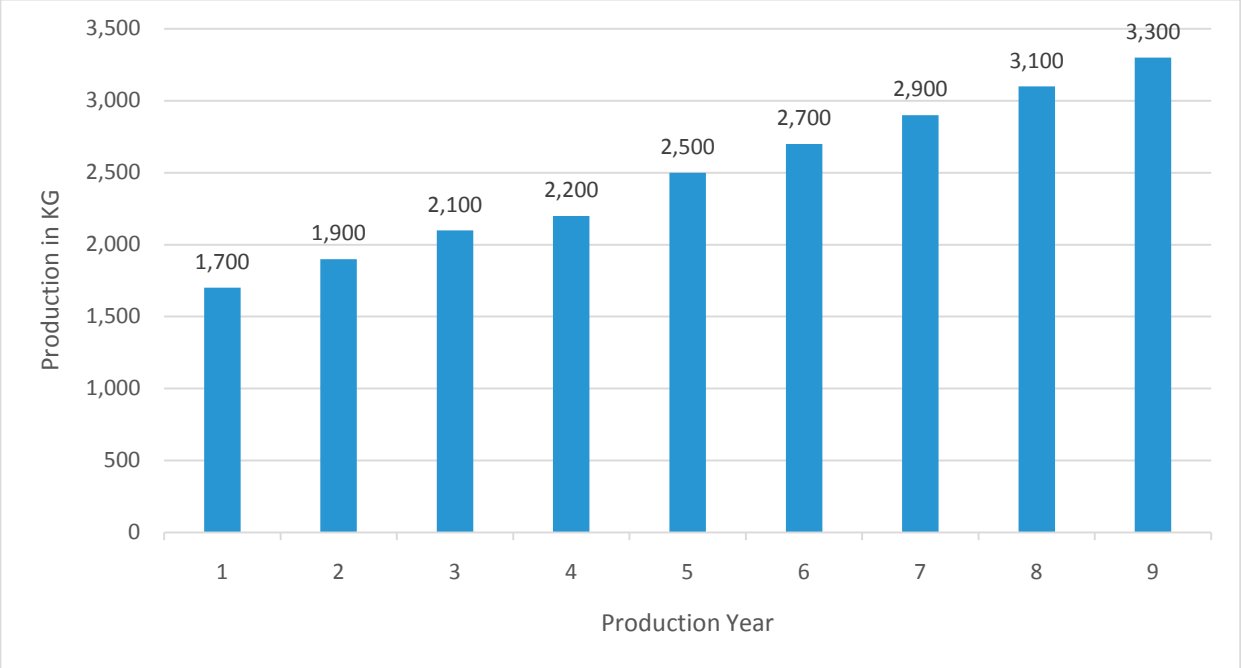
[118] Article 14(2) of the Mineral Law(2010) of Afghanistan.

4. NURABA AND SAMTI GOLD

The Nuraba and Samti gold mines are located in Cha Ab district of Takhar province, south from the border and the neighboring country of Tajikistan. The site was surveyed and explored by the Russians. The contract for the mines was signed with West Land General Trading Company (WLGT) on 20/12/1387, which corresponds to early in 2009[119]. There are, however, records of two contracts for the same gold mine with the same company, the first signed in 2009 and the second in 2013. The latter is the result of a review and renegotiation of the 2009 contract[120].

Article 1 of the first contract (2009) commits the company to spend approximately US$1 million during the survey and exploration period to establish the reserve and potential of the deposit. Article 3 states that the company would be given one year for exploration and nine years for extraction of gold. Article 6 mentions that the company would pay a 20% royalty on pure gold production (85%[121] of the LME price) based on the date of production[122]. Section 2 of Article 6 refers to the proposal of the contracting company, which mentions that WLGT's annual production of gold would be as shown in Chart 1.

Chart 1: WLGT's Proposed Annual Production of Gold[123]



Section 3 of the same article of the contract states that the company is obligated to pay full royalty even if the company produces less than the projected amount. For example, WLGT should pay royalty for

[119] The Nuraba and Samti Gold Mine Contract in Takhar dated 2008-9
[120] The Nuraba and Samti Gold contract in Takhar dated 2008-9
[121] Senior official of the MoMP, dated March 23, 2014
[122] Article 6 of the contract 2008-09
[123] Nuraba and Samti Gold Mine Contract 2008-09

1,700 kg of gold on the 20% royalty basis in the first year. The company is required to pay extra royalty to the state for excess production. Article 8 states that the company must complete its exploration work in one year and submit the report to the MoMP. Article 9 subsection 3 of the contract states if the company finds that there is not sufficient gold, it can stop exploration. Article 22 states that no changes or removal of any article in the contract are allowed[124]. Article 16 states that the company must establish a gold processing plant in Afghanistan and process gold in the country.

4.1. Political connections

The owner and CEO of WLGT is Haji Abdul Kabir, who migrated from Bokhara in the 1990s and settled in the Aqcha district of Jawzjan. His brother, who chose Moscow as his destination, is now a political figure in the Russian *Duma* (Parliament).Haji Kabir has been active in the mining sector of Afghanistan for seven to eight years and has extracted chromite from Khost province in the past without clearing his dues. The company of which he was a partner was accused by the Customs Department of Khost province of illegal extraction and smuggling of chromite through Waziristan to Pakistan[125].

The Nuraba and Samti Gold Mine contract was renegotiated in 2013. Not only that the terms of the contract softened, but also the company was not pursued for payment of past dues. As a result, WLGT has a new contract, on easier terms, for the gold mines it exploited for years.

West Land General Trading has been operating the mine since 2009 without paying required dues to the state for its production. Haji Abdul Kabir has a tea business as well and operates currently from Dubai. He was partner with Pahlwan Yahya in a company called Ganj Huzur that was awarded a three-year contract for chromite in Khost province in 2007. Under that contract, the company was allowed to extract 73,000 tons of chromite and export it, and in exchange was obligated to pay Afs4,300 (equivalent at that time to US$85) per ton as royalty. Mehwar Daily carried a report on August 13,′ 2014 that Ganj Huzur extracted up to 150,000 tons of chromite but paid no royalty to the state[126]. Two documents from the Customs House of Khost state that the company has been smuggling chromite ore to Pakistan without making any payments to the government[127]. The document further states that the Customs House has confiscated three trucks full of chromite belonging to Ganj Huzur and has asked the MoMP to instruct and update them about the company and its obligations[128].Ganj Huzur operated the mine in one of the most insecure provinces of Afghanistan under the protection of ministers and warlords. Mathew Dupee, in his February 2012 article for the Combating Terrorism Center, refers to a syndicate of criminals and insurgents collaborating to benefit from illegal extraction of chromites in Khost province[129].

[124] Article 22 of the contract 2007
[125] Document of Custom Department
[126] *Mehwar Daily Edition*, August 13, 2014
[127] Letter from Custom House to the MoMP, dated 5/8/1387
[128] Letter from the Custom House Khost province to Ministry of Finance, dated 2/4/1387
[129] Dupee, Mathew (2012), *Afghanistan's Conflict Minerals: The Crime-State-Insurgent Nexus*,Combating Terrorism Center, February 12, 2012 (accessed January 20, 2014: http://www.ctc.usma.edu/posts/afghanistans-conflict-minerals-the-crime-state-insurgent-nexus)

Ganj Huzur extracted and smuggled chromite ore to Pakistan and seemingly withdrew the security money, which had been deposited to honor the contract. The Minister then excused this act by saying the company incurred losses. Ganj Huzur had no experience of mining in the past, and sources say senior officials of the MoMP tempted the company's leaders to get started. Haji Kabir has secured two more contracts with the help of his friends and partners in government and Parliaments, including the chromite mine in Maidan Wardak, which extended to an area of 249 km^2, as well as a salt mine in Takhar. Haji Kabir was awarded the Nuraba and Samti gold mine contracts in Takhar, even though, according to Article 14 of the Mineral Law of Afghanistan (2010), he was ineligible because he had not paid required dues from the chromite mine in Khost province from which he had extracted for years.

Haji Kabir has deep connections with officials of the MoMP, and they have reportedly been helping him secure contracts. One source says that officials of the MoMP who were benefiting from the contract with WLGT allocated coordinates in a hurry, and only later on was it realized that two of the coordinates were actually across the border in Tajikistan.

Despite the fact the company has been present at the mine for five years, it was awarded a new contract for the same mine and given three years for exploration with further provision for extension[130]. Sources privy to the matter said that Haji Abdul Kabir used to pressure the MoMP through MPs to allow him to extract without paying dues[131]. Haji Abdul Kabir has admitted that Wahidullah Shahrani would ask him for bribes. Haji Kabir also used officials of the MoMP who were closely advising Shahrani, including a foreigner, to tempt the Minister, who reportedly succumbed to pressure and temptations often[132]. Haji Kabir has also been using members of the Afghan Parliament to pressure the MoMP not to ask him for payments. In addition, Haji Abdul Kabir is employing the son of Mir Ahmad Qasimi, who is the head of the Provincial Mining Department. Mir Ahamd Qasimi's son runs the company, while Haji Abdul Kabir can easily obtain signed documents needed to avoid legal hurdles.

The first proposal, which was submitted by West Land General Trading in 2008, shows that the company had promised to extract large amounts during the nine years of the contract (see Chart 1). The data compiled by Russia, according to a senior geologist of the MoMP, identified three sites in Nuraba and two in Samti with gold occurrences (Table 4).

Table 4: The Sites with Gold Reserves[133]

Mine Area Name	Site Name	Gold (in kg)
Nuraba	Hassar	437
Nuraba	Nuraba	210
Nuraba	Anjeer	155
Samti	Two sites	30 tons (impure)

Comparing Chart 1, which shows the proposed production of the company through the phases of the contract, with Table 4, which shows the amount of gold estimated in Nuraba and Samti, it seems clear that the company assigned random figures in its proposal to extract thousands of kg of gold. In actuality, Nuraba did not have very much gold and Samti, based on rough estimates, has 30 tons of impure gold.

[130] Article 3 of the new 2013 contract
[131] Interview with a senior official of the MoMP who did not want to be named dated, December 13, 2013
[132] Interview with senior official of the MoMP who did not want to be named, dated December 12, 2013
[133] Table compiled from old Russian data about the site, translated by British Geological Survey

One possible interpretation for the proposal and promise of more gold extraction than the site bore is that the company tempted the government with prospects of more revenues. The officials who were involved in evaluation violated the norms and standards necessary to be observed before a company is awarded a contract. A former senior employee of WLGT said that the company planned to invest and exploit Nuraba and invest the revenues in Samti to exploit it. The head of company was given time to explore first, prepare a feasibility report, and then sign a new contract for exploitation.

4.2. Contract Re-engineered

The second contract with WLGT was reviewed by the IMC and later endorsed by the Cabinet of Ministers in June 2013. The re-engineering of the contract to further favor the company occurred in late 2012, after the company had been extracting gold for four years. WLGT, under the new contract, gets three more years for exploration, despite the fact that the author of the report found an inspection report stating that the company produced 12 kg of gold from the site between August 2012 and January 2013.Nevertheless, the MoMP, under Minister Wahidullah Shahrani and Haji Abdul Kabir as the president of the company, signed the new contract in June 2013. The exploration stage under the Mineral Law of 2010 is defined to include survey, drilling, sample-taking for study, and mapping underground structures of the mine. It is also a stage during which mining operators invest money. During this stage, companies are prohibited from carrying out commercial exploitation. This new contract makes it obligatory for WLGT to complete an Environment and Social Impact Study, submit it to the Ministry of Mines and Petroleum for approval, and secure an exploitation license. The company is also obligated to complete and submit feasibility study to the MoMP[134].

The new contract raises many questions. First, why was there a need to review the contract? Did the company pay its dues? When was the Environment and Social Impact Study completed, and was it approved before the MoMP issued a license to operate the mine? Why did the MoMP grant three more years for exploration, even though the Russians had produced accurate data about the presence of gold at the sites? Why was due diligence not done before awarding the contract?

The Cabinet of Ministers has not produced any documents justifying why it supported the review and a new contract with WLGT. Sources working closely with the President's office say that the former Minister of Mines often got his way at Cabinet meetings for two reasons: first, his network within the Cabinet of Ministry was very strong; second, the majority of the ministers lacked experience and knowledge of the mining sector. He also received support from the donor community.

4.3. Violations and breaches

WLGT has a murky past in the mining sector. The company extracted minerals and paid no money to the state. It currently exploits the gold mine in Cha Ab district of Takhar and has committed many breaches and violations of the existing national laws. Below are some of the instances in which WLGT has been found in violation of the laws of the country in its operations at the Nuraba and Samti gold mines:

Extraction from gold-rich sites: WLGT**,** according to inspectors visiting the site**,** had been extracting gold from gold-rich sites. This is a serious issue for a country to allow such a skewed extraction of gold, as it

[134]Nuraba and Samti Gold Mine contract 2013

will position the sites with less-rich gold ores as unattractive and thus less economical to extract. Inspectors shared this report with the former minister and other senior officials, and this concern was additionally flagged by three other officials of the MoMP on different occasions. Despite informing the then-minister, no action was taken. The government's focus in this kind of situation is often to identify the mineral rich-sites, study the work plan of the company, and then approve it. A government should make certain the extraction plan is such that it allows balanced extraction from all sites so that, regardless of the concentration of gold, all sites are exploited. For now, WLGT will instead extract the gold-rich site and then may simply walk out when the rich gold mines are fully exploited and only low-percentage gold deposits remain.

Nonpayment of dues: The company extracted gold from the mine for several years but did not pay any royalties. It was supposed to submit a feasibility study and development plan to the government, but the company embarked on exploitation before even completing its exploration and mapping of the region. The contract mentions that the company has to pay royalty based on the figures submitted. The contract shows that in year one the company will produce 1,700 kg, with that figure increasing to 3,300 kg of gold by year nine. The base price for the metal for the purpose of calculating royalty will be the price of gold on the date in London Metal Exchange (LME). Haji Kabir, according to MoMP officials, has influenced and managed to reduce the base price for calculation of royalty to 85% (2012) of the LME price of gold on the day of calculation. WLGT has not shared its plans for operations either. In 2012, it paid royalty of US$173,000 to the state, but there is no mention of the production or amount of gold per year[135].

Exploitation and exploration: The contract awarded in 2009 to WLGT mentions a one-year exploration period allowed for the company, while the contract issued in 2013 mentions three years for exploration. In total, it has been almost six years, and the company has not paid any royalty to the state despite significant production of gold. WLGT was awarded the contract with an investment volume of up to US$40 million. Gold extraction began some time ago[136]. Extraction activities by WLGT have been reported by *Pajhwok News*, which quotes a former employee of WLGT, Nazir Ahmad Amiri, on record saying that the company reports amounts to the government that are less than the actual amounts of gold it extracts from the site. Amiriis further quoted in the report as having said that among the employees were Russians, Iranians, and Pakistanis who looked suspicious. He also stated that the company would produce 10-13 kg of gold monthly[137]. The presence of an Iranian, two Russian mining engineers, and a Russian woman named Volga has been confirmed by several officials of the MoMP who have previously visited the site[138]. Inspectors visiting the site also said that there were 12 armed guards' for the company guarding assets. It was further reported that one night during a visit of inspectors, the guards staged a small attack close to site to scare them into thinking there were insurgents in the area.

An inspector who was deputized to inspect the company and its activities said, "The Company was extracting from the sites that were rich in gold. Those are gold nuggets, which do not require processing.

[135] AEITI 2012 report
[136] Die Bunndesregirerung (2011) *The Progress Report on Afghanistan*, German Government,(accessed online, February 9, 2014)
[137] Op cit report by *Pajhwok News*, dated February 25, 2014
[138] Author's interview with an official of the MoMP who sought anonymity for security reasons, dated August 20, 2014

You just dust them off and you get gold. It is irresponsible to extract only from these minerals, as it will damage the real worth of the deposits and lead to less rent for the government. According to some inspectors of the MoMP, during peak time the company has extracted 4,050 gram of gold per day. Stated the inspectors, "On the day we went and started inspection, they produced 1,180 gram[s] of gold, and the next day the operator worked on the heap of waste to produce gold, and it was a ploy to mislead us and misrepresent facts or cover its real production of gold from the site."[139]The officer further explained, "We submitted our report to the Minister, but no action was taken against the company. I am sure the company is backed by some powerful people in the MoMP and Kabul. The company was not concerned about our report. The contract was not tendered and instead merely given to this company. Another senior official source stated that WLGT extracted 12 kg gold in the previous three months.[140]

During the research, several names of influential people were mentioned. A senior officer of the MoMP said that a key person who is partnering with Haji Kabir and protecting him is Abdul Rauf Ibrahimi, current speaker of Wolusi Jirga. The company has not paid royalty to the state in proportion to its production. The rent owed to the state by WLGT is not collected. Under the renegotiated contract of 2013, the company has been given three more years for exploration. Sources who accessed a report by a team of inspectors' who visited and stayed on the gold site for three months to inspect operations of the company shared that WLGT extracted 12 kg gold over a three-month period. However, in the new contract under the chapter "Investment," WLGT is obligated to submit the exploration report before exploiting the mine. There is no requirement to submit the exploration study to the MoMP, even now.

Social development promises and deviation: The company agreed in the contract that it would spend US$50,000 on development for the local people. The social development commitment is front-loaded, but it is a one-time commitment only and may disillusion local communities, detaching them from the project and reducing their stake in it. There are reports of noncompliance with its contractual commitment on the part of WLGT. *Pazhwak News* reports some cosmetic investment in making a wall along the river, but then the work was abandoned. The company also paved some roads but did not asphalt them. There is no monitoring of contract implementation. The company states it has spent the money, but this remains undocumented.

Disputes with local communities: There have been disputes between WLGT and local people. People demanded social development projects along with employment, but the company did not respond despite its contractual commitment to do so. International standards in mining, such as "Responsible Mining, "Equator Principles, "Natural Resources Charter," and "International Council on Mining and Metals," all highlight the importance of community consultation and the provision of social development projects by the mine operator. However, WLGT neither carried out any consultation prior to the operation nor responded peacefully to communities' demands. Instead, the company has been using local police and other powerful networks to suppress local people[141]. Local communities are unhappy with the behavior and the activities of the company, according to a journalist who has been

[139] Interview with a senior inspector of the MoMP who did not want to be named, dated December 14, 2013
[140] Interview with a senior official of the MoMP who sought anonymity, dated December 12, 2013
[141] Article 20 of the Nuraba and Samti Gold Mine Contract dated 2008-09

following the project[142].

Rules twisted: WLGT had no experience in gold mining prior to being awarded the contract for Nuraba and Samti. The president of the company, Haji Abdul Kabir, was a partner in the past with Palawan Yahya to exploit the chromite mines in Khost, but he reportedly resorted to illegal extraction and engaged with people who were illegally smuggling the rock.

WLGT has been extracting gold from Nuraba and Samti without paying much in royalty and other taxes. The author repeatedly asked officials of the MoMP and MoF about the project. In response, officials often said that the company was making loses, even though inspection reports by the MoMP showed that extraction was occurring. The company did not honor any of its obligations but nevertheless was given a new contract with the exploration period extended for three years. During this phase, the company has continued to extract without completing its exploration study. The government, which gave the contract to WLGT to generate revenue, has failed to receive much from the company while potential revenue has been siphoned off.

According to sources close to his company, Haji Kabir would extract gold from the site and bring it to Kabul for sale. He also had disputes with his partner Haji Basir, who had a 10% share in the company and was eventually kicked out. WLGT has had disputes with local people and often has resolved them either through local government officials or through direct pressure.

4.4. Conclusion

WLGT does not have the required experience in the mining sector to be fit to extract and process gold in Afghanistan. Sources close to the owner of the company said it enjoys the support of a powerful warlord in the north, Abdul Rauf Ibrahimi, the current speaker of Wolusi Jirga, and Shakir Kargar, the Minister of Commerce and Industries, as well as some other members of Wolusi Jirga. For a number of years the company extracted gold from the site, and later the contract was re-engineered to create a three-year extension for exploration.

Though WLGT has been extracting gold from Nuraba and Samti, it does not fully pay its dues to the state. It has been accused of bribing inspectors visiting the site so they write a favorable report. It has also employed family members of senior officials of the MoMP to navigate the legal check points and legitimize its illegal extraction operation. The company has also used members of Wolusi Jirga to pressure the MoMP to not collect revenues from it. The company promised to spend US$50,000 for social development of the local people but has done little. The company has also been misleading inspectors with incorrect data.

Haji Abdul Kabir, though ineligible after being involved in illegal extraction of chromite through another company in Khost, has been getting more contracts and let off the legal hook to pay dues on time. The company has not carried out essential studies promised in the contract. The company has also not produced any data on the size of the reserve despite exploring the mine for five years, during which

[142] Interview with journalist who sought anonymity, dated September 2, 2014

time it is suspected to have engaged in exploitation.

Haji Abdul Kabir has been awarded more mining contracts, and he extracts illegally and refuses to pay his dues to the state. The state has not pursued the course of law to pressure the company to pay its dues, nor has it imposed any punishment.

5. WESTERN GARMAK COAL

The contract for the Western Garmak Coal mine was signed between the Ministry of Mines and the Khoshak Brothers Company (KBC) on July 14, 2012[143]. The Khoshak Brothers has been operating a coal mine in Herat as well[144]. The Western Garmak contract is a package of an exploration and exploitation license for the mining operator[145]. The copy of the contract, which is accessible online from the website of the MoMP, mentions its duration as 10 years[146]. The contract obligates the Khoshak Brothers Company to prepare an exploration plan within four months of signing the contract, including a Technical Exploration Plan, a Financial Plan, and an Environment Action Plan. The company cannot carry out exploration activities until the MoMP approves its Exploration Plan. The Company is allowed three years to carry out exploration. The KBC is also obligated to carry out an ESIR and then prepare its environment protection plan based on the findings. The KBC also agrees that mining activities will commence once the Feasibility Study is completed, submitted, and approved by the MoMP. Doing a Feasibility Study is a binding element of the contract. While the contract mentions Afs1,211 as the royalty per ton to be paid by the KBC. Per the contract, during the exploration period, the KBC will also pay US$5 as rent per hectare of land and US$25 during the exploitation phase. Part 32 of the contract talks about disputes and notes their resolution within 60 days.

Afghanistan's Mine Regulation Framework obligates any mining company to provide the following: a description of the bidder's experience and procedures that will be applied for protecting the environment; means for preventing, minimizing, and remedying pollution and other impacts from mining activities; proposals with respect to the training of Afghan nationals and expenditures to be incurred thereon; any additional specific information identified in these regulations for each type of license and authorization[147];and criteria based on which the contract can be terminated, as follows:

1. The contract will be terminated if KBC assigns all or a portion of the rights held by it without the prior written consent of the Government.
2. KBC has knowingly submitted to the Government false statements which were of material consideration for bidding, granting and execution of this coal project.
3. There exists another material breach or nonobservance by KBC of any terms, obligations or conditions of this Coal Project Contract or any other law of Afghanistan.
4. KBC as part of a detailed Exploration Plan is obliged to provide MoMP a detailed investment plan for the phase of the mine that meets the terms of its bid proposal which was submitted to the MoMP. The Exploration Plan is to be submitted to the MoMP within four months of the effective date of this contract[148].

[143] Western Garmak Coal Mine Contract, dated July 14, 2012 (accessed on July 15, 2014, http://MoMP.gov.af/Content/files/Mineral%20Contracts/File_209_West_Garmak_Coal_Contract-English.pdf)
[144]Sabzak Coal Mine Contract, dated September 18, 2006(accessed on July 1, 2014, http://MoMP.gov.af/Content/files/Mineral%20Contracts/new_Sabzak_Coal_lr.pdf)
[145]Op cit part I of II of the Western Garmak Coal Mine contract
[146]Ibid
[147] Mine Regulation 2010
[148] Western Garmak Coal Contract July 2012

5.1. Legal framework and eligibility

The coal mine at Western Garmak was awarded to the Khoshak Brothers Company, which belongs to Mohammad Reza Khoshak, a sitting member of the Wolusi Jirga from Hirat Province. Mohmmad Reza Khoshak's business card designation shows him as the president of Khoshak Brothers Company, and the contract for the coal mine carries Reza Khoshak's email, as well as his mobile number as contact[149]. This represents a gross and obvious violation of Article 14 of the Mineral Law of Afghanistan (2010). Moreover, the rules of tendering and invitation of tenders have been grossly twisted to favor KBC during early stage as well.

5.2. Project Implementation

Western Garmak is located in the jurisdiction of Dar-e-Suf district of Samangan province. Dar-e-Suf happens to be one of the richest coal sites in the country, and there are reportedly 395 spots from where illegal extraction is being conducted by politically connected powerful people or local warlords. The author has secured a list showing the people who have been illegally extracting coal from the region among other minerals.

There are six villages close to the Western Garmak Coal Mine, including Khairabad, Beranger, Hosni, Hosni Borj, Sartangi, and Jaqraq. According to the district governor of Dar-e-Suf, there were 400-500 scattered families living around the coal mine[150]. The population is made up of Sadats and Hazaras. In the past there were factional tensions over control of the area, but fortunately no longer[151]. There is one school named Hosni, which provides education for both male and female students at different times of the day. There is also a clinic in the area[152]. There is a lot of rain-fed land that could produce wheat, but no one is cultivating it. The region also has a kind of herb named Angiza, which local people used to collect and sell, but its harvest has been reduced in the past few years[153].

The Western Garmak Coal mine was exploited by some 2,000 local artisanal miners until the Khoshak Brothers Company was awarded the contract in 2012. The artisanal miners staged a protest against the company and claimed title to the land, but they were pacified through a mix of dialogue and pressure[154].

5.3. Exploration and Exploitation

The contract includes exploration and exploitation in a packaged offer to the company. The company is allowed a three-year exploration period to estimate the reserve, prepare the Feasibility Study and Environment and Social Impact Assessment, and then submit them to NEPA for review and issuance of the permit to operate the mine. Part 6 of the contract with the company. States, "KBC agrees that

[149] Ibid
[150] Interview with the District governor of Dare Suf, Samangan province, dated July 17, 2014
[151] Interview with Engineer Bashir Ahmad, an employee of Khoshak Brothers, dated July 17, 2014 in Western Garmak
[152] Interview with Khan Mohammad, a local resident, dated July 17, 2014 at Western Garmak, Dare Suf, Samangan province
[153] Interview with Said Amir, local resident of Western Garmak, dated July 17, 2014.
[154] Interview with local resident who sought anonymity, dated July 16, 2014

exploration activities will not commence until the Exploration Plan has been accepted by the MoMP."[155]The Mining Regulation of Afghanistan (2010) requires the following to be included in an exploration report from a license holder:

1. The geological mapping that has been undertaken
2. The number of geochemical ample obtained
3. The type and amount of geophysical work
4. The number of meters (percussion and coring) drilled
5. The number of bulk sampling pits and trenches excavated and the length of trenches excavated
6. The number and volume of bulk samples taken
7. The number and type of assays
8. Whether any metallurgical test work was undertaken
9. Whether any mine (technical) feasibility studies were carried out

Khoshak Brothers has not submitted any maps, exploration plans, budget, or environment protection plans, but nevertheless has been carrying out extraction. There are dozens of instances of violation and noncompliance with the Mining Regulation of the country.

Officials of the company have said that exploration work is underway, but observation during fieldwork did not find any drilling being conducted, whereas the company was quietly carrying out exploitation of the mines[156]. The company submitted none of the studies, which are serious contractual obligations, while it has been exploiting the site. Senior officials of the MoMP who visited the area said, "Khoshak Brothers Company has started extraction. They were given 36 months for exploration; however, the company has extracted coal. When I went to the area there was protest by local people against the company. The company has stored 600 tons of coal in open space."[157]

The MoMP also has not received any real exploration-based maps and reports that are required before an exploitation license is issued to the company.

The Khoshak Brothers Company has started to extract coal from the Western Garmak Coal mine in the past year, according to local residents (see also photograph)[158]. There are around 230 workers busy extracting coal from the site on a daily basis, and they are paid wages according to output. Each worker reportedly gets Afs15, 000 - 20,000 per month. During Ramzan, the company extracts 150-200 tons of coal and much of the mining happens at night, whereas in other months the company extracts 200-300 tons per day.

[155] Part 6 of the contract signed with the company by the MoMP.
[156]Observation during the field visit to coal mine on July 16, 2014
[157]Interview with a senior official of the MoMP who sought anonymity for reasons of security, dated June 1, 2014
[158] Interview with a local resident in Western Garmak who requested anonymity, dated July 17, 2014

Tunnel inside mine with four workers (July 17, 2014)



Photo: J. Noorani

The exploration phase, according to the contract, has yet to come to an end, and one of the employees of the company states that it may take five years before an exploration study is produced. A conservative value of the extraction from the site over the course of one entire year (330 days) would be 88,000 tons (see Table 5 below).

Table 5: Estimated Extraction per Year, Revenue, Royalty, and Rent

No. of Days in Year	Average Tons per Day	Coal Rate	Revenue (in US$)	Royalty (US$21.5[159] per Ton)	Rent (US$25)
330[160]	267[161]	US$90[162]	7,929,900	1,894,365	31,262.5

Source: Author's calculations

According to an official of the MoMP, the company has paid only Afs15million as royalty for coal extraction, whereas it is supposed to also pay US$25per hectare as rent on the land it uses during

[159] The royalty in contract is 1,211 Afs per ton and for the sake of calculation was converted to USD. One U.S. dollar is equal to 56.50 Afs

[160] The number of production days in a year is reduced to 330 after deducting national holidays

[161] Average production during month of Ramazan and other months is 267 tons a day

[162] Rate of coal in local market is taken as US$90 for calculation purposes for the contract area of 650 hoof land162.

exploitation. The payments of 15 million Afghani is paid as royalty without properly accounting for production. This was authenticated by another senior official of the MoMP, who additionally shared that the company paid Afs15 million for extraction during the exploration phase to avoid legal traps and penalties, which is an illegal act. The company has not paid surface rent or taxes on the sale of its product. Khoshak Brother owes the state approximately US$1.9 million as royalty for coal extraction for one year and US$162,50 as surface rent annually

5.4. Violations and Breaches

The company has committed several breaches besides using political influence and offices to acquire the mining license. The breaches are legal, financial, and social in nature. The most flagrant breaches, which could have easily triggered legal recourse by the government, are as follows:

Legal Breaches: The contract was awarded to a sitting member of the Wolusi Jirga (Mohammad Reza Khoshak), despite subsection 2 of Article 14 of the Mineral Law of Afghanistan (2010), where it is unequivocally stated that Members of Parliament (Wolusi Jirga), among other ranking state and government officials, are not eligible to be awarded mining contracts[163]. Another irregularity is that the tender for the Western Garmak Coal mine that was awarded on November 10, 2011 was open for bidding for only for seven working days, which goes against the normal tender procedure. Tenders are to be open one for a minimum of one month.[164]. The contract was given to a single bidder, the Khoshak Brothers Company—the only company that submitted a bid—and this too is against the Mineral Law of Afghanistan 2010[165]. MoMP officials who were interviewed on the subject said that the former Minister of Mines had agreed to this after a discussion with the Mohammad Reza Khoshak[166].

Financial Breaches: The company, according to the contract, must pay 1,211 Afs as royalty per ton of coal extracted from the mine[167].The company must also pay US$5 per hectare annually as rent for the land contracted during exploration and US$25 per hectare during exploitation. The Khoshak Brothers Company has held the license for two years and has extracted for over a year. The estimated rent and royalty it owes the Afghan state are:

- Royalty: US$1,894,365
- Rent: US$3,250 for year one, and US$16,250 for year two, which totals US$19,500.

As mentioned above, the company has paid only Afs15 million, which is equivalent to around US$265,500. Moreover, the company has not paid taxes on its profits, which may amount to hundreds of thousands of dollars annually.

Violation of Environment Law: It is universally recognized that coal mining adversely affects water, soil, and air. For example, environment reports prepared by expert groups state the following:

> *Impacts to the land from coal mining cause drastic changes in the local area. Damage to plants, animals, and humans occurs from the destruction and removal of habitat and*

[163] Article 14 of the Mineral Law of Afghanistan 2010
[164] Anis Daily, October 30, 2011
[165] Article 24 of the Procurement Law of Afghanistan 2008
[166] ibid
[167] Page 9 of the Western Garmak Coal Contract, July 14, 2012 (accessed July 15, 2014)

environmental contamination. Surface mining completely removes land from its normal uses. Coal mining can damage water aquifer as well as water streams. In underground mining waste piled at surface creating run off that both pollute and alter water streams[168].

When pyrite is exposed to water and air, it forms sulfuric acid andiron. The acidity of the runoff is problematic in itself, but it also dissolves metals like manganese, zinc, and nickel, which then become part of the runoff[169]. The serious violations of the Environment Law of Afghanistan by the company may have far-reaching health hazards both for the people and the environment.

According to the parameters of Regulation 2 of the Environment Impact Assessment regulation, coal mining may have adverse environment impact; therefore, the National Environment Protection Agency is the sole authority to issue Certificates of Compliance to the company for operation[170].

The Khoshak Brothers Company has not submitted its Environment Impact Report. The Environment Impact Assessment regulation makes submission of an Environment Impact Assessment Report mandatory. Article 14 of the Environment Law of Afghanistan makes it mandatory for companies to submit their Environment Impact Assessment report[171]. The company piles coal in open places, which exposes it to rainwater (see photographs)[172]. Rainwater may create runoff that can affect theunderground and surface water,thus adversly affecting agriculture and threatening human life in addition to the environment.

Breaches of Health and Safety Standards: Coal mining is a very risky activity; as a result, miners working in coal extraction are especially exposed to fatal hazards. Standard clothing and gear for coal mining includes helmets with light, glasses, mask, fire-proof clothing, gloves, and mining boots.
A mining safety plan is an important element of a contract. The mining regulation of Afghanistan states, "PriortotheinitiationofbiddingformineralrightstheMinistryofMinesshall decide on the requirements for pre-qualification such as the necessary professional and technical qualifications and competence, financial resources, equipment, and other physical facilities, managerial capability, experience, business reputation, and personnel."[173]

However, the MoMP relaxed the requirements of the Mineral Law and Mining Regulation and awarded the contract to the company. Elsewhere, there have been cases of terminal diseases among coal miners. A news report in India mentions, "As many as 32 miners have died of heart diseases so far this year, 11 of them in the mines itself, possibly due to the pressures involved in their tough job in underground as well as open cast mines."

Coal dump close to Western Garmak Coal Mine (July 17, 2014)

[168] Keating, Martha (2001), *Cradle to Grave: The Environmental Impact from Coal*, Clean Air Task Force, online version
[169] Electric Power Research Institute (1999). Guidance for the co-management of mill rejects at coal-fired power plants. Final report. June.
[170] Part 2 of the Environmental Impact Assessment regulation of Afghanistan 2008.
[171] Article 14 of the Environment Law of Afghanistan 2007
[172] Observation and photos taken during field visit on July 17, 2014
[173] Article 10 of the Mining Regulation of Afghanistan 2010



Photo: J. Noorani

A September 2014 article for *The Hindu* further elaborates:

> *It is evidently the working conditions in the mines resulted in about 15 cases of heart attacks being reported every month in the area hospital, according to a source in the hospital. Inhalation of polluted air in the mines is also known to be the root cause of ailments like asthma and tuberculosis, the source added on condition of anonymity*[183].

Khoshak Brothers does not have professional experience in the mining sector. Its past experience was in extraction of coal from Sabzak Mine, where it has used traditional methods to extract coal and has often been blamed for underpaying its dues. The company has not observed the standards in the Western Garmak Mine, while the inspection process has failed in its duties to either enforce the law, regulation, and policies, or to penalize the company for violations.

The company has not installed any ventilation system nor any equipment to gauge methane gas level in order to avoid explosions. There have been incidents of collapse of shafts inside the mine, which have led to deaths and injuries to the miners, and the company has not paid any attention to preventing

[183]Dayashanker, Singerani. *The Hindu*, Miners fall prey to heart ailments. September 24, 2014.

recurrences of the incidents. Two workers died due to an explosion in the mine, and according to a local person they were on the site of the incident for two hours before their co-workers brought a motorcycle to take them to the city hospital. On the way one, of them succumbed to his injuries before reaching the hospital. The victims of the explosion got little compensation.

Photo below shows one of the miners working in the Western Garmak Coal mine in his work gear and smoking cigarette at the entry point of the tunnel which potentially is highly unsafe.

The research also found that there are two-way violations. For instance, a violation is identified in part 8 of the contract which says, "A royalty of Afs1211 will be charged from the company per ton of coal during **exploration and exploitation** and all other time."

Potentially dangerous activity outside mine entrance (July 17, 2014)



Photo: J. Noorani

Exploration and Exploitation are two different activities according to the Mineral law of 2010 of Afghanistan. The law defines that "Exploration" means any activity carried out to discover minerals in order to demarcate the quality and quantity of the reserves contained within it or to evaluate the

possibilities of its exploitation."[174]The contract blurs the line between exploration and exploitation and giving room for illegal activities and itself is not consist with the Mineral Law. What could be the incentive of state officials to place this clause? Sources inside the MoMP confirmed that the son of a senior official of the Department of Inspection is employed by the Khoshak Brothers, and he is not inclined to inspect the mine. On the occasion this does happen, he tailors the report to favor the company.

5.5. Conclusion

The company awarded the Western Garmak Coal mine contract belongs to a member of Parliament who used his clout during the bidding stage, evaluation, and course of negotiation to get the contract. The same company has been exploiting another mine in Sabzak of Herat province. Sources inside the MoMP said that KBC has been over-producing and under-paying.

The company has often failed to pay its dues on time. The company has extracted coal from Western Garmak during the exploration period which is illegal, yet the government has neither stopped the company nor made it pay the full amount of the dues owed. The company has not assessed the social and environmental impact of the project, nor has it put in place environment protection plans. The workers are exposed to threats of explosions as well.

There have been deaths in the mine due to negligence by the operator, and there have been conflicts with the local people. The miners who died due to the irresponsible operation of the company received very little compensation and the government fails to even react to the incident. The company does not pay a proportionate amount of royalty and other taxes.

5.6. Company Comments

In a letter to Integrity Watch dated June, 2015, the Chief of Khoushak Brothers Company stated the following:

- "The area of Gardomak Contract has been mentioned as 650 Hectares, but it is 12.5 sq km (1,230.5 hectares) n the contract."
- "It is mentioned that extraction was in progress. According to mining norms, the exploration phase of mining, which extended for 3 years in the contract, and then the SHORF and JAR have to be dug in order to find coal lines and to cut the coal levels; the achieved coal is called production, not extraction. It is usual all over the world. Extraction of minerals is a complicated and scientific/advanced process which is pre-planned according to an accepted work plan. In the end, upon confirmation of a coal stock, the exploitation of the mine will be started if it is economical."

[174]Article 3, subsection 15 of the Mineral Law of Afghanistan 2010

- “It is mentioned that the Chief of Khoushak Brothers Company was Mohammad Reza Khoushak but the Chief of the company is Didar Ali Watandost and the Deputy of the company is Ali Agha.”
- “Garmak Coal Mine had seen extraction by powerful men of that area and had not paid money to the Government. The Government could not deliver the mine area to our company after one year. It prevented the implementation of the company’s plans and still it is a problem.”
- “In spite of problems, this company finished the exploration and confirmation of the mine within two years and sent its report to the Directorate of Cadasters of the Ministry of Mining and Petroleum on 9/3/1394 by the letter number 282, which included technical and economic studies of the mine, geological-topographic maps, maps of Jars, Anliz, environmental streams and mine immunity.”
- Khousahk Brothers Company has delivered its complete anticipated exploration and search plans to the Ministry of Mining and Petroleum which included technical, financial, investment, health and environmental plans and mine immunity for the years 1392-1395. After confirmation, the Ministry of Mining and Petroleum resent the plan by the letter number of 323/528 on 9/4/1392. The company has acted based on that plan and the mentioned plan still exists in the Directorate of Mine Cadaster of the Directorate of Mine Audit and also at our company. Reports from implementation of activities of mining included plans and reports of development had been sent to the Directorate of Mine Cadaster ad their copies still exist in the company.”
- “According to the contract and regulations of mining, the land’s rent is $5 in the first three years of the contract (Search and Exploration Period) which has been paid by the company and its receipt still exists. Besides, about paying royalty, the amount of coal which has been produced during the search and exploration, the company has paid about 38,406,124 AFG and its receipt still exists in the company and the remaining 37 million AFG will be paid in installments whereas the company has invested 202,249,599, or nearly 3 million USD in the mentioned mine. According to the contract, the royalty on every ton of coal is 1,270 AFG and the rent of the surface area is $5 in the first three years.”
- “We have explained the environmental plans of the mine. Moreover, there are no villages, farming lands or forests near the mine area to be affected.”
- The company has provided enough clothes, caps, boots and safety lamps but in spite of frequent pressure and advice to the workers, most of whom are from powerful men of the region, they avoid using boots, gloves and glasses. They have even beaten up engineers and prevented them from entering the mine.”
- “Khoushak Brothers Company is the only pioneer mining company in Afghanistan and is the only domestic company which has completed the searching, exploration and confirmation of Sabzak Mine in Herat in C1 category with the implementation of 13 drilled wells with a depth of more than 150 meters, arranged geological and topographical maps, completed and analyzed technical-economic studies of Sabzak Mine in a scientific method and was approved by the Ministry of Mining and Petroleum of Afghanistan. It has now sent the confirmation of Western Garmak Mine to the Ministry of Mining and Petroleum for approval. Khoushak Brothers

Company has been honored two times by Certificates of Appreciation for its exemplary implementation of contracts and maintenance of mining standards and has received a letter of appreciation for preservation and for observing environmental issues from the Ministry of Mining and Petroleum."

- "This company has extracted from Sabzak and Garmak mines under the permanent monitoring of the representative of the Ministry of Mining and Petroleum. According to represented reports, the royalty price has been paid to the Ministry of Mining and Petroleum. The company has fulfilled all of its financial obligations to the government, including both the Ministry of Mining and Petroleum and the Ministry of Finance and does not owe one Afghani. The company has paid the greater part to the government on the Barmak Mine and the remaining money will be paid in specified installments. The production or extraction, environmental plans and their social effects has been explained in the above paragraphs."
- "I would like to remind you that this company is very interested in transparency, because the lack of transparency in the mining process has damaged our company a great deal. Insecurity, illegal taking of money, lack of assistance from government organs, existence of local powerful men and illegal production of coal mines by these people discourages investors."
- "Note: everything written by this company is accurate and documented. The company is ready to provide documents in any cases."

ANALYSIS, CONCLUSIONS AND RECOMMENDATIONS

The findings of the research conducted in this study demonstrate that there have been strong political connections and influences used by the winning companies to make it through the tendering and bidding process, with application of massive political pressure to get mining concessions. For example, there have been examples of sharing of inside information long before a tender is issued. Some winning bidders have been in partnership with the Minister or senior officials of the MoMP. Reciprocal political favors have also defined some transactions and relationships have allowing underpinning rent-harvesting by companies with beneficial ownership resting with a sitting member of the Wolusi Jirga, ministers, warlords, and politicians.

The benefits to politically powerful individuals and companies are given primacy by state agents. Mines have been contracted on very soft terms, and contract documents have been drafted with loopholes offering additional escape routes for the company. The bidding process was systematically engineered in all cases of this study, to make way for the political elites to win concessions easily.

The companies awarded contracts did not have any experience of professional mining in the past. Nevertheless, during the bidding process they managed to win the contracts in competition against some of the best and experienced companies. The companies at the proposal stage have made very attractive promises to secure entry into the next phase. At the negotiation stage there are clear signs of serious political interference in favor of the winning companies.

There have been major violations during the implementation stages. The contracts are given as a package, with both exploration and exploitation provisions. All of the companies have been observed extracting resources during the exploration phase. Instances of conflict with local communities have occurred, and there is also an example of violent conflict between communities precipitated by the mining company. The Kohi Safi Chromite mine operation led to fragmentation of the communities, which went on to target each other violently, causing 19 deaths. There was also a brewing conflict among communities in QaraZaghan which led to harassment of the local people and a high-profile assassination.

There have been violations of the existing procedures, laws, regulations, and contracts during tender, selection, and negotiation of contracts. At the same time, departments of the MoMP and NEPA have either grossly ignored their duties or have compromised their position to favor the individual company under pressure or promises of funds to them.

Political influence and connections have also insulated companies against the application of the law and other best practices during the implementations stage. The Cadastre, which according to Article 8 of the Mineral Law of 2010, is responsible to assess fees and collect dues, such as royalty and surface rent from a mining operator, has repeatedly failed in executing its mandate as well. The Inspection Department

has grossly failed in carrying out inspections, even at secure sites. The misuse of government and state offices is thus not merely observed during the contracting stage, but it goes on during the operations, extraction, removal, and export of products as well.

The five contracts generate several hundred million dollars in revenues for the companies per year, but most of them do not pay the royalty, surface rent, or taxes to the state. A rough calculation of losses to the government due to nonpayment of rent and royalty only is shown in Table 6.

Table 6: Estimated royalty and rent due from each company annually

Company	Promised/Estimated Production	Royalty Due in $	Surface Rent in $
Hewad Brothers (chromite)	130,000 tons	7,098,000	67,500
AIC (coal)	1,000,000 tons	8,000,000	300,000
AIC (cement)	438,000 tons	455,520	1,000,000
AKNR (gold)	1,628 kilograms	17,883,898	31,425
Khoshak Brothers (coal)	88,110 tons	1,894,365	31262.5
WestL and General Trading (gold)	1,700 kilograms	15,591,040	15,000
Total		53,663,572	1,430,175

Note
The calculations are based on author's compilation based on information in each contract (including royalty rates in table E1), production levels promised or estimated in company bid proposals, and international websites. The price of gold for these calculations is taken as $45,856 per kilogram (based on http://www.usagold.com/dailyquotes.html at 9:30 PM, July 28th 2014).
The price of coal used is $90 per ton (taken from traders involved in the coal trade). The AKNR did not find much gold at the site and applied for cancellation of license. The promise from the AKNR that it would produce 1628 kg Gold was a trap that must have led to an over-estimation of revenue from the mining sector, and thus allocation of revenue for development.

Source: Case studies

The royalty mentioned against AIC is for 1,200 tons of cement per day whereas if the contract were fully honored and AIC had produced 4,400 tons per day, the Afghan government would have received US$1,670,240 in royalty per year. However, the EITI report for 2011 shows that AIC merely paid US$33,595 annually; moreover, the report does not show any rent and no royalty for the coal it uses[175]. The report also shows that Westland General Trading paid US$172,032 as royalty for the year 2011.WLGT was awarded exploration and extraction licenses, but it secured a new contract for the same mine in 2012 with two additional years allowed for exploration[176]. The rest of the three companies are not covered under the EITI reporting requirements.

The government does not receive full revenues from any of the companies because of the flaws and corruption in the revenue and customs departments of the MoF and in some departments of the MoMP. There are 310 mining contracts issued by the MoMP in Kabul, while provincial mining departments have issued an unknown number of additional contracts in their respective provinces. Evasion of taxes and nontax dues is widespread across the country. The gross domestic product of

[175] Afghanistan EITI report for the year 2012
[176] Nuraba and Samti Gold Mine Contract 2012

Afghanistan was over Afs1100 billion[177], while domestic revenue collection from all sectors in 2013 was Afs109 billion[178]. The annual losses in the two revenue streams for the state from the five companies alone come to Afs2.2 billion. The actual value added in the mining sector could easily add over Afs100 billion to the Gross Domestic Product, which could come close to the total domestic revenue of the country in 2013.

Mine extractors are more often than not promised provision of security by the government despite low numbers of police per-capita of the national population for carrying out normal security activities. Companies often introduce their men to the Ministry of Interior to provide security at the mine site. The security personnel at the mine site have often turned predatory and invariably have abused the poor communities living around mines or scared inspectors and officials of the Cadaster from collecting revenues.

Observation and research of the implementation of each project shows that there were gross violations of the law, contracts, and international standards. Table 7 shows the status of each project.

Table 7: Comparison of various stages of project implementation in the five mines

Name	Tender Document	Tendering Process	Bid Evaluation	Contract and Contradictions	Legal Requirements	Contract Implementation	Change in Contract	Monitoring	Accountability for non-compliance
AIC[179]	Favorable to the winner	Influenced and non-transparent	Interfered with non-transparency	Serious violation of law and policies in terms of the contract	ESIR, Exploration data, Feasibility study, and EMP	Noncompliance with agreed terms of contract with impunity	Yes	Failed	Yes, but not held
AKNR[180]	Favorable to the winner	Influenced and non-transparent	Interfered with non-transparency	Violation and contradiction with the law	ESIR, Exploration data, Feasibility study, and EMP	Noncompliance with agreed terms of contract with impunity	Yes	Failed	Yes, but not held
HB[181]	Favorable to the winner	Influenced and non-transparent	Interfered with non-transparency	Serious violation/breaches death	ESIR, Exploration data, Feasibility study, and EMP	Breaches and violation of contract	Yes	Failed	Yes, but not held
WLGT[182]	Favorable to the winner	Influenced and non-transparent	Interfered with non-transparency	Violation and contradiction with the law	ESIR, Exploration data, Feasibility study, and EMP	Noncompliance with agreed terms of contract with impunity	Yes	Failed	Yes, but not held

[177] National Budget Statement of Afghanistan for 2014
[178] Financial statement for month of Qaws (November 21 – December 21, 2013, Ministry of Finance, 2014)
[179] Afghan Investment Company
[180] Afghan Krystal Natural Resources: the company that operated the QaraZaghan Gold Mine
[181] Hewad Brothers Company operating the Kohi Safi Chromite mine
[182] West Land General Trading: the company operating the gold mine in Cha Ab of Takhar

KBC[183]	Favorable to the winner	Influenced and non-transparent	Interfered with non-transparency	Violation, breaches, and contradiction with the law	ESIR, Exploration data, ,Feasibility study, and EMP	Noncompliance with agreed terms of contract with impunity	No	Failed	Yes, but not held

The system of governance existing in Afghanistan survives on corruption and the perception about state building within the country is that it is hostage to appeasement of warlords and political elites. Through their networks, these players dominate in the center of the country and have managed grassroots support elsewhere either through "fear" politics or "political favors." The companies operating in the sector are, at same time, being godfathered by some of the senior-most leadership of the country. Overall, this constitutes an inseparable assimilation of political power and economic interests. The rent captured from natural resources fuels not only the dominance of a few but also empowers the politically-back oligarchs who have defined the status quo. The oligarchs use this money to build the basis for their sustained hold over power and politics. These powerful individuals may then garner economic might to capture the state and set rules of the "game" for the polity. The body of citizenry, which is still gripped with conflict, poverty discrimination, insecurity, unemployment, lack of choices for development, and denied opportunities for participating in governance, is then held hostage to the narrative of a violent past. Despite the desire to change the narrative, they will likely find little resources to mobilize and organize themselves as they seek transparency and accountability.

Conclusions

Power-sharing in the government and state is based on ethnic and factional lines, combined with strong financial and economic interests. Individuals and networks have entrenched themselves as representatives of various Afghan groups, while the majority of Afghan citizens lead destitute lives on the margins. The government agencies "captured" by these individuals and networks have been used to bribe and/or coerce the state and political leadership to secure mines and other revenue generating projects. In other words, this is rent-seeking, sometimes given cover by being agents of the "historically disadvantaged" people. Some powerful individuals have encroached on the coercive "power" of the state and have used it for their own financial benefits and other and gains. The argument for "equity" in distribution of resources is correct, but the benefits have often been made a privilege of the powerful elites. Today there are over 50 members of Parliament who own mines or are major partners in mining projects. The acquisition of lucrative contracts in the mining sector has reinforced the status of these individuals and networks as legitimate faces of the rural population, which has been as used as a bargaining tool.

Most of the actors involved in the extraction of mines across Afghanistan are tied into political networks that have horizontal and vertical reach to the senior-most leadership. Michael Mann's theory of power and the network is a useful instrument to explain the situation in Afghanistan and the behavior of the elites to a large extent (see Box 1).

[183]Khoshak Brothers Company: the entity that operates the Western Garmak Coal mine

The elites who have effectively captured large parts of the mining sector today were/are part of power networks, militarily and ideologically, in the past. With the NATO intervention and the removal of the Taliban from power, the international community tended to ally with the current political elites. These political elites, who became private sector actors as well, were bestowed with mega construction contracts that gave them economic power. The political and economic power (and not least armed forces)that the political elites possessed, combined with the presence of minerals and issuance of tenders for mines, have led them to also contest for mines to sustain their hold over power. Paul Collier argues that oil and other surpluses in particular are unsuited to the political pressure generated by electoral competition[184]. The four sources of power—ideological, social, military, and economic—came to rest with the Afghan political elite networks. The political elites have been holding power centers in Kabul and have infiltrated their men into the state in critical positions. These political elites have defined themselves as "focal points" for Afghans with the international community, and thus shaped and reshaped the opinions of outside world on economy, security, and society as well.

Box 1: Elites, Networks, and Power

Michael Mann gives a theoretical and historical account of power. He says societies are not unitary but consists of subsets which make a whole and this whole can undergo changes in response to certain events." Societies are not unitary. They are not social systems (closed or open); they are not totalities. We can never find a single bounded society in geographical or social space. Because there is no system, no totality, there cannot be "sub-systems," "dimensions," or "levels" of such a totality. He further talks about concept of social power and says it consists of ideological, economic, military, and political. He believes that these aspects of social reality are largely independent sets of institutions and processes, and they create different though complementary sources of power for individuals and groups within a given state of society.

Source: Mann Michael (1986)"The Sources of Social Power," Volume III of Global Empires and Revolutions 1890-1945.

In Afghanistan, the pressure for the award of mining contracts has been engineered by the political elites to facilitate the capture of rent by their relatives and cronies, and there is a strong oligarchy dominating this lucrative sector of the economy. Personal enrichment is pursued through clienteles, which has become part of the political culture in the country. There are dozens of members of the Wolusi Jirga, Meshrano Jirga, and government officials who have either secured mining concessions for themselves or have won them for their relatives and crony capitalists. The outgoing President's brother, cousins, and former Vice President's brother have mining concessions and have resorted to illegal extraction. There are several powerful members of the Wolusi Jirga who either operate mines directly or benefit from the revenues. There are powerful lobbies in Afghanistan and Dubai that can not only win a mining concession for a client, but can shape the content of the contract in favor of their clients. The mining oligarchy includes prominent political figures, former diplomats and spies who know the country and its corruption channels well, and Afghan officials of almost all ministries. For example, former intelligence officials who were involved in Afghan Jihad in the 1980s and 1990s have consulting companies in the mining sector. Some former senior Afghan diplomats, including ambassadors, have

[184] Collier Paul (2007). *The Bottom Billion*, Oxford University Press

consulting companies working in the mining sector. For example, Sayed Tayyab Jawad and Barrna Karimi, who were Afghan ambassadors to the USA and Canada, respectively, have consulting companies in the sector[185].

A large number of Afghan live below the poverty line, and the priority of the government of a conflict-affected country such as Afghanistan must be to play a pro-people and anti-poverty role to protect and expand the choices of people. It may develop key infrastructure and improve the capacity of citizens (for example through education and vocational training) so as to enable them to get employment at higher wages. Building trust for the state among citizens and providing some level of safety net for the worst-off and those displaced by conflict and natural disasters are also important. Liberalization of the economy according to simplistic Western models (and not taking into account the political economy and conflict dimensions) has effectively been taken advantage of by a select group of individuals, families, and networks that originally gained power and earned money from the war in Afghanistan. This increasingly entrenched elite may have a major impact on emergence of viable democracy, and competent Afghans may find it difficult to make their mark in politics and decision making of the state. The government may continue to be captured by a few, thus seeding discontent among the general population. Bitter conflicts for a share in resources between the elite and the rest of Afghans cannot be ruled out, as well as intra-elite conflicts which are ongoing.

The core logic behind promotion of private investment in the mining sector—more revenue generation and employment creation—has so far failed in the Afghan context, because individuals, and companies owned by these individuals, that obtained contracts in the mining sector have made the law, regulation, policies, and state institutions subservient to their interests. This has effectively denied the Afghan state the opportunity to stabilize its revenue base and carry out its functions, largely because the functions of state that are essential for people to see the state as an entity that provides protection and mediation instead have been used as a tool for advancement, reinforcement and enrichment of a small, select group of people. Moreover, millions of dollars donated by the international community have also been wasted in the name of "developing" the mining sector. People who worked on Ghori Cement Enterprise were happier when the state ran the factory, as they received salary and subsidized housing, among other amenities. The majority of the Afghan citizens are poor and can't afford medical and other daily living necessities. This is compounded by the fact that there are no interventions from the outside for improving their lots.

The legacy of the recent past has extended and perpetuated powerful political elites in Kabul and other provinces. The power configuration in the center and provinces shows the footprints of these political forces at the helm of governance. The discovery of mineral resources and associated prospects for easy money and windfall rents from the sector for the political elites, have led them to corrupt government institutions. It increasingly seems that these powerful elites are using state institutions to distribute resource rents among themselves and their clients, and sometimes they contest over them as well, including through violent means. In worst-case scenarios, they may mobilize their armed men to capture and exploit mines and thus promote a kind of Balkanization of the country in the wake of the withdrawal

[185] Interview with a businessman who had made a bid for the Iron mine in Pashtun Zarghon, dated October 14, 2014

of international troops.

Though there have been some initiatives such as EITI and complete contract disclosure to bring some level of transparency, but it is not sufficient. This research understands that the development discourse around the mining sector may be imbued with intense nationalistic rhetoric to discourage foreign private investment and pave the way for capture of the mines by Afghan elites and their cronies. The elites, who often have no experience with mining, see the sector as a source of windfall profits, and they may use political connections to get mining contracts. These kinds of trends, if allowed to take root, may lead to serious questions about the distribution of wealth as well.

The doctrine of economic liberalization, based on the efficient uses of limited resources and productivity increases by genuine private entities, has instead led to a politically connected oligarchy. For liberal democracy to flourish and grow, effective merit-based administration is important. However, in Afghanistan the elites have reproduced and entrenched themselves, and it may take many battles and long drawn-out interventions, both internal and external, to dent the status quo produced by the oligarchy.

Recommendations

The recommendations discussed below are directed at the various key stakeholders related to exploitation of Afghanistan's underground mineral resources. They are based on the analysis and findings reported in the chapters on the individual case studies, which also have been summarized earlier in this chapter. It is hoped that these recommendations will serve to help facilitate a constructive dialog for making improvements in the regulation of the mining sector, in particular ensuring that revenues due to the government do not get lost or diverted into private pockets.

Ministry of Mines and Petroleum: The government should build a strategic vision for the development of the mining sector and must avoid being trapped by a quest to generate quick revenues without putting effective institutions and proper regulations in place. The international community can be a supporting partner in the vision. Without a long-term vision, Afghanistan will not be able to develop the sector nor bring development to the society.

The MoMP needs to amend the Mineral Law, which was recently approved by the Wolusi Jirga and signed by the President. The new Mineral Law is weak and does not have the provisions necessary to guard against corruption, notorious influence paddling, and cannot bring stability to the in-chaos mining sector of the country. The Mineral Law and regulations should define more specific penalties for companies and individuals who either deviate from the terms of the contract or resort to illegal extraction and nonpayment of royalties and other dues. The draft mineral should undergo several intense consultations before it is drafted and sent cabinet and Wolusi Jirga.

The Afghan government needs to recentralize the licensing system for mines because the former minister's plan to decentralize the licensing system to provincial mining departments has led to massive corruption and secrecy, where contracts for extraction been awarded without any revenue coming to

the government. There are over 50 cases in provinces where contracts have been awarded to powerful Members of Parliament, warlords, and other politicians. The government must declare of chromite, coal, and precious and semi-precious stones illegal and punishable.

Tender documents must make it mandatory for bidders to disclose of the beneficial ownership of each company and all of its shareholders. This is essential to avoid the phenomenon of hidden owners, shareholders, and beneficiaries, including senior government officials and elements of the political leaderships whose involvement in the companies concerned clearly gives an impression of unfair granting of favors and *quid quo pros*.

Serious due diligence must be carried out on each company bidding for mines in Afghanistan before they are short-listed for evaluation of their bids. The past experience of the company especially in mining, its technical and financial capacity, mining expertise, shareholders' profile, behavioral profile, and access to technology need to be studied. Investment by suspect entities, including foreign companies especially from Afghanistan's neighborhood, cannot be allowed.

The tendering, short-listing of each bid, bid evaluation, and negotiation should be carried out by a team of experts with clear benchmarks and accountability, immune to political interference. The final contract agreed with the winning company should squarely reflect the promises mentioned in the proposal submitted in response to the tender document. The bidding process must be transparent and all proposals shared with Afghan citizens within ten days of signing the final contract with a winning entity. This is essential to safeguard against political interferences and ensure that best offer for the country is the one that is accepted.

There should be clear definitions of the various activities in the mining sector (for example, exploration versus exploitation), and companies need to be regularly monitored as to whether their activities conform to the activities stipulated in their contracts. For example, and most importantly, when there is a shift from exploration to exploitation, it needs to be confirmed that the required prerequisites for this change—as required by law, regulations, and contract—have been met.

Community consultation must be a necessary requirements and mine operators and government must inform the citizens and engaged them in an informed manner. The Community Development Agreement, which is a legal requirement in Afghanistan, must be localized and implemented as it is a sound way to both inform and empower local people through a dialogue.

Ministry of Finance (MoF) in collaboration with the MoMP: The MoMP and MoF should develop a joint mechanism for collecting revenues on due dates from each company and share information on collections with the public. This would help in capturing the rent owed to the state, and the public would be informed as to how much revenue has been collected from the sector.

The MoMP and MoF should additionally create a join team to assess and monitor the activities of each company at each stage. For example, the MoMP should review the timeline for each company as specified in their contract, inspect their activities, and make sure that their activities correspond with the timeline in the contract. This would avoid over-extraction or production occurring while taxes and

other rents are being denied to the state.

The Customs Department of the MoF should be provided a copy of each mining contract and should track the exports of each company so that these can be cross-checked against contractual and legal requirements. This may help to ascertain who is exporting how much, as well as the amount of Afghanistan's annual export of minerals, which may help in reducing vulnerabilities to corruption.

The MoF and MoMP should work on developing a mechanism to project the revenue expected from each mine (according to the contract provisions) and monitor actual collection of revenue; following this, shortfalls and delays in revenue collection can be reviewed.

National Environment Protection Agency: The NEPA should independently require companies to turn over to it the required Environmental and Social Impact Report (ESIR) and assess the ESIR before issuing an exploitation permit. The decision in each case should be published on the NEPA's website. This will increase access to information and awareness of citizens, specifically of communities living around mines.

The inspection department of the NEPA should clearly define the processes involved in mining operations and regularly monitor and inspect adherence to the same by mining operators. This would help encourage companies to follow standard procedures and reduce risks of incidents. Inspections should be standardized for mining processes and equipment for mine operation, and the NEPA needs to inspect mines regularly and share reports with public.

The NEPA should carry out thorough environmental baseline studies of the environment in areas where mines are located, which will enable them to assess the environment management plans of mine operators in an informed manner.

Ministry of Public Works: The Ministry of Public Works must have clear procedures for the treatment of the work force by companies and define minimum terms and conditions for various classes of employment. The social development expenditures and activities of each company must be monitored and evaluated against the commitment in the contract. The Ministry must also implement minimum standards on work safety and water usage.

Ministry of Interior: The Afghan Public Protection Force should protect mining sites from subversive elements and not interfere in disputes between communities and companies over rights-based issues. Police units guarding mining sites need to be trained in Human Rights Issues and other international standards before deployment.

Ministry of Women Affairs: Women are vulnerable generally across the country and are simply not present in economic spaces. Violence against them is prevalent and often unrecorded or suppressed. The Ministry of Women Affairs must do its own assessment of mining's impact on women and how to avoid or mitigate negative impacts, as well as how best to capitalize the positive impacts.

Afghan Civil Society: Afghan Civil Society has to educate itself more on natural-resource governance, revenue management, and social and environmental impacts of mining in order to be effective in its

informational, advocacy, and mobilization work on all aspects of mining. Change in the sector needs consistent and synergistic efforts. Thus civil society should carry out more research, both on individual mines and on broader patterns of tendering and contract implementation revenue collection and management, and its base advocacy efforts on very solid evidence. This may help bring policy changes, yet inform body of citizens and improve revenue management from the sector.

International Partners: The international donor community needs to provide targeted funding to the MoMP. For example, there needs to be some focus on exploration of mine sites to confirm reserves. Some exploration conducted by the public sector may also be helpful in curbing tendencies of mining companies to engage in exploitation in the guise of exploration. It may also help clean mining companies to invest more in the midstream mining activities which is development of a mine site rather than sinking capital in risky upstream activities.

The international community should help the government develop the sector rather than promoting overly rapid extraction in the short run. Nurturing good governance must play an important role. Moreover, international partners may help both in drafting good strategy for governance of the sector and provide technical and financial support for capacity building and implementation of the strategy.

LIST OF MINING CONTRACTS, LAWS, AND OTHER DOCUMENTS

1. Ghori Cement Contract (http://MoMP.gov.af/Content/files/Mineral%20Contracts/new_MX-2301N_20121013_183416_lr.pdf)
2. QaraZaghan Gold Contract (http://MoMP.gov.af/Content/files/Mineral%20Contracts/File_211_QaraZaghan_Contract-English.pdf)
3. Kohi Safi Chromite Contract (http://MoMP.gov.af/Content/files/Mineral%20Contracts/File_206_Gada_Khail_Chromite.pdf)
4. Nuraba and Samti Gold Contract (http://MoMP.gov.af/Content/files/Mineral%20Contracts/new_Noraba_%20Samti_Gold_lr.pdf)
5. Nuraba and Samti Gold Contract (http://MoMP.gov.af/Content/files/Gold%20of%20Takhar%20Pronice.pdf)
6. Western Garamk Coal Contract (http://MoMP.gov.af/Content/files/Mineral%20Contracts/File_209_West_Garmak_Coal_Contract-English.pdf)
7. Mining Regulation of Afghanistan 2010 (http://MoMP.gov.af/Content/files/Mining%20regulations%281%29.pdf)
8. UN Guiding Principles for Business and Human Rights (http://shiftproject.org/sites/default/files/GuidingPrinciplesBusinessHR_EN.pdf)