This manual will guide communities to better understand the nature of corruption and irregularities in the extractive sector, and how to curb it.

ANTICORRUPTION MANUAL

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HUMAN RIGHTS RESEARCH AND ADVOCACY CONSORTIUM (HRRAC)

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Acknowledgment and Preface:

Afghanistan's natural resources have for many decades been a source of power and wealth for the country's militant groups, and local warlords, and less often to the local communities. Unfortunately, competition for control of revenues from natural resources has fuelled cycles of corruption, conflict and poverty, preventing opportunities to spur economic growth and social development.

This manual is an effort to help local community members, and civil society activists to understand the cycles of corruption and irregularities, associated with the extractive industry in Afghanistan. This document will help them in improving the oversight and management of the natural resources extracted in their areas.

Disclaimer

The authors' views expressed in this report do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

Chapter 01: Mining In Afghanistan: Challenges And Opportunities

Afghanistan is believed to be rich in mineral deposits. The value of these resources has been roughly estimated between $1-3 trillion. Afghanistan has vast reserves of gold, platinum, silver, copper, iron, chromite, lithium, uranium, and aluminum. The country's high-quality emeralds, rubies, sapphires, turquoise, and lapis lazuli have had a historical demand in the global gemstone market.

The government of Islamic Republic of Afghanistan has limited internal revenue sources and has been consistently dependent on foreign aids to meet their spending requirements. Utilizing Afghanistan's mineral wealth can transform the whole economy. The prudent use of Afghanistan's rich mineral resources could will be the best substitutes for foreign aid and decrease the country's dependence on donor countries and foreign support. If managed properly, the mineral resources could end in sustainable economic growth paving the way for a lasting peace.

Extractive activities can bring many positive development impacts to the communities involved, but also have the potential to create or exacerbate vulnerabilities within these communities. Afghanistan's mineral wealth is prone to exploitation. The subsequent revenue is used to fund armed struggles. There are often violent conflicts over the control of resources at the community level. Conflicts are sparked sometimes over the mining activities. Groups are in competition to counter each other. Illegal mining is widespread throughout Afghanistan. Without a clear and immediate response, the massive mineral resources in Afghanistan, proves to be an opportunity lost, and a constant threat to the national security as a large share of the country's mineral wealth is currently going toward warlords, armed militias and Taliban insurgents.

Effective engagement by communities is a crucial strategy for anti-corruption initiatives. However, encouraging involvement and civic-mindedness at a local level can present challenges for donors and practitioners. Trust, the sense of ownership, and inclusion creates and strengthen participation by enabling community members to express their opinions and expectations, and demand accountability from power holders. Feedback plays a pivotal role in successful projects by fostering dialogue between policymakers and citizens.

Historically communities have fared poorly from mining projects, especially in areas where they lost land without compensation and saw few benefits from mine revenue. Mining has created inequality within

communities, as some families or leaders benefitted from jobs, consultancy or sitting fees, gifts and other benefits, or local contracts, but others did not. Indeed, mining has disrupted communities' social fabric and structures at the same time as it created opportunities for corruption and self-enrichment by company representatives and government officials. All of this occurred in a context usually characterized by minimal or no transparency around profits and revenue management.

Mining involves the extraction of valuable minerals, metals (ores) or other geological materials from the earth. Common minerals and metals include gold, cobalt, titanium, coal, bauxite, copper, oil & gas, gemstones such as diamonds, rubies and sapphires, but also limestone, gravel and other rare earth elements.

Depending on where the minerals, oil and gas are located, there are different ways of extracting them, either by removing the soil and rock overlying the mineral deposit (surface mining) or by mining the deposit through shafts and tunnels while keeping the overlying soil and rock in place (underground mining), drilling. In large-scale or *industrial mining*, mineral extraction is mainly done by machines. By contrast, *artisanal or small-scale mining* (ASM) uses minimal or no machinery, relying mainly on physical labor to unearth minerals and metals.

Though minerals are associated with huge opportunities and economic recovery and development, in poorly governed countries, mining or natural resources remain a source of protracted conflicts. There are strong reasons for it. It is visible in countries that progressed to date such as the United Kingdom, Australia versus may African countries such DRC, Liberia for example. The most important aspect to avoid conflicts is to incorporate communities through development agreements, give them due rights and opportunity to participate effectively and compensate properly.

Transparency and Accountability:

Transparency constitutes the demand for information, the ability of citizens to obtain information, and the supply and actual release of information by government and private sector. Transparency comprises the legal, political, and institutional structures that make information about the internal characteristics of a government and society available to all stakeholders. Transparency is increased by any mechanism that leads to the public disclosure of information, whether a free press, open government, hearings, or the existence of nongovernmental organizations with an incentive to release unbiased information about the government. Transparency helps to reduce corruption, increase public disclosure, and create trust.

The Role of Communities in Extractive Industry:

Communities make an integral part of mines occurring close to communities. Communities around mines are located at such a vulnerable position which make them prone to negative impacts. There has not been a unanimous approach to make communities protected, participatory and beneficial during extraction. However, it depends on out government to give a vital role to communities in extraction. It is important to devise first the role of government in working with extractive companies.

The Role of Government in Working with Extractives Companies:

It is the government that runs the state and it is the state that owns the natural resources of a country. Thus, government plays important role in mines exploration and extraction. In some cases, our government involves directly through state owned enterprises but in other cases government contract private sector companies through formal contracts for exploration and extraction.

Article Nine of the constitution states that:[i]

"Mines and other subterranean resources as well as historical relics shall be the property of the state. Protection, management and proper utilization of public properties as well as natural resources shall be regulated by law"

Afghan government has a *representative role* in that it owns and manages on behalf of its citizens the exploitation of minerals by hiring companies to extract the resources for a specific amount. The Government has a responsibility to ensure that the mineral resources are extracted responsibly and that the resulting revenues are managed transparently and for that the government has aimed to follow the principles of the Extractive Industry Transparency Initiative (EITI) in Afghanistan. But so far the government has not been able to qualify for that. Moreover, the law is enacted but procedures and regulations are not completely formulated.

The Ministry of Mines and Petroleum regulates and administer all minerals based on Afghanistan's mineral law. The Ministry provides permits for exploration and resource development activities. Government is responsible to propose the grant of exploration and exploitation licenses. The government, Ministry of Mining and Petroleum (MoMP) is responsible under the law of Minerals to provide data and information to the public regarding mineral resources and activities with due respect to confidentiality, and publish all reports of mineral activities annually. The ministry is supposed to set the rules for permitting, manage the permitting process, and issue the required permits. The requirement for licenses

and permits in Afghanistan is set with minimum requirements. Any Afghan with 18 years of age can obtain license provided he/she has no stake at government and can arrange required investment, and a list of equipment. At the same time, it is emphasized that no person shall conduct mineral or mining activities unless that person has been granted a license or authorization by MoMP.

The law requires the license holder to provide enough information related to the implementation of community development agreements. The law respects the safety of labor, protection of the environment, or affected communities, including any material breach of the community development agreements, to the extent that if the contractor doesn't satisfy these obligations, their licenses will be revoked. Government of Afghanistan is expected to ensure that there is a 'fair and transparent' process for how they grant permissions to companies to engage in mineral exploration and development.

Community Grievances:

Community grievances around injustices fuel violence against mining company staff, sabotage of operations, resentment of central governments that permitted the mine but did not channel revenue back into communities, and a wave of law suits challenging mining companies' exploitation of their land.

One of the responses to these grievances was for governments, mining companies and communities to broker 'community mineral beneficiation schemes' (CMBS). A CMBS is a scheme for compensation and distribution of mineral revenue-funded benefits to mine-affected communities.

- Examples of CMBS-funded activities include:

- Resettlement of communities (including construction of new housing)

- Health and education services

- Agricultural infrastructure (such as irrigation networks or markets)

- Infrastructure development (such as water, sanitation, electricity and roads)

- Training and employment opportunities

- Local procurement (e.g., sourcing food, hardware, machinery and equipment, fuel, or local tradesmen), and

- Direct cash transfers to community members.

- In some cases, mining companies voluntarily implement CMBSs, but a legal requirement for CMBSs has also proliferated around the world, to better ensure the rights of parties are identified and protected.

Causes of Corruption:

Negotiations: the main risk for corruption is that community voices get sidelined or ignored, possibly because their leaders have been bribed or threatened in order to minimize their advocacy. Specific risks are:

Manipulation of negotiations: Corrupt manipulation of agreements through unauthorized contact between stakeholders, illicit sitting-fees, and the giving/receiving of bribes and other improper gifts and benefits, can result in exclusion of certain community groups from negotiations, and favoring of other groups.

Community leaders do not represent community interests. If the mining company or government can get away with it, there are incentives to deal with community leaders who do not genuinely represent the community, as well as private interests to be gained by community 'leaders' who can obtain such a role.

Social Impact Assessments (SIA): there are significant incentives for mining companies, and possibly some government officials and community leaders, to influence the scope of SIAs so they exclude some groups, favor other groups or make findings that will reduce potential costs, including recommended benefits. Specific risks are:

The criteria for conducting SIAs are not publicly knowable. Unclear or unknown criteria for SIAs create uncertainty about what social factors are being considered, creating an opportunity for the company to corruptly manipulate what gets assessed.

The accuracy or truthfulness of SIA reports is not verified. If SIAs' findings are not verified stakeholders can be misled about the social impact of a mine, including information about basic needs, and the distribution and demographic composition of the local population. Companies can subsequently manipulate social impact data, including falsifying impacts, creating false baselines for social indicators and omitting certain groups from programs.

SIA reports are not publicly available once finalized. Uncertainty around the content of such reports can facilitate corruption if communities or CSOs do not know what findings and recommendations have been made.

Final CMBS design: the main corruption risk is lack of transparency around what benefits communities are supposed to receive. Lack of knowledge about what is in a CMBS allows those responsible for delivering benefits to under-deliver or fail to deliver. The specific risk is:

The content of final agreements between mining companies and communities/ landholders is not publicly knowable. Unless there is full transparency about the content of landholder agreements, there is uncertainty around what rights community members have to compensation, local development activities,

and other benefits. Lack of transparency allows these rights to be manipulated. For example, leaders might steal compensation packages, or companies can pay bribes to government officials and leaders to reduce what is actually delivered in practice.

Activity selection and implementation: once a CMBS has been designed, there is still potential for favoritism around which activities are funded. Without financial controls on the implementation of activities there are also risks for fraud and misuse of funds. Specific risks are:

➢ Inadequate processes for selecting activities for funding: Lack of written criteria or controls over approvals can result in parties responsible for selecting activities choosing ones that favour them, their families or their clan.

➢ Inadequate monitoring of expenditure: Monitoring helps deter corruption and early detection of wrongdoing.

➢ Inadequate processes for selecting contractors: Without background checks on contractors' performance or their connections to decision-makers, contractors lacking in merit may be selected to implement activities.

➢ Inadequate monitoring of activities, including the quality of built infrastructure: Detection of non-delivery or poor delivery of activities is necessary to hold parties to account.

Responding to Corruption

Unless adequate systems are in place to manage and respond to corruption complaints, there may be little to deter corrupt acts. Specific risks are:

➢ No investigations or prosecutions of allegations of corruption: If stakeholders know they will not be prosecuted for corruption they are likely to ignore anti-corruption laws and measures.

➢ Potential whistleblowers will not make a report: If potential whistleblowers think they will be (a) ignored, or (b) persecuted for complaining about corruption, reporting is unlikely to occur.

➢ Whistleblowers will not be legally protected: Laws to protect whistleblowers are critical to encouraging reporting.

➢ No written legal agreement to underpin the CMBS: A legally enforceable agreement helps to deter corruption, punish perpetrators and recover stolen funds.

When not properly managed, the risks described above can create opportunities and incentives to engage in corruption. Below is a list of 12 common corrupt acts arising from the kind of unmanaged risks described

above. Whether these acts are actually illegal or defined as corrupt will depend on the laws of each jurisdiction.

- Biased design of the CMBS to favor certain families or groups
- Giving or receiving illegal gifts, benefits and bribes
- Embezzlement (theft) of funds
- Fraud
- Contractors inflating costs or community leaders inflating sitting-fees
- Misuse of public funds
- Misappropriation or misuse of equipment, especially vehicles
- Trading in influence, e.g., a government official using his or her influence to obtain favorable contractual terms from the community for a friend's company
- Favoritism, e.g., bias activity selection by public officials in favoring certain applicants
- Extortion, e.g., a government official refusing to approve certain activities unless he or she receives a share of the funds
- Unauthorized facilitation payments (speed money), e.g., by a mining company to a community leader to speed up an approval
- Non-declarations of private interests in the mining project or a contractor, e.g., by a community leader or public official

The Impact of Corruption

Corruption and mining, demonstrates that corruption in community benefiting schemes can have the following impacts on communities and their development:

- Communities do not receive benefits to which they are entitled, because their leaders, the mining company and/or government officials have engaged in corruption that enabled under-delivery or non-delivery of activities.
- Reduced quality of life if alternative land, water or housing is not provided – so communities not only receive reduced benefits but their living standards *deteriorate*.
- The weakening of rights to self-determination around development and culture (including the cultural caretaker role for the environment), because corruption has prevented community input into decision-making.
- Reduced social capital and cohesion, if corruption benefits certain individuals, families or clans at the expense of others.

- The most alarming negative impacts are reduced social capital and reduced confidence in government.

Chapter 02: Anti-Corruption Strategies at Community Level

Legal solutions: having laws that require transparency as called does not mean transparency will happen. These laws need to be reviewed, enforced and evaluated.

Building Community Capacity to Prevent Corruption:

In order for community-based approaches to be successful in fighting corruption, many trainings and capacity building initiatives of community members is required. This is especially the case in conflict-affected and fragile contexts, where the capacity of local populations and the state have often been depleted through neglect, lack of investment, physical destruction, displacement and migration. It is important that community members that serve in community institutions are trustworthy and can represent the whole community or group. These criteria may dominate over professional credentials and technical skills. As such, greater training may be required for community representatives.

Training on technical skills required for community-based approaches, such as project cycles and M&E data collection, are essential to the functioning of such approaches. Equally important are trainings in and strengthening of 'soft' skills – such as participation and empowerment strategies, relationship-building, civic education, conflict management, social and resource mobilization and advocacy. These skills are critical to the aims of community-based approaches and their sustainability. Training to build leadership capacity is also essential to the success of community fight of corruption and non-prudent use of natural resources.

Preventing Corruption Through Multi-Stakeholder Engagement:

It is important for the credibility and the goals of CMBSs to have community representatives, especially traditional leaders, involved in planning, implementing and managing activities. Involvement enhances a local sense of ownership over the CMBS – which means the community is more likely to engage, and therefore the CMBS is more likely to deliver what they want. But communities are often unequal places, where some groups are excluded from participation, or feel uncomfortable participating, because of traditional power structures, e.g., women, young people, poorer families, and ethnic or religious groups. CMBSs can institutionalize these power dynamics. If genuinely participative multi-stakeholder dialogue

occurs, it will not necessarily reduce corruption risks. This is because dialogue does not change structural incentives to be corrupt, e.g., community pressure to fund certain development activities, family pressure to embezzle funds or misuse vehicles, low or unpaid government salaries, or widespread opportunities to steal.

Aside from promoting dialogue, multi-stakeholder initiatives are also advocated because greater citizen involvement and participation by CSOs is thought to promote revenue transparency and accountability.

Increased availability of information about revenue flows will not necessarily be the catalyst for anti-corruption action by, for example, citizens or local journalists, because engaging in action depends on time and resources. In poor communities these are in short supply, because individuals with an interest in pursuing anti-corruption action are usually busy making a living from other activities.

Citizen oversight bodies that are explicitly created to scrutinize decision-making by local authorities and to hold them accountable can create antagonism and distrust. Anti-corruption strategies can be revolutionary in terms of their impact on patterns of traditional authority. New accountability and transparency mechanisms may seek to involve a broader spectrum of people in decision-making for communities that have been historically controlled by traditional leaders, and who are probably also male and from dominant families.

Establish and train community based mine watch committees to conduct 'social accountability' tools that build civic engagement.

Registering Complaints through HRRAC Advocacy Application:

One of the main barriers to preventing corruption is the lack of channels to both document and report corrupt practices. HRRAC has developed an ANDROID application that facilitates the documentation of incidents of graft abuse, and theft within the mining sector. The application has the capacity to record the geographic position where the incident takes place. It also has the capacity to record conversations, take photographs, or record video. Each incident will automatically record the time and date of the incident, from where it is recorded in a database. HRRAC advocacy team regularly review the information from uploaded by reporters and major cases of corruption are raised at advocacy conferences and media events, and the government is demanded to address it.

Ensuring The Licensed Companies Follow The Standard Operational Procedure

The License holder (company) shall have to appoint a person in charge responsible for ensuring the health and safety working practices during mining activities in the mining area. Provide a health and safety plan,

and maintain safe and healthy working conditions for its workers, support workers and visitors, provide safety trainings and necessary skills to the miners, tools, clothing and equipment for proper use, and provide insurance to the employees.

The government should organize some form of public consultation to allow affected and other interested people to express their views and concerns regarding the proposed project before the license is issued.

Government, MoMP, sometimes *carry out*, but more often *check and approve* the environmental and social impact assessment process and resulting management or mitigation plans without due consideration and appropriate mitigation and adaptation plan.

Moreover, it is the government responsibility to *provide security* in mining areas, not only to company staff, but also to the local communities who live there. In providing security it is critical that government forces as well as private security contractors respect human rights and local traditions.[ii]

Finally, it is important to emphasize that it is the government responsibility to *deliver basic services* such as water, education, healthcare and infrastructure (incl. roads and electricity) to its citizens, including in remote areas where mining companies operate. Local communities should be aware of these important government roles and responsibilities and need to hold relevant government agencies and officials accountable for their performance in these areas.

Chapter 03: Communities And Sustainability

Extractive projects such as oil, gas and mining are long-term projects and can span over multiple generations. It is therefore important to manage not only impacts but also benefits and revenues responsibly for current and future generations. One of the best ways to do this at the community level is to negotiate a community development agreement (CDA) with companies. CDAs can take longer than expected, however, it is important to sign it at the present and for future.

What Are Community Development Agreements (CDA)?

The mineral law of Afghanistan emphasizes on the plan and implementation of CDA. Put the clause of Mineral Law: "the license holder shall report to the MoMP about necessary information on the implementation of terms and conditions of the Community Development Agreement". There is not a clear procedure on CDA implementation anywhere in the MoMP legal framework and policies. Anyhow, a Community Development Agreement (CDA) is a "consultation-based agreement between the company and the local communities affected by project activities that will address both how the community can take advantage of development gains offered by the project and how impacts from the project may be mitigated." A CDA has become the generic term for different types of agreement that may have similar goals of promoting community involvement and development benefits, but in specific content and detail may vary considerably.

Afghan Mining Law requires that companies have a CDA with local communities but it has not yet been brought into practice. It is important for our government to draft guidelines and standards for CDAs in Afghanistan. Depending on the legal requirements, it is not unusual, and actually advisable, for national or local government to play a role in the facilitation of a CDA. This can help to increase transparency, address any power imbalances, and to allocate the role of basic service provision to where it should be, i.e. with government. Such agreements should address environmental, social including relocation, compensation, jobs, health, and human rights concerns within the community.

The goal of CDA is to create a transparent agreement that lays out concrete benefits for the local community, clarifies communications processes, and establishes responsibilities for reporting and monitoring.

Though, it is not clear that CDA will deliver the following benefits. Much of it is associated with the type of articles included in the CDA during drafting. Potential benefits of CDAs for communities include[iii].

- CDA enables impacted communities to articulate and have addressed their development goals

- Mutual understanding of expectation

- Recognition of status as landowners

- Acknowledgements of impacts

- Compensation for impacts

- Development benefits

- Greater clarity regarding what the contractor is committing to

- A legal framework for ongoing engagement

- A sense of shared responsibility

- Communities feel partners in the project and therefore quicken the license to operate

Potential risks of CDAs for communities include:

- Limits capacity to change engagement plans

- Groups that are not part of the 'CDA' are not consulted. This might lead to alienation and tensions between communities.

The Role of Community in CDAs?

Communities are supposed to take a central role in the CDA process. However, communities first need to decide how they want to be represented within the CDA negotiation process with the company. That is, does the community elect one person to do the negotiations? Does a working group or council represent the community? Or does the community prefer open meetings and vote on issues as they arise? Documenting the community's decision-making processes and vision on the future in some form of community protocol can be helpful before entering negotiations with a company. Once a representation process has been agreed, the community must decide on what it wants included in the CDA, how it wants aspects to be reported on, and monitoring of the CDA once in agreement.

Experience shows that for the CDA to be successful and for the community to be able to play its role, it is important that the company, ideally together with other (civil society) organizations present helps strengthen community capacities in various areas via different types of capacity building:

- *Agreement-making capacity*: financial and logistic assistance, independent expert advice, negotiation training, project and industry awareness-raising, appointment of independent mediators, work with local NGOs to help improve community governance;

- *Governance capacity*: liaison and management committees; financial management structures such as trusts and foundations; dispute resolution processes; internal and external communication processes;

and monitoring and review processes;

- *Program-delivery capacity*: grant management, leadership development, networking, organizational development, etc.[iv]

Finally, there should be sufficient support to help communities with the ongoing monitoring and implementation of the CDA as well as their participation in any relevant structures.

Community Monitor CDAs

Community-based monitoring is a process whereby a range of stakeholders such as citizens, government agencies, industry, academic, community groups, and local institutions work together to monitor, track and respond to issues of common community concern.

Community based monitoring can take several different forms. This can include:

- Community involvement in the development of indicators for monitoring impacts;
- Community feedback sessions with the company;
- Joint on-site monitoring and assessment of environmental and social impacts.

The role of communities in the consultation and agreement-making process includes, but is not limited to:

- Define local needs and priorities;
- Communication of local knowledge and values;
- Establish community planning and mobilization;
- Determine mobilization of local assets and resources;
- Engage in monitoring and evaluation;
- Resolve internal organizational issues and conflict.

Community-Company Relationship and Its Importance:

There are essential elements to strong mutual relationship between community and company. They include:

- Mutual respect;
- Open and ongoing communication;
- Inclusion of all community groups;
- Honesty;
- Disclosure of information in a language and format that is understandable to everyone;

- Transparency of project exploration, operations, and their impacts;
- An effective grievance mechanism.

This requires that companies:

- Are sensitive to local customs and norms;
- Create realistic expectations with communities;
- Develop fair conflict resolution mechanisms;
- Be ethical and consistent;
- Start the engagement process as early as possible and maintain contact throughout;
- Disclose and share information that allows communities to make their own decisions regarding the project;
- Incorporate community views into the design and operations of the project.

And that communities:

- Have an appropriate and functioning internal governance system that represents the community and has community acceptance to negotiate on their behalf;
- CDCs or any type of village organization with proper representation of community members is a pre-requisite.
- Develop or access the knowledge and skills to meaningfully participate in the consultation process;
- If the process is fair and transparent, to participate in it without frustrating it.

Communities demands must be incorporated in a document but that should be flexible enough to assess and respond to urgent needs of the community.

There are several important reasons why companies want to develop good relations with communities and have a flexible social interaction document.

- Reputation, both nationally and internationally;
- Preventing conflict with communities and protecting company resources;
- Facilitates the formal approvals process as it minimizes risks of costly delays due to community opposition;
- Effective and efficient project management;
- Helps to manage risks, reduces closure costs and liabilities;
- Provides access to local workforce and employees;
- Improves relations with (local) employees, resulting in retention and lower recruitment and training costs;
- Assurance to all stakeholders and investors that the company is acting responsibly and managing risk.

Conversely, communities benefit from good relations with companies because they help to set the expectations for how companies should engage and behave regardless of the minimum requirements set by governmental regulations. By clearly outlining the need for a social license to operate, communities can say to the companies "this is how you will work with us" and even document such 'rules of engagement' or even a more comprehensive Community Development Agreement (CDA)

How Do Companies Decide Who to Consult with?

In the early stages of a project, companies will often create a stakeholder engagement plan, which identifies who is an affected party and who is an interested party. An *affected party* is a stakeholder or community that is directly or indirectly impacted by the proposed project either positively or negatively. An *interested party* is a stakeholder or community that is not affected by the proposed project, but may still have an interest in it. The latter includes stakeholders that 1) have knowledge about the impacts of the operation; 2) are a partner on the project, or 3) are part of the broader community and have expressed interest in the project.

While the stakeholder engagement plan is created by the companies, it often requires approval by the appropriate government ministry. The resulting plan usually details which communities are consulted and often in what order and how frequently. In general, the primary focus of the consultation process will be on the *affected party* – those communities directly or indirectly impacted by the project. Nevertheless, it is important to realize that while several communities may be affected by a single private investment, each may be impacted differently, and even within communities' experiences may vary.

Consultation Process

The consultation process, as led by the company or government, is different at each stage of the project life-cycle. A general overview of the sort of relationships and levels of engagement companies should ideally have with communities at each stage of a mining project.

The experience of many communities is that engagement and the quality of the relationship with the company is often built during the exploration and feasibility stages, and then strongly tested during the construction stage as this is when impacts are often the severest and most direct. As production continues, the relationship usually stabilizes although this can be consistently positive or consistently negative.

Company/Community Interactions During Mining Project

Exploration: at this stage, community are uncertain about how long will it take to decide which area will come under the impact of mine. There is expectation on the side of community that they are notified before there are any impacts, and that there must be transparency about who does what and that companies must adhere to the relevant laws and regulations.

At this stage, community should revitalize their internal structure and get details about the proposed project from the company and government agencies. In Afghanistan, government agencies have no culture of sharing even general information with the public, but communities must work with the companies to get details as more information leads to avoid rumors, manage expectations and prevent conflicts.

Feasibility: Feasibility study looks at the relevant of the contract or project and is useful for the cost-benefit analysis of the project. during this stage, detail technical studies including EIA/SIA/HIA should be conducted. This is also a stage of consultation and engagement with local communities to establish coordination, pave way for signing CDA, fix a timeline for project, and identify other developmental priorities within the area.

> It is important for communities to know national and international best practices and standards to which the companies and government must comply. Communities must have the capacity to clearly communicate their social, environmental, health and developmental needs and concerns.

Feasibility is an important stage and opportunity for communities to learn more about the project, develop their own vision, and stipulate key priorities on how the project can benefit their area and how it can strengthen the overall community. At this stage, community can make suggestions for impact assessment and impact mitigation, and CDA (livelihood improvement).

Construction: large construction projects such as dams, highways, multi-story buildings etc. attract temporary external workforce to the site which will have both positive and negative impacts for the community. Companies may destroy crops, find unfair ways to access lands, and force community members to resettlement and unequal compensation. On the positive side, community representatives with the necessary skills and experience as well as business opportunities for those local entrepreneurs and/or cooperatives who have studied the market, know what services company workers need (e.g.

catering, hotels, restaurants, transport) and invest their earnings wisely. The company or local government must manage the expectations of community members.

Delivery: During this stage, companies are entering into the stage of real community development program delivery, with focus on locally identified development needs and community participation in design, implementation and controlling. Here communities must insist that companies comply with any agreements made with them, and monitor all the ongoing and pending activities. Communities should highlight any negative impacts of projects.

Withdrawal and Closure of Actions: this can cause decline in community flow of social and economic life. Therefore, it is highly advised to CSOs, companies and local communities to well plan the closure quite in advance to work for a smooth transition. Closure should be based on proper and detailed closure plan subject to community monitoring and controlling.

Proper attention should be given to conducting the social and environmental impacts of closure on communities. Communities must follow with government if there are any negative social and environmental impacts after the closure of project.

International Standards for Consultation with Communities

Though Afghanistan has some coverage for local communities but in practice it is not enforced and implemented to the will and wish of affected groups. Internationally there is a growing consensus on the good practices for community engagement and consultation. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) empowered communities to withhold or give rights under the Free, Prior and Informed Consent (FPIC). UNDRIP has since been applied in the extractive industries to communities more generally. The main purpose of FPIC is to ensure that people are not forced, pressurized or threatened in their choices.

FPIC refers to the following principles for how communities should be engaged:[v]

- *Free* from force, intimidation, manipulation, coercion or pressure by any government or company;

- *Prior* to government allocating land and prior to approval of specific projects. You must be given enough time to consider the information and decide;

- *Informed*; you must be given all the relevant information to make your decision, i.e. if you agree to the project or not. The information must be in a language that community members can understand. You must have access to independent information, meaning not only from the company or government. You must also have access to experts on law and technical issues, if requested, to help you make your decision;

- *Consent* requires that the people involved in the project allow communities to say 'yes' or 'no' to the project, at each stage of the project.

> Meaningful consultation is defined as a process involving all project stakeholders, affected peoples, including concerned NGOs, that is explained in a stakeholder participation plan and: (i) begins early and is carried out on an ongoing basis throughout the project cycle; (ii) provides timely disclosure of relevant and adequate information understandable and readily accessible to affected people; (iii) is free of intimidation or coercion; (iv) is inclusive and responsive to marginalized groups, with attention to gender; (v) enables incorporation of all relevant views of affected people and other stakeholders into decision-making; (vi) includes persons with disabilities, and (vii) includes a comprehensive discussion of environment and social issues, including benefits.

Meaningful community consultation and participatory methods provide many benefits, for all stakeholders:

- better understanding of the local values, knowledge and experiences of the different stakeholder groups;
- an opportunity to validate data;
- help the impacted communities understand the planned intervention and its implications, and thus assist them in planning for the change and to more easily adapt to and cope with the likely changes;
- help resolve conflicts over resource use;
- help enhance the design of the project;
- help win community support for project objectives and for implementation (i.e. a social license to operate), thus avoiding protest action against the project.

Communities Expectations:

Revenue and non-revenue benefits from mineral projects to both government and communities are often strongly related to several factors, for example:

- the size of the reserve or mineral deposit;
- the stage or phase of the project (i.e. exploration vs. production);
- the level of financial investment the company has made or is planning to make in the project;

- the size and financial capacity of the company;
- the regulatory requirements, expectations and any other agreements with government and potentially impacted communities.

Common forms of *revenue benefits*, mainly allocated to the government, include:

- Fees for licenses and permits: these may include licenses to explore, to extend an exploration phase, to drill, to expand a field;
- State share of production: throughout the production phase;
- Royalty payments
- Income tax: throughout the life cycle
- Customs duties, value added tax (VAT), payroll taxes, taxes on inputs and imports, likely to be particularly significant during the development phase;
- Property tax and stamp duty: land-related taxation, some of which will be one-off at the exploration and construction phases;
- Job creation and contracting/procuring services from local (qualified) suppliers;
- New or improvement of existing infrastructure, including access to roads and electricity;
- Better service delivery from government because of increased income from taxes and royalties and other extractive industry-related payments;
- Social investment in projects or programs aimed at enhancing community development.

In connection to the last point, companies are strongly encouraged to fund initiatives that are aligned with local development plans and will support the broader community, while at the same time encouraging government to take its responsibility for the delivery of basic services and other development projects.

It is important to remember that benefits to communities are often not present consistently. For example, job opportunities may be high in number during the construction phase, but are significantly reduced once the project is built and operational. This is one of the reasons why resource-rich areas experience patterns of 'boom' (periods of high economic growth and prosperity) and 'bust' (periods of extremely low economic growth and prosperity). Employment and business opportunities are generally only available for those local workers that have the necessary skills and experience, or those local businessmen and businesswomen that can deliver goods and services according to certain quality standards.

> *Every company should have Corporate Social Responsibility and Social Investment Strategies. CSR and SI are based on ideas that a company has a responsibility to contributed to society from its profit. Communities should request companies to share their social responsibility strategy with them. But at the same time, communities should develop their own development plan.*

Chapter 04: Mining Activities Effects on Local Communities

Change in societies, and therefore also in local communities, is something that happens all the time. Sometimes companies and agencies bring new change, sometimes they accelerate change already happening, and sometimes the change is local and sometimes global. Mining activities affect people and the environment in communities in different ways.

Some impacts of the extractive industry can be positive, such as: employment and business opportunities, access to housing, healthcare, water, fuel, electricity, sewage and waste disposal, and multiplier effects for the local economy. But these positive impacts are not guaranteed. To have positive changes, communities and local leaders must work together through consultation and partnership with the government and the companies. It is not always possible to predict the consequences of the extractive industries on communities, so communities need to be prepared to work with companies to identify and prevent impacts as they arise.

Potential negative impacts resulting from extractive projects could include the degradation of the environment and impacts to local culture and ways of life. Poor management of the extractives in communities by local leaders, government, and companies can have long term negative impacts on communities. In some communities, the impact of the extractive industry has been devastating. Governments must have in place a system to ensure company compliance with the laws and regulations, particularly those relating to environmental and social protection. To ensure the protection of the community, communities must organize themselves and work together to ensure that their positions are communicated clearly to the companies and government.

Potential Impacts Associated with Mining Activities

As noted above, impacts can be positive or negative to a community or individual community representatives. In fact, the same impact that has a positive impact in one community may have a negative impact in another. For example, in-migration to one community may lead to economic growth, new jobs, and educational opportunities. In another community, in-migration may lead to increased drug abuse and crime. Not all impacts will apply to any one community and whether they are positive or negative often depends on the situation.

Overview of Potential Social and Environmental Impacts of Mining:

Type of Impact	Potentially Positive Effects	Potentially Negative Effects
Health	- New health care facilities - Increased access to medication, vaccination, and health services - Improved health awareness - Increased capacity of local health care workers	- Increased prevalence of diseases - Increased illness due to land, water and/or air pollution - Health risks associated with water, air and land contamination
Culture and Traditional Way of Life	- Community works together to preserve traditional way of life of community - Cultural heritage sites can be improved or receive better access roads, protection	- Reduced land access and loss of ability to hunt and gather or live traditional way of life leading to malnutrition and dependency - Damage to sites of cultural and spiritual significance
Community Impacts	- Increased access to services including schools, health facilities, water & sanitation - Increased access to other communities for transportation and communication	- Increase in crime and disorder including potential alcoholism, drug use and sexual exploitation - Increasing inequality and community tension due to uneven distribution of resources - Bribery and corruption - Increased conflict over resources
Economic Impacts	- Direct employment for community members - Indirect employment due to economic growth and contracting / business opportunities - Investment into the local community from the companies	- Inflation of local goods and housing - Loss or change of traditional livelihoods - Reduced food or fish production due to environmental degradation or limited access (for example, during seismic surveys)

	- Enhanced skills and training of community members	
Environmental Impacts	- Environmental Consciousness	- Soil and water degradation - Noise and air pollution - Loss of ecosystems - Impacts on wildlife and habitats - Increased traffic

The Role of Community in Impact Assessment:

When reviewing an impact assessment report, communities should ask themselves:

1. Who conducted the impact assessment?

2. What type of impact assessment is required by law, what type has been conducted in practice and what is included? For example, does it focus on environmental, social, health or human rights impacts, or a combination?

3. Was the community adequately consulted/ involved in the impact assessment, and were the legal requirements for community consultation met?

4. What are the community concerns regarding the proposed project?

5. Have these concerns been adequately addressed in the impact assessment? If not, how have these concerns not been addressed?

6. What are the identified negative impacts to the community in terms of:

    a. Environment

    b. Social / culture

    c. Health

    d. Economic / livelihoods

    e. Security

    f. Heritage

7. Do these ascertained impacts match with the main community concerns, or are there any gaps?

8. How do these impacts affect different vulnerable groups (incl. women, youth, elderly, disabled, etc.) within the community?

9. What are the proposed mitigation measures for the assessed impacts?

10. Do these mitigation measures adequately address the concerns of the community?

11. Are there any positive impacts, and if so, how can they be enhanced further by the project?

12. How will the impacts be monitored throughout the life of the project and how will new concerns be taken care of?

If communities have problem with analysing the impact assessment reports and statements, they can seek the technical assistance of independent consultants, NGOs and or media.

Resettlement is one of the major issues communities face. Afghanistan has a law for resettlement. Since resettlement usually has severe socials impact on affected people and their livelihoods, international standards require that companies and government apply the more stringent standard of 'informed consultation and participation', or 'free, prior and informed consent (FPIC)' in the case of indigenous people. This means that project developers should inform affected communities sufficiently early about the resettlement process (including eligibility and entitlement frameworks with compensation and livelihood restoration packages), let them participate in the drafting and validation of the resettlement action plan, and develop an effective grievance mechanism.

References

[i] Constitution of Afghanistan, article 9

[ii] For more information, see for example the Voluntary Principles on Security and Human Rights at: http://www.voluntaryprinciples.org

[iii] TIMU Report on Oil, Gas and Mines

[iv] Brereton et al. (2011), ibid, pp.17-24.

[v] UN Permanent Forum on Indigenous Issues (UNPFII) (2005) *International Workshop on Methodologies regarding FPIC and Indigenous Peoples.* E/C.19/2005/3.