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ابتکار شفافیت صنایع استخراجی افغانستان

Transparency in Afghanistan's mining, oil and gas industries

7th Afghanistan EITI Report for Fiscal Years 1397-1398

(21 Dec 2017– 20 Dec 2019)

Afghanistan Extractive Industries Transparency Initiative
May 2021

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Executive summary

Following the endorsement of the AEITI MSG in its meeting held on July 4, 20201, AEITI has joined the pilot to develop an alternative approach to EITI reporting. The alternative approach to EITI makes increased use of direct online disclosures, which reduces the costs of annual AEITI reporting but also increases the demands on stakeholders' time. The overall purpose of this report is to transparently disclose the data required under the 2019 EITI Standard.

This 7th AEITI Report is the first AEITI Report written and produced in-house by the multi-stakeholder group (MSG) of the Afghanistan Extractive Industries Transparency Initiative (AEITI). This data in this report is presented on a cash accounting basis, representing payments actually made in the fiscal years 1397 and 1398 (21 December 2017 – 20 December 2019).

This report is primarily based on the government's unilateral publication of data. Apart from disclosing data, the report also makes recommendations to strengthen both government and companies' systematic disclosures of EITI data by identifying and addressing gaps in such disclosures. Data collection for the 7th AEITI Report was carried out by the AEITI National Secretariat, located in Kabul. The AEITI National Secretariat did not undertake any field visits to locations outside of the capital city. The data collection process started in July 2020 and was completed in February 2021, with some delays due to Covid-19 related restrictions in travel and in-person meetings. Reliable and timely data on the extractive industries is challenging in many countries, particularly in economies with large informal sectors like Afghanistan. Despite the 0-9 month time lag for producing data, the government produces some aggregate, un-audited, statistics on production, exports, gross (extractives and non-extractives) revenues, and non-tax extractive revenues.

The government's revenues from the extractive industries totaled AFN 4,834,909,947.81 ($67,076,997.06) in 1397 and AFN 4,288,144,753.56 ($55,160,081.73) in 1398. The revenues in 1397 were 75% higher than the USD 38,172,596.74 in revenues in 1396, because the MSG decided to include companies that did not hold mining, oil or gas licenses but engaged in exports of mineral commodities in the scope of the 7th AEITI Report. This is an effort to build a more complete picture of the government's revenues from the extractive industries, given the importance of customs fees and taxes levied on exports.

Following average of 2.3% annual economic growth in 2014-2019, Afghanistan's economic (GDP) growth reached 3.9% in 2019 (1398), as the country recovered from the drought in 2018. The industrial sector, which includes mining and extractives, grew by only 2% in 2019.[2] The government's domestic revenue collection has deteriorated sharply in 2020, particularly from Q2 onwards. The World Bank's July 2020 development update on Afghanistan noted the sharp decline in domestic tax and non-tax revenue collection, linked to reduced economic activity, restrictions

[1] See: Minutes of Meeting of MSG 47

[2] World Bank (July 2020), 'Afghanistan Development Update: Surviving the storm', accessible on https://openknowledge.worldbank.org/handle/10986/34092

on international trade, and deteriorating compliance. In total, domestic revenue collection in the first half of 2020 were AFN 74.7 billion, 20% lower than the MoF's target of AFN 94 billion.[3]

To replace reconciliation, the MSG has assessed the underlying audit and assurance systems underpinning the government and SOEs' revenue data disclosures. The MSG concludes that there are stronger assurances for revenue data in 1397 than in 1398, when the SAO qualified its opinion of the Qatia accounts given a lack of access to the MOF's systems. This 7th AEITI Report presents a series of recommendations for strengthening the SAO's audit of government extractive revenues, which is key to underpinning the MOMP and MOF's systematic disclosures of revenue data.

The AEITI MSG plans for this 7th AEITI Report to be the start of an alternative approach to EITI reporting that integrates the data disclosures in each government entity and companies' internal systems. This report is meant to provide a diagnostic, a clear picture of the extractive industries in 1397-1398 (2018-2019) – and where possible, 1399 (2020) – and a basis for informed discussions to inform policy making and public debate. The AEITI MSG welcomes the participation of any stakeholder not already involved in EITI who would like to collaborate on the development of e-government and systematic transparency in Afghanistan's extractive industries.

[3] World Bank (July 2020), 'Afghanistan Development Update: Surviving the storm', accessible on https://openknowledge.worldbank.org/handle/10986/34092

Abbreviations

AFN	**Afghani**
GoIRA	Government of Islamic Republic of Afghanistan
GD-Cadaster	General Directorate of Cadaster of MoMP
GDLSM	General Directorate of Large Scale Mining
IPRD	Information and Public Relation Directorate
ISA	International Standards on Auditing
ITL	Income Tax Law
LTO	Large Taxpayers Office
JCE	Jabal Saraj Cement Enterprise
MoF	Ministry of Finance
MoIC	Ministry of Industry and Commerce
MoMP	Ministry of Mines and Petroleum
MPC	Mines Protection Commission
MSG	Multi Stakeholder Group
MTC	Mining Technical Committee
N/A	Not applicable
NCE	Northern Coal Enterprise
NDC	National Development Corporation
NEPA	National Environmental Protection Agency
NSIA	National Statistics and Information Authority
NSTA	National Single Treasury Account
PDF	Provincial Development Fund
PEPs	Politically Exposed Persons
PFEM	Public Finance and Expenditure Management
PRP	Processing Permits
QEIT	Qualifying Extractive Industry Taxpayer
RFI	Request for Interest
AoI	Areas of Interest
RfP	Request for Proposal
SAI	Supreme Audit Institution
SAO	Supreme Audit Office
SIGTAS	Standard Integrated Government Tax Administration System
SITC	Standard International Trade Classification
SOE	State-Owned Enterprise
TIN	Taxpayer Identification Number
ToR	Terms of Reference
US	United States
USAID	US Agency for International Development
USD	United States Dollar
USGS	United States Geological Survey
VAT	Value Added Tax
WB	World Bank
WHT	Withholding tax

Acknowledgements

The MSG is grateful to the Members of G-1 Working Group for their valuable time, dedication, comments and review of the contents of this report and the AEITI National Secretariat for their coordination and support. The AEITI National Secretariat thanks the MSG for providing the opportunity for the team to do coordination, data collection, translation, data verification and enriched the drafted outline, which has increased the institutional capacity of the AEITI Secretariat.

Furthermore, the MSG would like to thank all of the current and previous members of the MSG and Working Groups for their inputs and reviews in the context of the Covid-19 pandemic, in which physical visits and meetings were not possible. Despite these challenges, all stakeholders who were a part of the AEITI successfully completed this 7th AEITI Report using their own capacities, without resorting to the conventional EITI reporting approach of relying on an Independent Administrator.

The AEITI MSG and National Secretariat are grateful to both the World Bank and EITI International Secretariat and their advisors for providing technical support in preparing this report.

Introduction

Piloting alternative EITI: from COVID-19 response to systematizing disclosures

The EITI Board has established a pilot to develop a more comprehensive alternative approach to EITI reporting based on collating and analyzing systematically disclosed data, in its 13 February 2020 decision[4] reaffirmed on 24 May 2020.[5]

Following the endorsement of the AEITI MSG in its meeting held on July 4, 2020[6], AEITI has joined the pilot to develop an alternative approach to EITI reporting. It should be noted that the impact of the Covid-19 situation on Afghanistan has created logistical challenges since March 2020. Travel bans and a deteriorating health situation due to COVID-19 have made it impossible for in-country data collection and consultations by Independent Administrators in time for publication of the 7th AEITI Report by December 31, 2020. As a result, the AEITI MSG decided to freeze the hiring of the Independent Administrator, choosing instead to self-write and publish the 7th AEITI Report with technical assistance from the World Bank and the EITI International Secretariat. Afghanistan's decision to implement the alternative approach to EITI was announced through a letter to the EITI International Secretariat dated July 28, 2020.

The alternative approach to EITI makes increased use of direct online disclosures, which reduces the costs of annual AEITI reporting but also increases the demands on stakeholders' time. It is also aimed at repositioning AEITI as a mechanism for data quality verification and sector dialogue, from being merely a data collection and disclosure tool. This strategic repositioning has been planned with a view to reinforce AEITI as a governance and accountability tool in addition to its role in ensuring sector transparency. Under the alternative AEITI, data gathering in the AEITI Report is limited to datasets that cannot be disclosed systematically online, and a review of publicly accessible information required by the EITI Standard that has been systematically disclosed. Based on the results of the alternative approach in the 7th AEITI Report, the MSG plans to institutionalize and mainstream EITI disclosures within the regular functions of the MoMP and MoF over a period of time, dispensing with the need for hiring an external Independent Administrator. Capacity building and technical assistance for such a transition will be provided by the World Bank through the Afghanistan Gas Project (AGASP).7

Thematic approach to EITI disclosures

The disclosures in this 7th AEITI Report are presented in thematic clusters that provide a narrative context, while at the same time being based on the EITI Standard, 2019. Rather than following the structure of the extractive industry value chain, the 7th AEITI Report is structured to address the main objectives of the AEITI's work plan, namely informing public debate and strengthening oversight over the extractive industries' contribution to the economy.

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[4] See: EITI Board Decision 2020-07/BM-46 dated February 13, 2020. Available at: https://eiti.org/board-decision/2020-07

[5] See: EITI Board Decision 2020-33/BC-290 dated February 13, 2020. Available at: https://eiti.org/board-decision/2020-33

[6] See: Minutes of Meeting of MSG 47

[7] See: Lopez Quiroga, Carlos Alberto.2020. Disclosable Version of the ISR - Afghanistan Gas Project (AGASP) - P172109 - Sequence No: 01 (English). Washington, D.C.: World Bank Group. http://documents.worldbank.org/curated/en/144411588199259997/Disclosable-Version-of-the-ISR-Afghanistan-Gas-Project-AGASP-P172109-Sequence-No-01

The thematic chapters of the 7th AEITI Report are as follows: (i) Impact of Covid-19; (ii) contribution to the economy; (iii) revenue collection; (iv) overview of the extractive industries; (v) production and exports; (vi) legal and fiscal framework; (vi) contracts and licenses; (vii) company ownership; (viii) state participation; (ix) revenue management and expenditures; (x) subnational contributions and (xi) social and environmental expenditures.

In each of the chapters, this AEITI Report reviews the systematic disclosures through government websites, and company disclosures to a lesser extent. Building on this review of systematic disclosures with reference to requirements of the 2019 EITI Standard, the report addresses gaps by recommending additional disclosures, either on relevant government and company portals, or by making such disclosures through the 7th AEITI Report itself. The report concludes with an overview of progress on past recommendations and some background on EITI implementation in Afghanistan.

Objective

The overall purpose of this report is to transparently disclose the data required under the 2019 EITI Standard. This report is primarily based on the government's unilateral publication of data. Apart from disclosing data, the report also strengthens both government and companies' systematic disclosures of EITI data by identifying and addressing gaps in such disclosures. Although this report does not include a reconciliation of company payments with government revenues as in conventional EITI reporting, the objective of the report is to reinforce both the transparency and accountability of the extractive industries through increased analysis and commentary. The aim is also to demonstrate some of the analytical research that can be performed based on Afghanistan's EITI data. The thematic approach to EITI disclosures in this report aims to address some of the key demands for information identified in the AEITI's work plans.

This 7th AEITI Report covers the two fiscal years 1397 (21 December 2017 – 20 December 2018) and 1398 (21 December 2018 – 20 December 2019). The reporting period was approved by the MSG at its 4 July 2020 meeting.[8]

Data Collection

Data collection for the 7th AEITI Report was carried out by the AEITI National Secretariat, located in Kabul. The AEITI National Secretariat did not undertake any field visits to locations outside of the capital city. The data collection process started in July 2020 and was completed in February 2021, with some delays due to Covid-19 related restrictions in travel and in-person meetings. The AEITI National Secretariat drafted the data collection templates on behalf of the G1 Working Group, which approved the templates before data collection was launched. Once collected, the data was collated and sanitized. Reporting government entities were given an opportunity to review the sanitized data as laid out in the Summary Data Tables for 1397 and 1398 (available here). The AEITI National Secretariat established mechanisms to ensure the confidentiality of information and data before publication in the 7th AEITI Report, to make sure that the data could not be manipulated before publication.

[8] See MSG meeting minutes accessible at http://aeiti.af/en/documents/category/minutes-2015-2021

Chapter 1

Covid-19's impact amid growing fragility in 1399 (2020)

WHAT IS CONTAINED IN THIS CHAPTER?

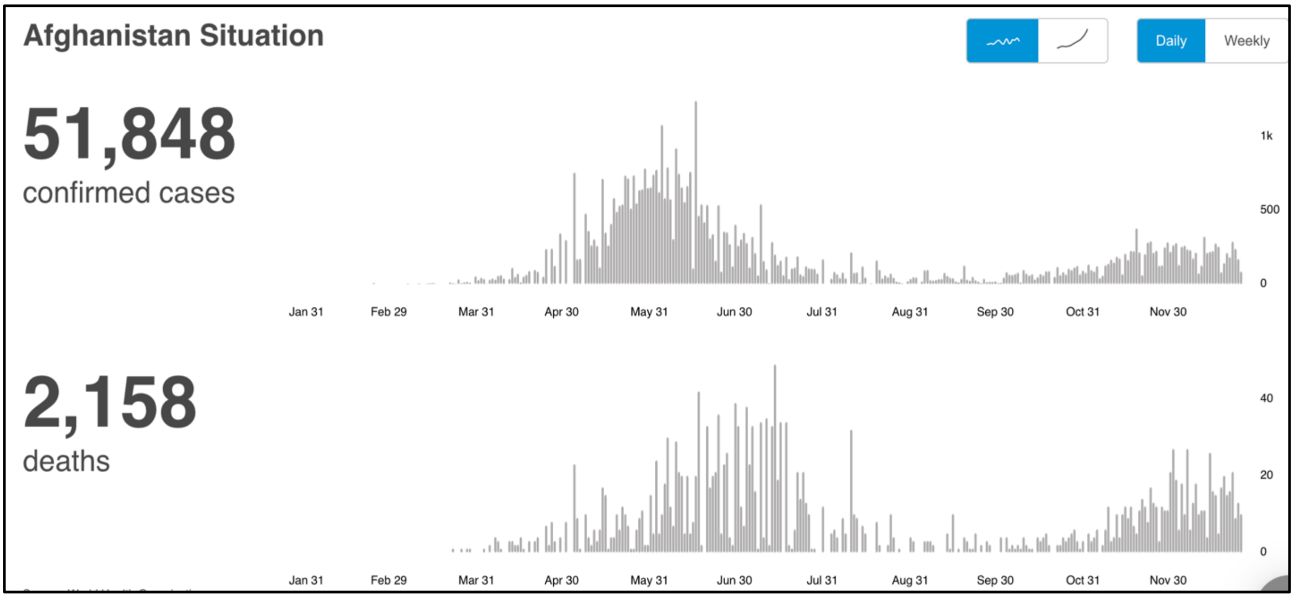
This chapter provides the latest available statistics on the extractive industries and the economy of Afghanistan. The objective is to provide a snapshot of the early impact of the Covid-19 pandemic on Afghanistan's economy, and its mining, oil and gas sectors in particular.

Amid Covid-19 related restrictions, Afghanistan has also faced growing insecurity in 1399 (2020), with a high number of attacks and targeted killings in urban centers including Kabul. This section presents available data on recent trends in the mining, oil and gas sector amidst the Covid-19 pandemic in 2020. In some cases, there is some limited information on a generalized slowdown of activities from Q2 2020 as the lockdown conditions were imposed from March onwards. Every attempt has been made to include as recent information as possible in this 7th AEITI Report.

Updates on the Covid-19 and economic situation.

From its first confirmed Covid-19 case on 24 February 2020, Afghanistan progressively tightened containment measures and imposed countrywide lockdown on 28 March. The lockdown was extended twice, until end of June 2020. After re-opening in August, schools and universities closed again on 28 November, with final exams postponed due to a second wave of infections since early November. Figure 1 presents World Health Organization data on Covid-19 confirmed cases and deaths in Afghanistan in 2020.

Figure 1 Confirmed Covid-19 cases and deaths in Afghanistan in 2020



Source: World Health Organization Covid-19 dashboard for Afghanistan: https://covid19.who.int/region/emro/country/af

There were 51,848 confirmed cases and 2,158 deaths related to Covid-19 in Afghanistan in the period 28 February – 31 December 2020. According to the IMF, the pandemic and pandemic and containment measures stifled domestic activity and disrupted trade and transportation, particularly in the second quarter of 2020.[9] Oxfam estimated that the number of people on brink of famine in Afghanistan had risen from 2.5m in September 2019 to 3.5m in May 2020.[10]

The most reliable updated source for information on the Covid-19 pandemic and the government responses is the IMF's Policy Responses to Covid-19 tracker here.

Latest data on the economic impact of Covid-19

Reliable and timely data on the extractive industries is challenging in many countries, particularly in economies with large informal sectors like Afghanistan. Despite the 0-9 month time lag for producing data, the government produces some aggregate, un-audited, statistics on production, exports, gross (extractives and non-extractives) revenues, and non-tax extractive revenues.

GDP growth

Following average of 2.3% annual economic growth in 2014-2019, Afghanistan's economic (GDP) growth reached 3.9% in 2019 (1398), as the country recovered from the drought in 2018. The industrial sector, which includes mining and extractives, grew by only 2% in 2019.[11]

The Covid-19 pandemic has hit Afghanistan with a sharp economic contraction in the first half of 2020, with industrial output, including extractives, having been heavily impacted by lockdowns and border closures.[12] Border closures in March-June 2020 have impacted mineral exporters and business activity has been suppressed by the lockdowns in Q2 2020.[13] The IMF's May 2020 staff report on Afghanistan forecast medium-term GDP growth averaging 3% annually in 2020-2025 due to the impact of the Covid-19 crisis, down from a previously-forecast 3.7% annual GDP growth forecast for 2019-2024.[14]

Table 1 presents the evolution of projections for Afghanistan's GDP growth in 2020 from different development agencies.

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[9] IMF, 'Policy responses to Covid-19', accessible on https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19

[10] Oxfam International (June 2020), 'World on the brink of a 'hunger pandemic': coronavirus threatens to push millions into starvation', accessible on https://www.oxfam.org/en/world-brink-hunger-pandemic-coronavirus-threatens-push-millions-starvation

[11] World Bank (July 2020), 'Afghanistan Development Update: Surviving the storm', accessible on https://openknowledge.worldbank.org/handle/10986/34092

[12] World Bank, 'Afghanistan country page: overview', accessible on https://www.worldbank.org/en/country/afghanistan/overview

[13] World Bank (July 2020), 'Afghanistan Development Update: Surviving the storm', accessible on https://openknowledge.worldbank.org/handle/10986/34092

[14] IMF (May 2020), 'Islamic Republic of Afghanistan : Request for Disbursement Under the Rapid Credit Facility-Press Release', accessible on https://www.imf.org/en/Publications/CR/Issues/2020/04/30/Islamic-Republic-of-Afghanistan-Request-for-Disbursement-Under-the-Rapid-Credit-Facility-49386

Table 1 Evolution of projections for Afghanistan's GDP growth in 2020

Date	Source	Projection of year-on-year GDP growth in 2020
January 2020	Asian Development Bank (here)	3%
April 2020	IMF (here)	–3%
July 2020	World Bank (here)	-5.5% to -7.4 %
August 2020	Ministry of Finance 2021 Fiscal Strategy (here)	–5%
September 2020	Asian Development Bank, World Bank and IMF (here and here)	–5%

Mining licensing

There was a marked slow-down in applications for new mining licenses in 2020. The year started with a large build-up in applications for new mining licenses since the enactment of the 2018 Minerals Law. Table 2 presents the number of mining license applications in 2018-2020.

Table 2 Applications for mining licenses by year, 2018-2020 (1397-1399)

s. No.	Applications for licenses in 1397-1399	Number of mining applications
1	Small Scale Mining Projects	107
2	processing permits	50
3	Gemstone export permit	11

Source: AEITI website: http://aeiti.af/en/documents/category/data-for-7th-aeiti-report?page=2

While the government started the year with investment promotion efforts, including the publication of a MOMP brochure on Afghanistan's mineral resources for the PDAC Conference in Toronto in March 2020, the number of applications for new mining licenses fell to three in 2020 as a whole, according to the MOMP Transparency Portal.

In December 2019, the MOMP opened an international tender for 68 mines that had been approved by the High Economic Council.[15] However, it does not appear to have concluded the award of all of these licenses as of the end of 2020. On 3 December 2020, MOMP announced plans to open a tender for 45 construction materials mining sites that had been approved by the High Economic Council.[16] According to data from the Transparency Portal, there were 17 small-scale mining licenses, two exploration licenses, three gemstone export permits and two PRP permits awarded in 1399 (2020). There were 28 small-scale mining licenses awarded in the first quarter of

[15] Ariana News (December 2020), 'Govt to call for tenders for 68 mines across Afghanistan', accessible on https://ariananews.af/govt-to-call-for-tenders-for-68-mines-across-afghanistan/
[16] MOMP Tweet on 3 December 2020, accessible on https://twitter.com/MOMPAfg/status/1334427138804551683

1400 (2021) according to the same source.[17] The MOMP also processed license renewals and extensions, such as the extension of four marble mining contracts in Nangarhar Province on 3 December 2020.[18]

In oil and gas, the MOMP concluded in June 2020 the extension of the two contracts (Mazar-i-Sharif and Sanduqli) on the Afghan-Tajik Block with the consortium of Dragon Oil, TPAL and Ghazanfar Investment. The MOMP reported that the consortium had invested $20m of the $60m they had committed to invest in survey and exploration.[19]

Production and exports

There is no publicly available data on mining production for 2020 (1399). Neither the MOMP website nor the MOMP Transparency Portal provide any information on production beyond 2019 (1398). The production data disclosed in the Transparency Portal is being updated by the Revenue and Cadaster directorates, based on the receipts of the relevant royalty amount paid by the companies to the government on a quarterly basis. However, such payments also include payments in arrears from previous quarters / years, which makes it hard to understand the exact production volumes in a specific reporting period.

The World Bank reports that Afghanistan's total exports grew by 11% year-on-year (y-o-y) in the first quarter of 2020 to $202.4m, despite a decline in exports of mineral products by 6% y-o-y that was primarily driven by a 20% ($1.8m) decline in export of talc stone reflecting weak economic conditions and decreased demand in Pakistan.[20]

Mining export data is provided in the NSIA's Quarterly Statistical Updates, covering the main extractive commodities. The NSIA's Quarterly Trade Statistics for the first two quarters of 2020 indicate a sharp contraction in exports of all four mineral commodities recorded as exported in the April-June period. Table 3 presents the NSIA's Quarterly Trade Statistics data for Afghanistan's mineral exports in Q1-Q2 2020.

Table 3 Mineral export data for Q1-Q2 2020

Quarter	Coal		Marble		Precious stones		Talc stone	
	Export volume (kg)	Export value ($)	Export volume (kg)	Export value ($)	Export volume (kg)	Export value ($)	Export volume (kg)	Export value ($)
Q1 2020	179,667,877	16,641,705	9,043,830	225,138	1,152,000	141,114	94,794,852	4,800,641
Q2 2020	7,420	674	1,421,055	73,112	0	0	0	0

Source: NSIA First and Second 2020 Quarter Trade Statistics: https://nsia.gov.af/library

The central bank, Da Afghanistan Bank's (DAB) Economic and Statistical Bulletin for Q2 2020 reports an 11.8% y-o-y contraction in the value of mining exports, as part of an overall 5.8% y-o-y

[17] See bulk download function for license data on the MOMP Transparency Portal, accessible on https://transparency.mom.gov.af/license
[18] MOMP Tweet on 3 December 2020, accessible on https://twitter.com/MOMPAfg/status/1334427143942508544
[19] MOMP Tweet on 16 June 2020, accessible on https://twitter.com/MOMPAfg/status/1272766645774270465
[20] World Bank (July 2020), 'Afghanistan Development Update: Surviving the storm', accessible on https://openknowledge.worldbank.org/handle/10986/34092

contraction in the value of Afghanistan's total exports.[21] NSIA statistics indicate that Afghanistan's total exports fell from $143m in Q2 2019 to $32.7m in Q2 2020.

The Covid-19-related lockdown, including border closures and disruption of air links, impacted exports significantly. In July 2020, the World Bank projected total goods exports to contract by between 17% and 28% in 2020, depending on the extent and duration of border closures.[22]

Government revenues

The government's domestic revenue collection has deteriorated sharply in 2020, particularly from Q2 onwards. The World Bank's July 2020 development update on Afghanistan noted the sharp decline in domestic tax and non-tax revenue collection, linked to reduced economic activity, restrictions on international trade, and deteriorating compliance. In total, domestic revenue collection in the first half of 2020 were AFN 74.7 billion, 20% lower than the MoF's target of AFN 94 billion.[23]

The DAB's quarterly Economic and Statistical Bulletin recorded a 9.85% y-o-y decline in total domestic revenue collections to a total of AFN 42.88 billion in Q1 2020, with a significant decline of 46.06% y-o-y in income tax revenues.[24] The DAB recorded an even sharper 13% y-o-y decline in domestic revenue collections to AFN 39 billion in Q2 2020, with a 41% y-o-y decline in income tax revenues.[25]

The Ministry of Finance's Afghanistan Revenue Department (ARD) has published weekly reports on its revenue collection since May 2019 on the ARD website[26], in an open data format (.xls format) with a one-week time lag. The data is disaggregated by type of revenue (tax, non-tax and customs revenues), but not by individual revenue flow or by company. However, it presents the data broken down by the individual collecting Customs Office and by the type of national revenue-collecting entity (e.g., Mustofiats, Large Taxpayer Office, Medium Taxpayer Office, Small Taxpayer Office, Ministries).

Figure 2 presents monthly domestic revenue collections compared to monthly targets for 2020. Aside from in April and October, domestic revenue collections were consistently below the Ministry of Finance's targets.

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[21] Da Afghanistan Bank (October 2020), 'Economic & Statistical Bulletin: Second Quarter, FY 1399', accessible on https://www.dab.gov.af/sites/default/files/2020-10/Economic%20Bulletin%20for%20the%202nd%20Quarter%20of%20FY%202020.pdf

[22] World Bank (July 2020), 'Afghanistan Development Update: Surviving the storm', accessible on https://openknowledge.worldbank.org/handle/10986/34092

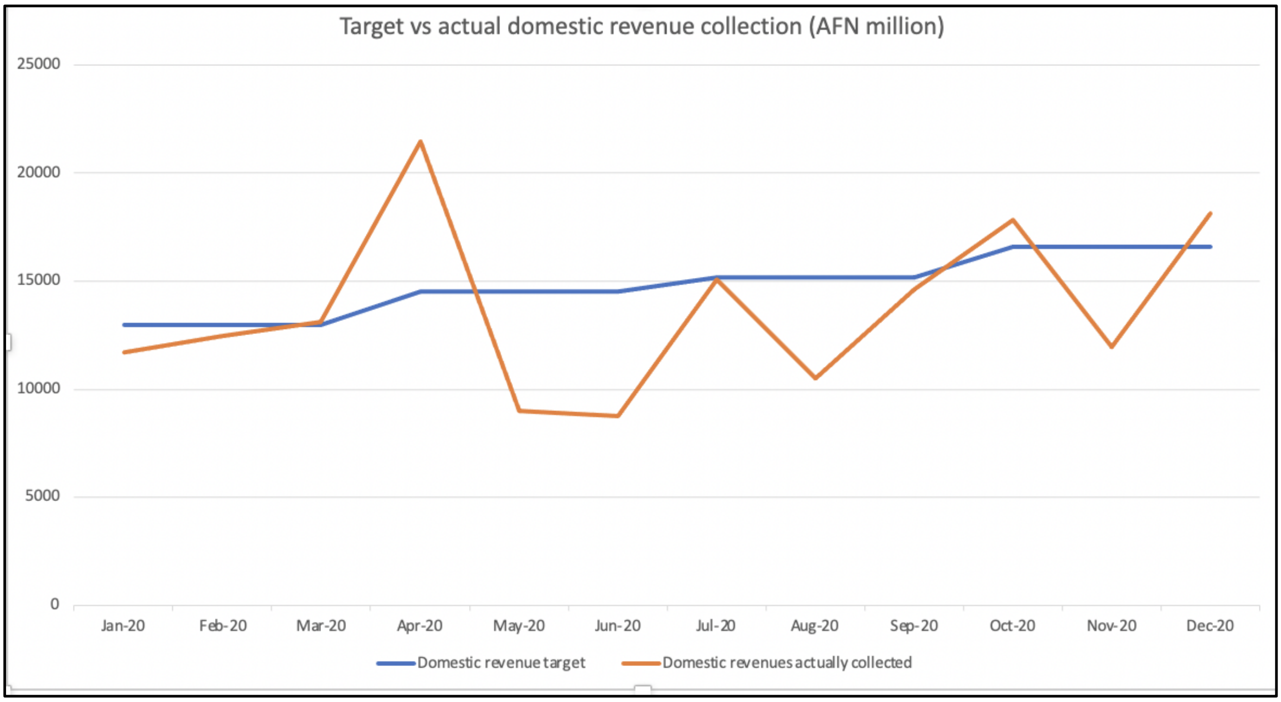
[23] World Bank (July 2020), 'Afghanistan Development Update: Surviving the storm', accessible on https://openknowledge.worldbank.org/handle/10986/34092

[24] Da Afghanistan Bank (August 2020), 'Economic and Statistical Bulleting Q1 1399', accessible on https://dab.gov.af/sites/default/files/2020-08/Economic%20Bulletin%20for%201st%20Quarter%20of%20FY%201399%20%28Final%29.pdf

[25] Da Afghanistan Bank (October 2020), 'Economic and Statistical Bulleting Q2 1399', accessible on https://dab.gov.af/sites/default/files/2020-10/Economic%20Bulletin%20for%20the%202nd%20Quarter%20of%20FY%202020.pdf

[26] Afghanistan Revenue Department website, 'FY-1399 Current Revenue Collection Reports', accessible on https://ard.gov.af/?s=english&c=fy-1399-current-revenue-collection-reports

Figure 2 Afghanistan's target and actual domestic revenue collection in 2020 (1399)



Source: Afghanistan Revenue Department Revenue Collection Reports: https://ard.gov.af/?s=english&c=fy-1400-current-revenue-collection-reports

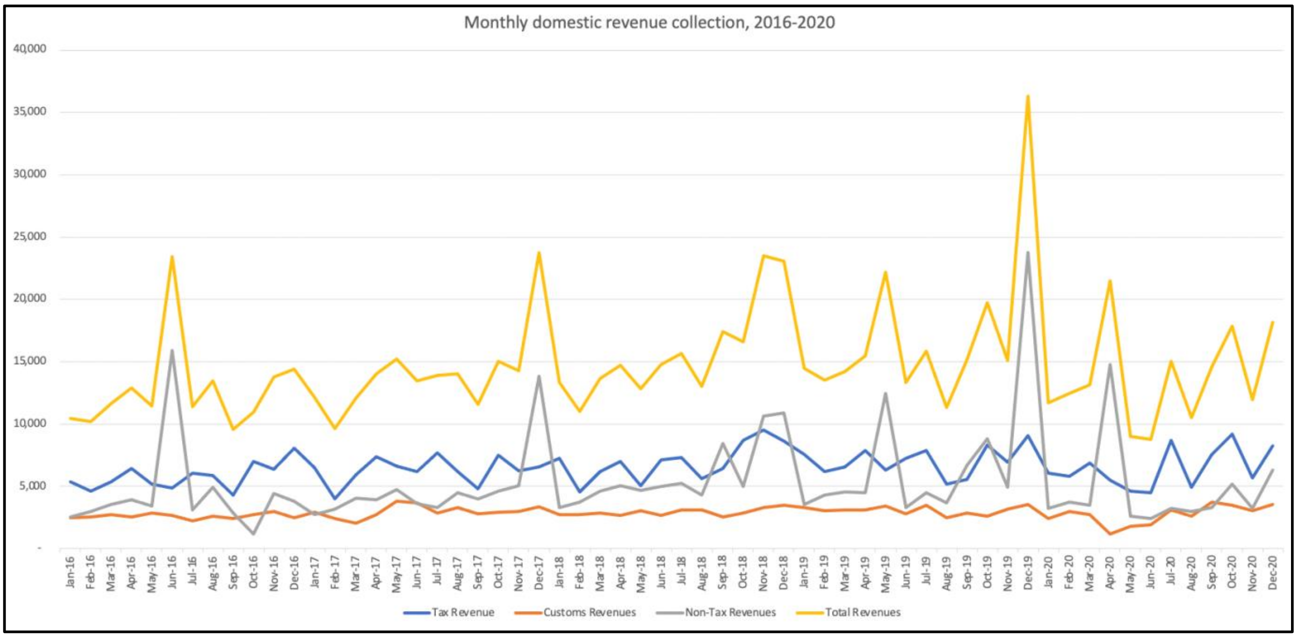
In its July 2020 development update on Afghanistan, the World Bank forecast total domestic revenue collection to decline by between 30% and 35% y-o-y to AFN 144 billion in 2020 (around 3% of GDP), with domestic revenue collection expected to be depressed to below 2019 levels until 2025.[27] In Q2 2020 alone, the IMF reported a 40% decline y-o-y in tax revenues, which it attributed in part to a 45-day extension of Q1 2020 tax filings.[28]

Figure 3 presents the ARD's monthly domestic revenue collection figures, including the shares of tax, non-tax and customs revenues, over the period of 2016-2020 (1395-1399). Domestic revenues have been lower in 2020 than in previous years.

[27] World Bank (July 2020), 'Afghanistan Development Update: Surviving the storm', accessible on https://openknowledge.worldbank.org/handle/10986/34092

[28] IMF (November 2020), 'Islamic Republic of Afghanistan: Request for a 42-month arrangement under the extended credit facility', accessible on https://www.imf.org/en/Publications/CR/Issues/2020/11/13/Islamic-Republic-of-Afghanistan-Request-for-a-42-Month-Arrangement-Under-the-Extended-Credit-49888

Figure 3 Afghanistan's monthly domestic revenue collection, 2016-2020



<u>Source</u>: Afghanistan Revenue Department Revenue Collection Reports: https://ard.gov.af/?s=english&c=fy-1400-current-revenue-collection-reports

In August 2020, Parliament approved the government's supplementary 2020 budget, updated with the more than $200 million in Covid-19 related resources and expenditures agreed since April 2020. This included additional funds for health care (AFN 6.2 billion), social protection including bread distribution program (AFN 2.8 billion), wheat purchases program (AFN 1.7 billion), Covid-19 related transfers to provinces (AFN 2.3 billion), support for agriculture (AFN 5.9 billion) and short-term jobs (AFN 1 billion). In 2020 as a whole, the government has planned up to 2.9% of GDP in Covid-19 related spending, with around 15% directed to health.[29]

The World Bank projects fiscal sustainability, defined as share of recurrent expenditure financed by domestic revenues, to drop to 48% in 2020 under a baseline scenario, from a high of 74% in 2019. Fiscal sustainability is only projected to gradually recover to 64% by 2023 with increasing revenues.[30] The World Bank's July 2020 update on Afghanistan expected total donor grant support to rise to $500 million, making it above pre-Covid-19 levels. However, over the medium term, grant support is expected to gradually decline from $3 billion (15.6% of GDP) in 2020 to $2.2 billion (11.1% of GDP) by 2023 under a baseline scenario.[31]

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[29] IMF, 'Policy responses to Covid-19', accessible on https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19

[30] World Bank (July 2020), 'Afghanistan Development Update: Surviving the storm', accessible on https://openknowledge.worldbank.org/handle/10986/34092

[31] World Bank (July 2020), 'Afghanistan Development Update: Surviving the storm', accessible on https://openknowledge.worldbank.org/handle/10986/34092

Table 4 Forecasts for Afghanistan's domestic revenue collection, including from extractives, in 2020-2025

	Extractive revenue (AFN million)	**Total domestic revenue (AFN million)**	**Total revenue and grants (AFN million)**
1398 (2019) *(actual)*	1,800	207,396.9	398,062.8
1399 (2020) *(budget)*	1,692	177,075.7	439,349.7
1400 (2021) *(proposed budget)*	2,189	193,167.8	417,748.0
1401 (2022) *(projected)*	2,710	224,442.8	439,075.2
1402 (2023) *(projected)*	3,356	252,450.2	458,076.1
1403 (2024) *(projected)*	3,968	275,417.4	472,888.6
1404 (2025) *(projected)*	4,690	303,580.0	492,775.9

Source: Ministry of Finance's 2021 Fiscal Strategy: https://mof.gov.af/sites/default/files/2020-09/FSP%202021%20Final.pdf

Recommendations:

1. The Afghanistan Revenue Department and the MOMP should share more updated information on tax and non-tax revenues from the extractive industries with the AEITI MSG and Secretariat on a regular basis to allow for more updated data disclosures on the value of mining, oil and gas revenues.

2. The Afghanistan Revenue Department is required to publish all the customs data in an open and accessible format with a breakdown per year, per company, per mineral, and per area at its website and share it with MoMP through its Transparency Portal on a real-time basis or at least per quarter.

3. The MoMP should develop a clear mechanism for collecting production data and ensuring that this information is updated on the Transparency Portal in a timely and systematic manner.

Chapter 2

Extractive industries’ contribution to the economy

WHAT IS CONTAINED IN THIS CHAPTER?

This chapter provides the extractive industries’ contribution to the economy of Afghanistan (EITI Requirement 6.3). The objective is to provide a snapshot of the economic impact of the mining, oil and gas industries, including on gross domestic product, government revenues, exports and employment.

Contribution to GDP

Afghanistan’s past EITI Reports have sourced GDP figures from NSIA, albeit without clarifying whether these are GDP figures at current or constant prices, nor whether the GDP figures provided include poppies. This Report cites data from the NSIA and the World Bank to identify the contribution of extractive industries to the GDP.

NSIA Data

The NSIA Data classifies the contribution of extractives sector to the GDP in the form of two-line items, i.e. 'mining and quarrying', and 'electricity, gas and water'. As the latter includes electricity and water as well apart from gas, the overall estimates for the contribution of the extractives (oil, gas and mining alone) sector to the GDP cannot be accurately estimated. However, the estimated contribution of mining and quarrying to the GDP is accurate.

Table 5 below describes the NSIA assessment of the contribution of extractives to the GDP.

Table 5 Contribution of the mining and quarrying sectors to GDP, from NSIA

Year/FY	GDP at Current Price (in Million AFN)	Contribution of Mining and Quarrying to GDP	% Contribution of Mining and Quarrying to GDP	Contribution of Electricity, Gas and Water to GDP	% Contribution of Electricity, Gas and Water to GDP
2017-18 (1397)	1,434,553	25421.17	2%	22688.62	2%
2018-19 (1398)	1,478,707	27753.80	2%	29914.04	2%

World Bank Data

Unlike the NSIA Data, which measures all economic activity pertaining to extractives as a portion of the GDP, the World Bank data measures only Rents from extractive resources as a portion of the GDP. Table 6 below describes various calculations of the World Bank in determining the share (%) of extractives rents to GDP. This is of three types: contribution of natural resource rents (extractives and forests), oil and gas rents, and coal rents to the Afghanistan's GDP.

Table 6 Natural resource rents in Afghanistan*

Year	Natural Resource Rents as % of GDP	Oil and Gas Rents as % of GDP	Coal Rents as % of GDP
2009	0.40648527	0.00544297	0.11649807
2010	0.58800729	0.00497397	0.19302219
2011	0.84194929	0.00661517	0.47317264
2012	0.68063142	0.11033069	0.2521995
2013	0.52611123	0.0040292	0.21820461
2014	0.49568247	0.00316892	0.2134763
2015	0.47903252	0.00107623	0.16210414
2016	0.62585979	0.00082412	0.23355323
2017	0.69353068	0.00125469	0.30384429

**Total natural resources rents are the sum of oil rents, natural gas rents, coal rents (hard and soft), mineral rents, and forest rents.*
Source: Estimates based on sources and methods described in "The Changing Wealth of Nations: Measuring Sustainable Development in the New Millennium" (World Bank, 2011)

Recommendations

Based on the data available with the NSIA, it is possible to accurately determine the contribution of mining and quarrying to the GDP. However, since the gas sector is measured along with electricity and water, it is not possible to accurately determine the contribution of hydrocarbons to the GDP. The Ministry of Mines and Petroleum, Government of Afghanistan (MoMP) should work with the NSIA to determine the contribution of hydrocarbons alone to the GDP, such that it can be totaled among with the contribution of the mining and quarrying to identify the total contribution of extractives to the economy.

Contribution to Revenues

Prior to understanding the contribution of extractives to Afghanistan's revenues, it is essential to first understand the contribution of Afghanistan's revenues to the country's economy in a country that is severely dependent upon foreign aid. Table 7 below describes the contribution of non-grant revenues for the Central Government of Afghanistan as a percentage of its GDP over the past decade. From the trends, it is visible how non-grant revenues in Afghanistan have been very low, making the country dependent upon foreign aid.

Table 7 Total revenue excluding grants for general government in Afghanistan

Calendar Year	Non-Grant Revenues as % of GDP
2010	10.88
2011	10.99
2012	10.12
2013	9.76
2014	8.45
2015	9.97
2016	11.54
2017	13.09
2018	14.30
2019	14.09

Source:
International Monetary Fund, Total Revenue, Excluding Grants, for General Government for Afghanistan, retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/AFGGGRXGGDPGDPPT, November 4, 2020.

In this context, table 8 below describes the contribution of extractives to national revenues for the years under consideration.[32] These figures indicate significant potential for the extractives sector to contribute to Afghanistan's revenues. The fact that the nascent formalized extractives sector, predominantly the mining sector, already contributes to more than 10% of Afghanistan's non-grant revenues (but only 1.5% to total revenues) while the informal sector is much larger is a challenge as well as an opportunity. If the informal sector is formalized, and illegal mining is prevented, the sector can be a viable avenue for Afghanistan's revenue generation.

Table 8 Contribution of the extractive industries to government revenues, 1397-1398

Year	Total Revenues in AFN Million, Excluding Grants (Current LCU)	Total Extractives Revenues in AFN Million	% of Extractives Revenues to Total Revenues
2017-18 (1397)	189,909	2,306.9	1.2%
2018-19 (1398)	207,250	362	0.17%

Employment rate at the Extractives Sector of Afghanistan

Afghanistan's context means that proper documentation of employment is problematic. The MOMP does not track employment by private companies. For this report, the MOMP's Mining Inspection Directorate has collected employment information from the private companies engaged in small-scale mining, while the General Directorate of Large-Scale Mining has collected information from companies engaged in large-scale mining and the General Directorate of Hydrocarbons collected information on employment in oil and gas companies. The government employment list and private sector list is available here.

The NSIA publishes data on employment in the Ministry of Mines and Petroleum, in its annual Statistical Yearbooks that provide employment data for all Ministries. However, in collecting data for this 7th AEITI Report from the MOMP's human resources department, the MSG received data that differed from the data sets of NSIA. Thus, for 2018, the NSIA reported MOMP staffing of

[32] While the total revenues are based on the International Monetary Fund, Government Finance Statistics Yearbook and data files, the data for extractives revenues has been supplied to the AEITI Multi-Stakeholder Group by the Ministry of Finance, Government of Afghanistan.

2132[33] while the MOMP HR department reported 2170 (of which 1915 are male and 255 are female). For 2019, the NSIA reported MMOMP staffing of 1568[34] while the MOMP HR department reported 3895. No explanation has been provided to the AEITI for these discrepancies. The MOMP HR department's staffing figures include permanent staff, contractors on annual basis (NTA) and contractors on a daily basis (Belmaqta).

Table 9 provides the employment at the MOMP in 1397-1398 (2018-2019), sourced from NSIA.

Table 9 Number of Employees at MoMP in 2018 and 2019

S.No	Year	No. of Employees	Entity
1	2018	2132	MOMP
2	2019	1568	MoMP

Source: NSIA, 'Afghanistan Statistical Yearbook 2017-18' (https://www.nsia.gov.af:8080/wp-content/uploads/2019/04/Afghanistan-Statistical-Year-book-2017-18-3.pdf) and 'Afghanistan Statistical Yearbook 2018-19' (https://www.nsia.gov.af:8080/wp-content/uploads/2019/11/Afghanistan-Statistical-Yearbook-2018-19.pdf)

The MOMP website has published data on employment in the extractive industries, sourced from the MOMP based on company reporting.[35] The data is presented broken down by company, by type of role (managerial, technical, support), by contract type (permanent, temporary) and by gender. Total private-sector employment in the extractive industries reached 3367 in 1397 (2970 in mining, 397 in oil and gas) and 4852 in 1398 (4455 in mining, 397 in oil and gas). The MSG considers that these employment statistics may under-estimate the size of employment in the mining sector in particular, given the potential for companies to under-report their employment to the MOMP.

There is no reliable source of information on total formal employment in Afghanistan on government websites. The Central Statistics Organization (CSO) (since renamed the NSIA), publishes the Afghanistan Living Conditions Survey (ALCS) every four years, which provides an estimate of total employment in Afghanistan. The latest ALCS published, covering 2016-2017 (1395-1396), provides an estimate of the size of total formal employment as 6.5m people in 2017.[36] Using this figure for total employment implies that total extractive industry employment reached 0.0518% of total formal employment in 1397 and 0.0746% in 1398. However, the government employment data collected for this report which is also broken down by Entity, by role (managerial, technical, support), by contract type (permanent, temporary) and by gender. The total government employment data reached to 3856 (Male 1915, Female 255) in 1397 (2170 MoMP, 952 AGE, 675 NCE, 4 NEPA and 55 other Government entities) and 3895 (Male 1951, Female 250) in 1398 (2201 MoMP, 952 AGE, 675 NCE, 4 NEPA and 63 other government entities.

[33] See page 25 at Afghanistan-Statistical-Yearbook-2018-19.pdf (nsia.gov.af) accessed by 23 Feb 2021 at 9:00 AM
[34] See page 29 table no. 3-1 at Afghanistan-Statistical-Yearbook-2019-1st-Version.pdf (nsia.gov.af) accessed by 23 Feb 2021 at 9:00 AM.
[35] See '1397 & 1398 Extractive Employment Data accessible at https://momp.gov.af/eiti-disclosures
[36] Central Statistics Organization (2018), 'Afghanistan Living Conditions Survey, 2016-17', accessible on https://www.ilo.org/surveyLib/index.php/catalog/2114/download/17907

Recommendation:

4. The MoMP should collect employment data from all extractive companies through the relevant department at least on an annual basis and ensure it is published on the Transparency Portal in a timely manner.
5. The MSG, in coordination with the NSIA, should map out all of the extractive sector government entities that collect employment data and ensure extractive sector employment is published annually on the NSIA and MOMP websites.

Chapter 3

Collection of extractive industry revenues

WHAT IS CONTAINED IN THIS CHAPTER?

This chapter provides information on the government revenues collected from companies operating in the mining, oil and gas sectors, including the value of each type of payment by company (EITI Requirement 4.1), by individual project (EITI Requirement 4.7), and whether the data is timely (EITI Requirement 4.8) and reliable enough (EITI Requirement 4.9) to be of use to public debate and policy-making. The objective is to inform the public of the specific government revenues collected from each project as a basis for assessing each mining, oil and gas company's contributions to economic development.

What does the government collect in revenues from companies in the mining, oil and gas industries? This is a key question at the core of the EITI's mandate. The data in this report is based on the government's unilateral disclosure of revenues collected from companies holding mining, oil and gas licenses. The reliability of the data in this report is assured through the SAO's certification that it is the same financial data as in in the government's Qatia account reports, which are audited by the SAO.

Full disclosure of tax and non-tax revenues (Requirement 4.1)

Disclosures of government extractive revenue data for 1397-1398

The government's unilateral disclosure of revenues is provided in the Summary Data Tables (SDTs) for 1397 and 1398 (available here) published on the AEITI website[37], disaggregated by company, revenue stream, and government entity and, for non-tax revenues collected by the MOMP, by license.

For the first time, the AEITI data includes both companies that hold mining, oil and gas licenses, but also companies that export mineral commodities without themselves mining, given the importance of trade for many of Afghanistan's minerals.

The data in the SDTs most relevant to this chapter is structured in the following way[38]:

- Part 3 (Reporting entities): These are the reporting entities (Government agencies, companies and projects) and related information.
- Part 4 (Government revenues): This is data on government revenues in aggregate per revenue stream, according to GFS classification.

[37] See 'FY2018-2019 (1398) Afghanistan Summary Data 2.0' and 'FY2017-2018 (1397) Afghanistan Summary Data 2.0 published on AEITI website, accessible on http://aeiti.af/en/documents/category/data-for-7th-aeiti-report

[38] Part 1 (about), and Part 2 (disclosure checklist) of the SDTs are outside the scope of this chapter. Part 1 discloses the country and data characteristics, whereas part 2 discloses contextual and aggregate financial data for EITI Requirements 2,3,4,5 and 6.

- Part 5 (Company data): This is company- and project-level government extractive revenue data per revenue stream.

What revenues does the state collect from the mining, oil and gas industries?

There are four government entities collecting revenues from mining, oil and gas companies.

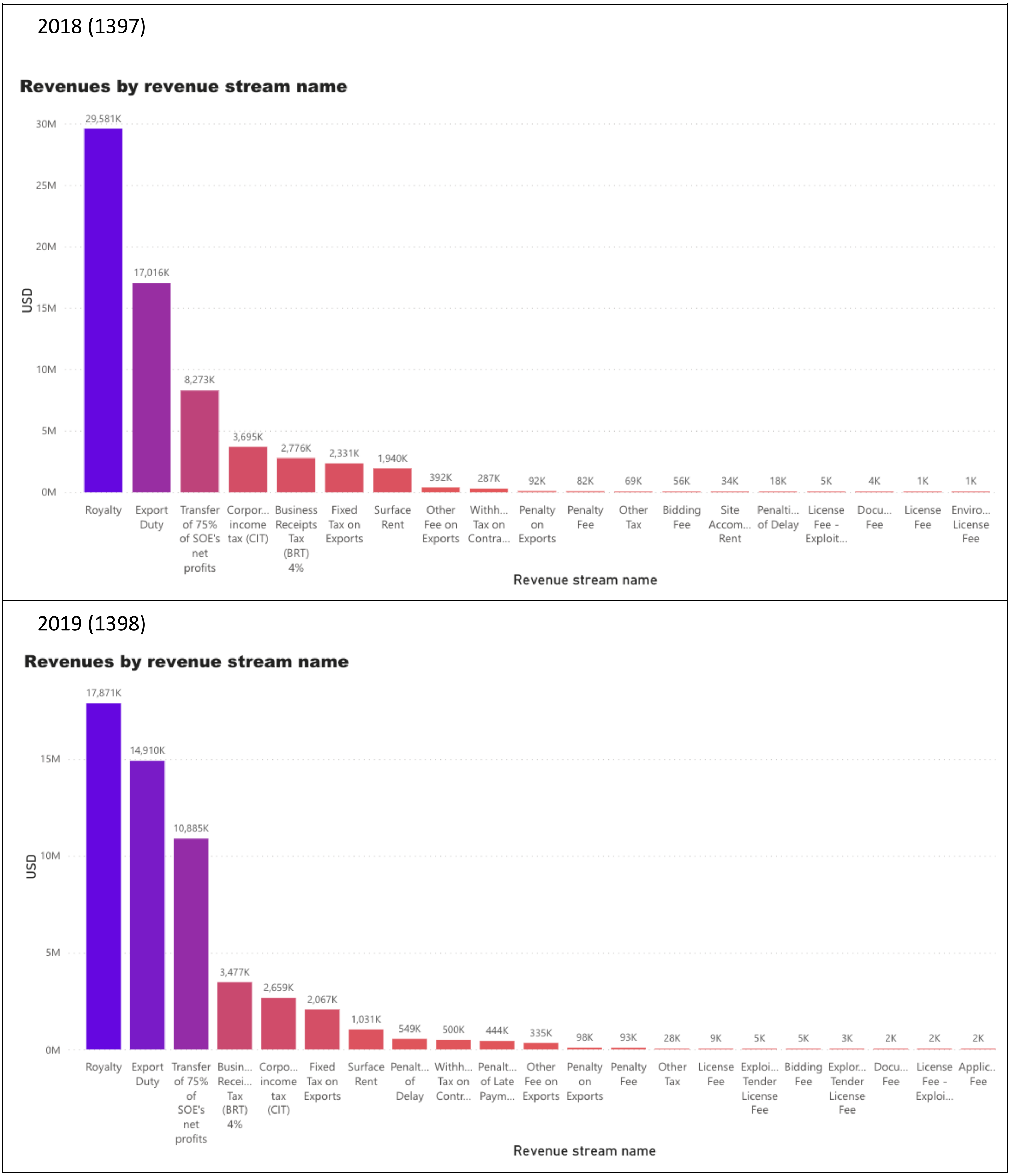
MINISTRY OF FINANCE: levies taxes on companies and receives dividends from state-owned enterprises. Since 2018, the Large Taxpayers Office has sole jurisdiction for collecting tax revenues from the extractive industries. The Revenue Department collects SOE transfers of net profits.	**MINISTRY OF MINES AND PETROLEUM:** levies non-tax revenues related to the licensing of mining, oil and gas rights. The Revenue Department operates the non-tax revenue system (NTRS), which is integrated with the MCAS system on the Transparency Portal.
CUSTOMS DEPARTMENT: part of the Ministry of Finance, collects export duties on the mining commodity trade. There is at present no oil or gas exports.	**NATIONAL ENVIRONMENTAL PROTECTION AGENCY:** collects environmental licensing fees.

The full list and descriptions of revenue streams levied on extractive companies are available here.[39]

Figure 5 lists the largest government extractive revenue streams by value in 1397 and 1398. This data is presented on a cash accounting basis, representing payments actually made in the fiscal period under review, in US Dollars.

[39] See '7th AEITI Report Supporting Documents - Revenue Streams List' document on AEITI website, 'Public Documents', accessible on http://aeiti.af/en/documents/category/public-documents

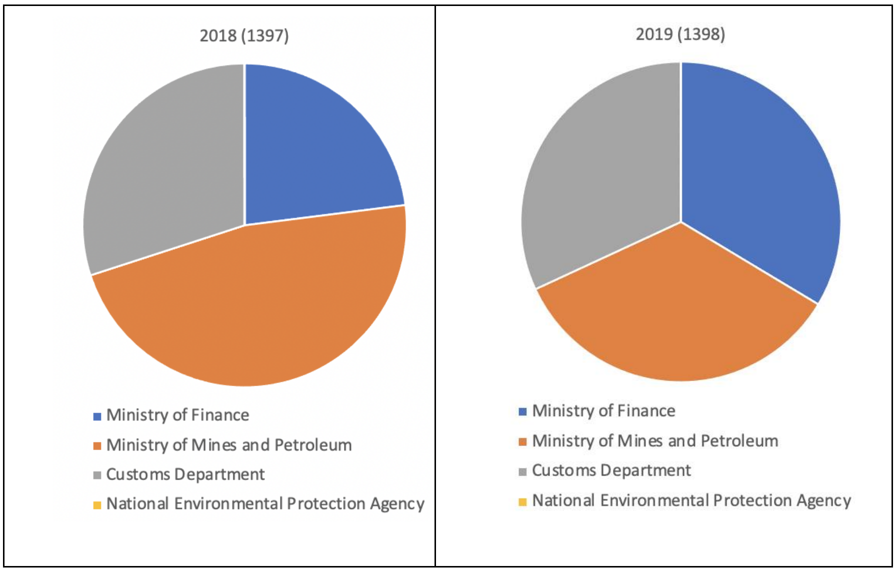
Figure 4 Largest government revenue streams from the extractive industries in 2018-2019 (1397-1398), in USD



Source: Afghanistan's EITI summary data: http://aeiti.af/en/documents/category/data-for-7th-aeiti-report

Each of the four government entities' share of total government extractive revenues in 1397 and 1398 is presented in Figure 5.

Figure 5 Four government agencies' share of extractive revenues in 2018-2019 (1397-1398)



Source: Afghanistan's EITI summary data, http://aeiti.af/en/documents/category/data-for-7th-aeiti-report

Given that the MSG adopted an approach to publishing data based on the government's unilateral disclosure of data, it has not set any materiality threshold for revenues and is disclosing the full list of all government revenues from all companies operating in the extractive industries in 2018-2019 (1397-1398).

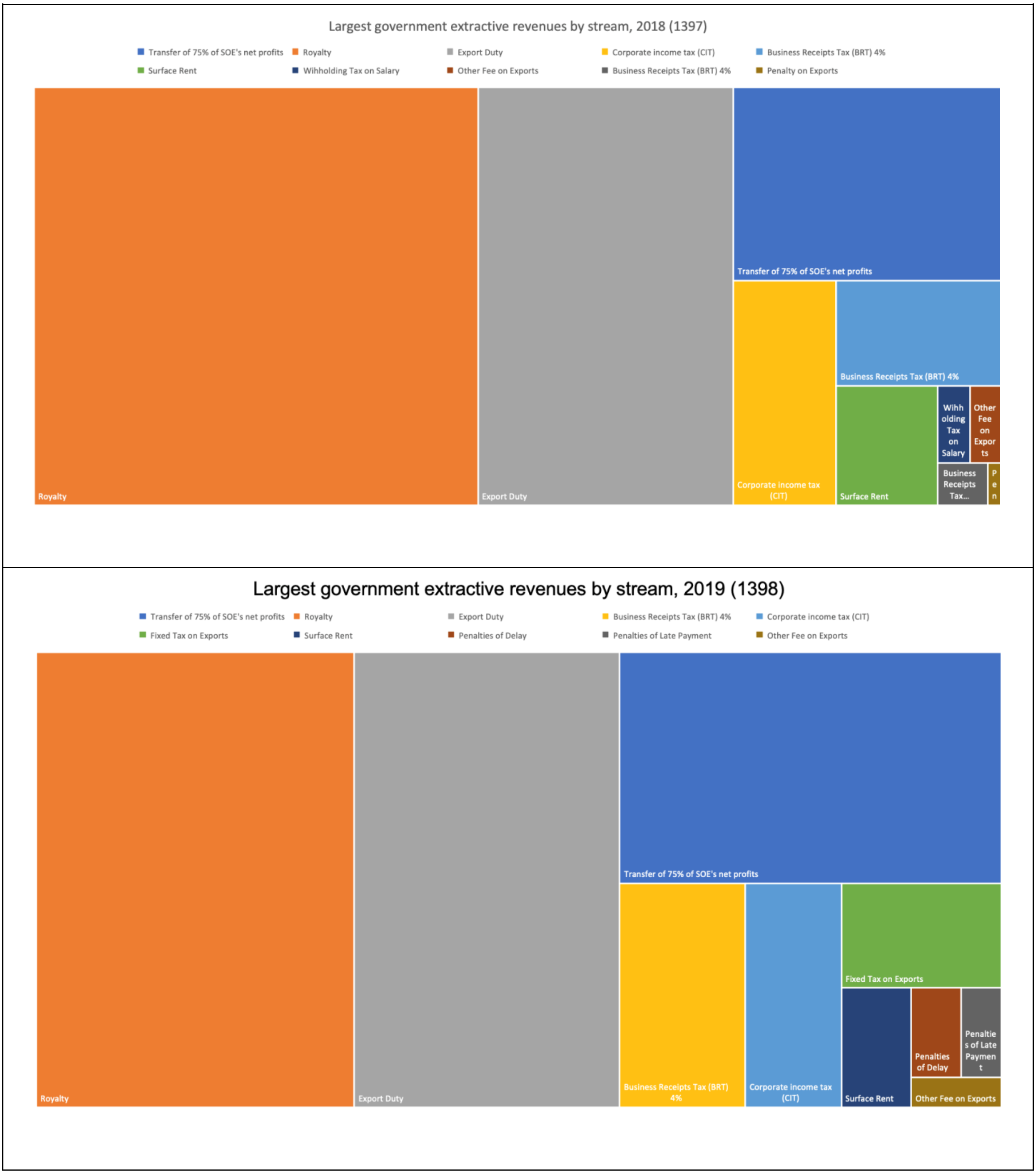
What's material? Largest revenue streams in 1397-1398

The top ten largest revenue streams from the extractive industries to government in 1397 and 1398 consist of revenues collected by three government entities: the Ministry of Finance's Revenue Department (Large Taxpayer Office), the Customs Department and the Ministry of Mines and Petroleum's Revenue Department.

The government's unilateral disclosure of extractive revenues provided in the Summary Data Tables (SDTs) for 1397 and 1398 (available here) includes revenues levied on imports. These revenue streams include Import Duty, BRT on Imports, Fixed Tax on Imports, Other Fee on Imports and Penalty on Imports. The first two revenue streams (Import Duty and BRT on Imports) in particular are listed as among the top government extractive revenue streams by value in both 1397 and 1398. However, the MSG has agreed to exclude these revenue streams on imports given that they are not considered to be forms of levies on extractive companies' activities.

Figure 6 presents the value of the largest government revenue streams from the extractive industries in 1397 and 1398, drawing on AEITI summary data for the two years.

Figure 6 Largest government revenues from the extractive industries in 2018-2019 (1397-1398)



Source: Afghanistan's EITI summary data: http://aeiti.af/en/documents/category/data-for-7th-aeiti-report

Requirements of the EITI Standard that did not apply in Afghanistan in 1397-1398

The MSG has reviewed the extractive industry activities under the government's jurisdiction and not found any evidence of arrangements covering either transport revenues, barter-type arrangements or infrastructure provisions involving the government. It is possible that such provisions exist within private to private arrangements, but not involving revenues or benefits accruing to the government.

Barter arrangements and infrastructure provisions (Requirement 4.3)

The MSG has confirmed that there were no barter-type arrangements active in Afghanistan in 1397-1398. Indeed, there are no agreements that fit the description of "involving the provision of goods and services (including loans*, grants and infrastructure works), in full or partial exchange for oil, gas or mining exploration or production concessions or physical delivery of such commodities*."

Transport revenues (Requirement 4.4)

The MSG has confirmed that there were no revenues collected by either government or SOEs (Afghan Gas and North Coal) from the transportation of extractive commodities in 1397-1398.

Largest companies by payments to government in 1397-1398

The list of top mining, oil and gas companies ranked by the value of their annual payments to government has fluctuated widely in the 1388-1398 period. Signature bonus payments related to copper, oil and gas projects in 1388, 1391 and 1392 meant that companies making those payments (MCC-JCL and CNPCI-Watan Oil and Gas in particular) were the largest contributors to government revenues in those years. The one consistent trend during the 1388-1398 period is that the two SOEs – Afghan Gas and North Coal – were among the largest contributors to government revenues.

This trend continued in 1397 and 1398, when the two SOEs accounted for a combined 60.18% and 60.16% of government revenues respectively.

For this 7th AEITI Report, the MSG has decided to include mineral commodity exporters in the scope of the government's disclosures of extractive industry revenues for the first time. This is because mineral exporters account for a large share of the export duties and taxes paid related to mining commodity exports. Given that non-licensing owning companies were not included in the scope of past AEITI Reports, the inclusion of all mineral exporters in the scope of this report has caused larger value of export duties and taxes being disclosed in this report.

Table 10 presents the value of the largest 20 extractive companies' payments to government in 1397 and 1398, including mineral exporters.

Table 10 Annual top 20 extractives companies by (tax and non-tax) payments to government (1397-1398)

1397 (2018)

Company name	Revenues (USD)	Revenue %
North Coal Enterprise (NCE)	39,289,628	58.94%
Ghulam Sarwar Stanikzai Limited	3,262,157	4.89%
Sang Siya Afghanistan Limited	2,248,822	3.37%
Mohammad Omar Noorzai Limited	1,646,509	2.47%
Hakeem Tareen Limited	1,443,924	2.17%
Khoshak Brothers Co	1,245,473	1.87%
Zakir Fareed Limited	1,098,322	1.65%
Nasib Usmaan Limited	957,585	1.44%
تصدی کود برق بلخ Kod-e-barq Balk	927,768	1.39%
Dragon Oil sanduqli limited	925,940	1.39%
TP Afghanistan limited	828,943	1.24%
Afghan Gas Enterprise	825,777	1.24%
Nek Hakimzada Limited	770,712	1.16%
Hikmat Mohammad Sherzad Limited	737,343	1.11%
Usman Izzat Limited	695,900	1.04%
Farhan Zadran Limited	655,950	0.98%
Misaq-E Sharq Company	655,704	0.98%
Javed Liaqat Ali Limited	546,526	0.82%
Farshad Mohidi Limited	545,195	0.82%
Sajjad Hashimi Limited	535,555	0.80%

1398 (2019)

Company name	Revenues (USD)	Revenue %
North Coal Enterprise (NCE)	32,270,960	58.70%
Ghulam Sarwar Stanikzai Limited	2,064,295	3.75%
Usman Izzat Limited	1,445,917	2.63%
Sang Siyyaa Afghanistan Limited	1,165,651	2.12%
Khoshak Brothers Co	1,074,273	1.95%
Mohammad Omar Noorzai Limited	1,012,568	1.84%
Afghan Gas Enterprise	804,062	1.46%
Yasir Mohmand Limited	751,539	1.37%
Sahil Bilal Limited	710,567	1.29%
Noor Abas Khoshiwal Limited	612,533	1.11%
Farshad Mohidi Limited	608,439	1.11%
Farhan Zadran Limited	605,129	1.10%
TP Afghanistan limited	582,759	1.06%
Misaq-E Sharq Company	575,705	1.05%
Mirwais Qarizada Limited	533,360	0.97%
Hakeem Tareen Limited	513,266	0.93%
Hikmat Mohammad Sherzad Limited	498,827	0.91%
Nek Hakimzada Limited	489,247	0.89%
تصدی کود برق بلخ Kod-e-Barq	410,204	0.75%
Haji Nabi Jan Limited	400,542	0.73%

Source: Afghanistan's EITI summary data: http://aeiti.af/en/documents/category/data-for-7th-aeiti-report

How has the government revenue data been collected and disclosed?

The MSG decided to prepare the 7th AEITI Report, covering financial data for 1397-1398, on the basis of unilateral government disclosures of extractive revenues. There have been advances in systematic disclosure of sector-specific revenues collected by MOMP through the Transparency Portal, but not yet in tax disclosure.

Data collection for the 7th AEITI Report was conducted with the four government entities that collected extractive industry revenues in 1397-1398: the Ministry of Finance's Large Taxpayer Office, the Customs Department, the Ministry of Mines and Petroleum and the National Environmental Protection Agency.

These requests for data were sent in August 2020. The government entities' initial data disclosures were submitted to AEITI in September, with additional data collected in October-November 2020.

The data was collected by the AEITI Secretariat and handled according to the confidentiality provisions agreed by the MSG at its meeting on 22 September 2020 as part of its approval of the 7th AEITI inception report (see here).

Systematic disclosures of government extractive revenues data

Afghanistan operates a partial government disclosure of revenues from the extractive industries. The MOMP Transparency Portal discloses close to real-time unaudited non-tax revenue information disaggregated by company and by license.

However, while government tax revenue data is systematically maintained within the government's SIGTAS tax management system, disclosures to the same levels as non-tax revenues have been hindered by taxpayer confidentiality provisions in the 2009 Income Tax Law. The Afghanistan Revenue Department, part of the MOF, publishes annual tax collection reports for the period 1395-1400 in open data format.[40] The monthly revenue data is broken down by type of revenue-collecting department (LTO, MTO, STO, Mustofiats, Customs office) and split between tax revenues and customs revenues. The data is not further broken down by individual type of tax.

The MOMP, through its service provider RDF, has developed a virtual private network (VPN) to connect the MoF's SIGTAS, ASYCUDA and RMIS systems to the MOMP's MCAS and NTRS systems to primarily alert the tax authorities of Tax Identification Numbers (TIN) of companies awarded extractive licenses.

In preparing this 7th AEITI Report, the MSG identified some apparent inconsistencies in the data on the Transparency Portal. Table 11 presents a few examples of these apparent inconsistencies.

Table 11 Comments on apparent inconsistencies in the MOMP Transparency Portal

Company name	License number	Comments on the MOMP Transparency Portal data
Khoshak Brother Co.	EXPL 1/2006	This license is marked as expired, and yet there continue to be payments recorded as associated to this license until at least September 2020. However, no production is reported as associated with this license since September 2017 (even though the license is only marked as expired since July 2020). It is unclear why any production is recorded as being associated with this license given that the license is marked as 'exploration license' in the portal.
Khoshak Brother Co.	EXPL 2/2012	The license is marked as an "exploration license", so it is unclear why any production is recorded as associated with this license. It is also unclear why payments to MOMP are recorded up to September 2020, when production associated with this license is only reported up until July 2017.
TP Afghanistan Ltd	P EXPL 1/2013	It is unclear why the application date is the same as the date of award of the license. It is also unclear why there were three payments of surface rent associated with this license in 2018, but only one payment of surface rent in 2019 (and none so far in 2020).
Dragon Oil Sanduqli Ltd	P EXPL 2/2013	It is unclear why the application date is the same as the date of award of the license. It is unclear why no payments associated with this license were recorded in 2019 (there were three payments of Surface Rent in 2018). In the contract terms, it is unclear what the meaning of the following sentence is: "*Dragon Oil Sanduqil Limited has to pay 0.126 royalty for Curd Oil.*"
Hashimy Group	EXPL 7/2012	It is unclear why production associated with this license is reported up to and including in 2018, when the license is marked as an "exploration license" in the Transparency Portal. It is also unclear why royalty payments are reported for 2019, when the latest production figures reported are only for 2018.

Evolution of government extractive revenues over the past 12 years

The promise of significant revenues related to exploration and production of copper, oil and gas has not lived up to the expectations to date (i.e. in the 1388-1398 period). The majority of extractive activity, and hence revenues (when excluding signature bonuses) has been from small-scale mining and the two extractive SOEs- Afghan Gas Enterprise and Northern Coal Enterprise.

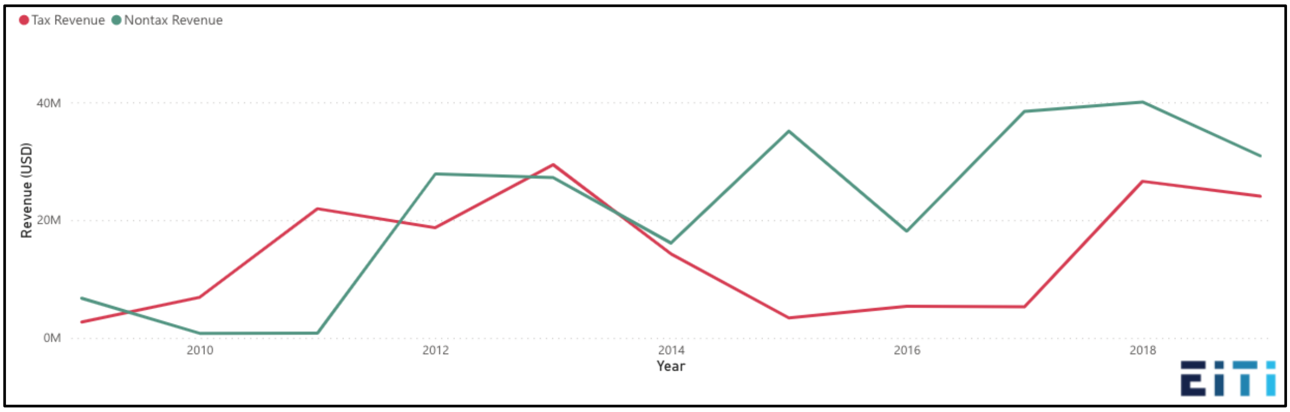
[40] Afghanistan Revenue Department website, 'Previous Years Domestic Revenue Reports', accessible on https://ard.gov.af/category/?s=english&c=Previous-Years-Domestic-Revenue-Reports

The signature bonuses paid related to the Mes Aynak copper project and CNPCI-Al Watan's oil and gas project in the years 1388, 1391 and 1392 skewed the trend of extractive revenues in the 1388-1398 period and should be excluded from a trend analysis of government revenues from the extractive industries.

The trend in tax revenues in the 1388-1398 period has been uneven, with a gradual rise in tax revenues from the extractive industries in 1388-1392 before a slump in tax revenues in 1393-1394. Tax revenues from the extractive industries has plateaued at a relatively low level since 1395.

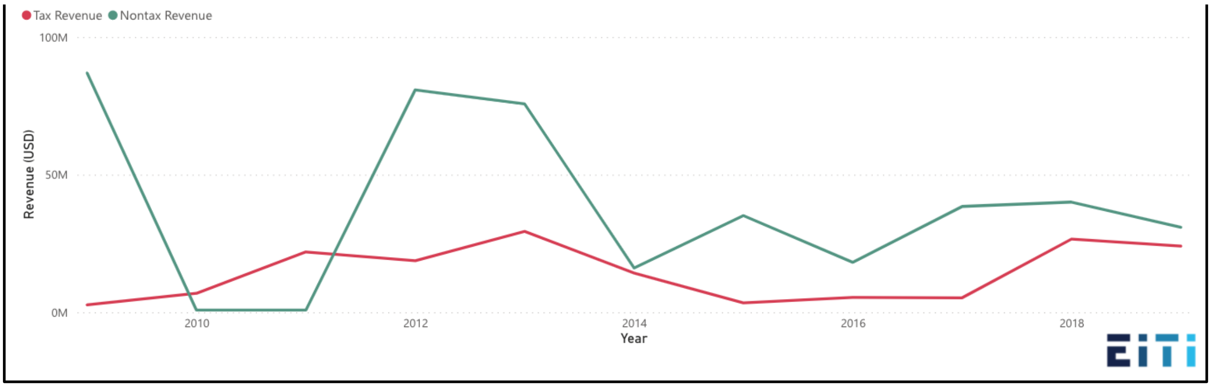
The trend in non-tax revenues in the 1388-1398 period has oscillated, with relative peaks in non-tax revenue collections in 1392, 1394 and 1396 and troughs in non-tax revenue collections in 1391, 1393 and 1395.

Figure 7 Tax v non-tax government extractive revenues, excluding signature bonus in 2009-2019 (1388-1398)



Source: Afghanistan's EITI summary data: https://drive.google.com/drive/folders/0B9Bl74fkjArzakIxaUlQbEN6NUU

Figure 8 Tax v non-tax government extractive revenues, including signature bonus in 2009-2019 (1388-1398)



Source: Afghanistan's EITI summary data: https://drive.google.com/drive/folders/0B9Bl74fkjArzakIxaUlQbEN6NUU

Key findings from analysis of government extractive revenues in 1397-1398

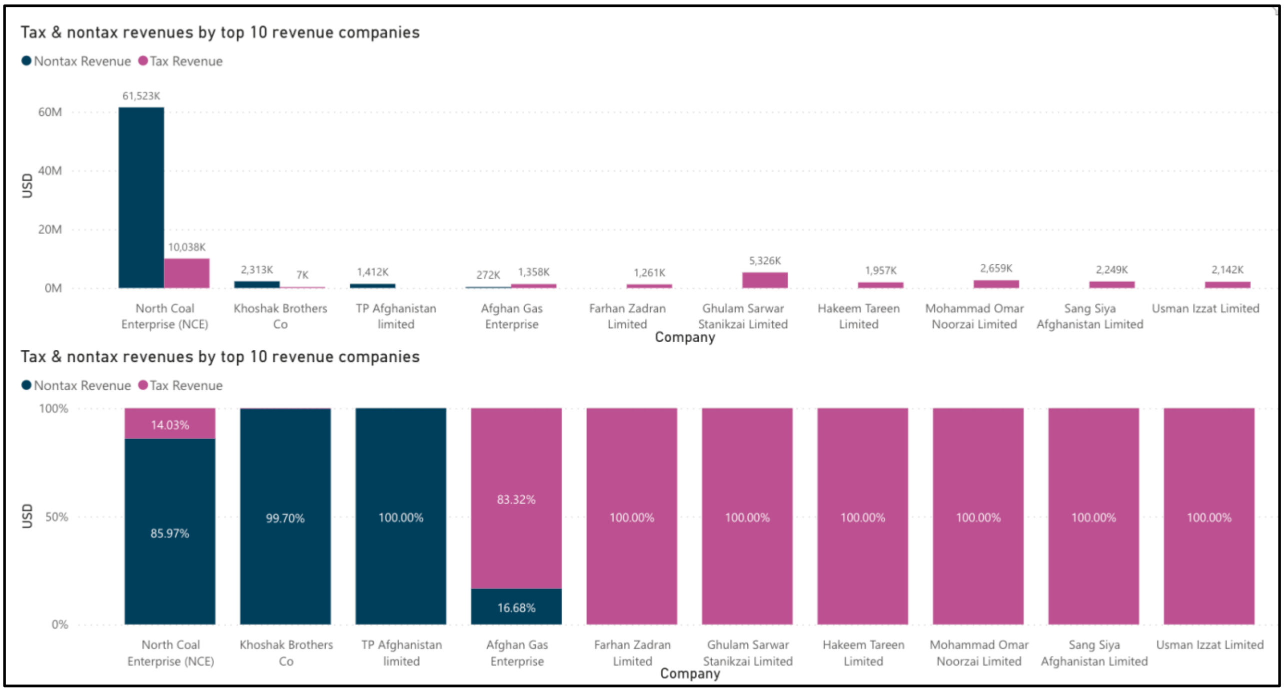
The financial data on government extractive revenues in 1397 and 1398, broken down per company, raises several questions. This report recommends that the government use the EITI to identify the answers to these types of questions, which might inform required improvements to governance processes.

Small number of mining, oil and gas companies paying both tax and non-tax.

Extractive companies tend to pay either tax (e.g. CIT, BRT-4%, various withholding taxes) or non-tax (e.g. royalties, license fees...), but rarely both in the same year. Only the larger extractive companies making payments to government tended to make both tax and non-tax types of payments in 1397 and 1398.

The data in the Summary Data Tables for 1397 and 1398 (available here) includes data on companies paying customs duties related to minerals, but that do not hold any extractive license. The MSG decided to include companies involved in the export of minerals in the scope of this report. Companies that do not hold a mining license do not make payments to the MOMP.

Figure 9 Composition of payments to government of top 10 extractive companies, by share of government revenues (in 1397-1398)



Source: Afghanistan's EITI summary data: https://drive.google.com/drive/folders/0B9Bl74fkjArzakIxaUlQbEN6NUU

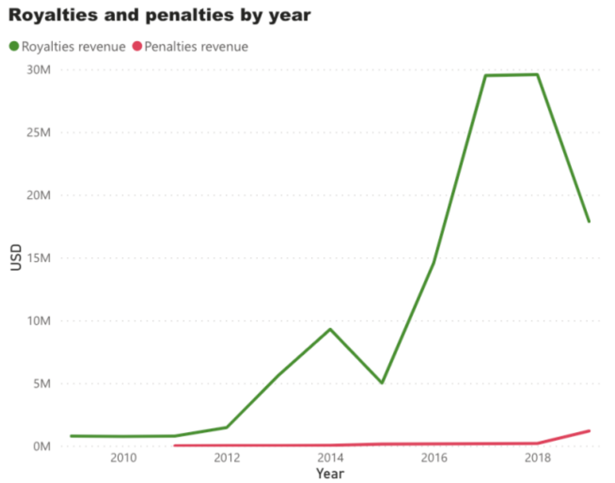
Some companies have paid penalties for late payment of both tax and non-tax.

Some mining, oil and gas companies have paid higher penalties for various reasons than they have paid actual tax – Corporate Income Tax (CIT) and BRT – 4%. The detailed per-company data in the Summary Data Tables for 1397 and 1398 (available here) reflect this. The reason for this is that companies have tended to pay their CIT and BRT with some delay. In some cases, this could have led to the whole payment being booked as a penalty.

Figure 10 Top ten companies by penalties paid in 2018-2019 (1397-1398); penalties vs royalties revenues in 2009-2019 (1388-1398)

Top 10 companies paid for penalties

Company name	Year	Revenues (USD)
North Coal Enterprise (NCE)	2019	954,523
Khoshak Brothers Co	2018	59,929
Amania Mining Company	2019	27,946
افغان گولد اند منرالز	2019	22,430
شرکت خدمات انجنیری جیو و معادن افغانایت Afghan Knight Geo & Mining Co	2019	17,312
شرکت استانه بابا	2018	17,086
Abdul Rahman Baba Steel & Iron Company	2019	13,915
Mohammad Omar Noorzai Limited	2018	12,204
Sang Siya Afghanistan Limited	2018	12,194
Ghulam Sarwar Stanikzai Limited	2019	9,979
Ghulam Sarwar Stanikzai Limited	2018	5,840
Mohammad Omar Noorzai Limited	2019	3,030
Amania Mining Company	2018	1,801
شرکت استانه بابا	2019	1,142
Total		**1,159,332**



Source: Afghanistan's EITI summary data: https://drive.google.com/drive/folders/0B9Bl74fkjArzakIxaUIQbEN6NUU

Qualifying Extractive Industries Taxpayers continued to pay BRT4% in 1397-1398

Qualifying Extractive Industries Taxpayers (QEITs) are legal entities that hold a mining license or is party to a hydrocarbons contract. Article 80 of the 2009 Income Tax Law indicates that BRT is not expected to be levied on QEITs, nor on the sales or transfers of mining or hydrocarbons licenses and contracts. However, extractive companies like MCC have continued to pay BRT to the Ministry of Finance's Large Taxpayer Office in 1397-1398. It should be noted that since this AEITI Report also covers payments from companies exporting mineral commodities, these companies are not exempt from BRT 4%.

The two extractive SOEs – Afghan Gas and North Coal – are considered QEITs and exempt from BRT. However, the SAO's audit of the two SOEs' 1395-1396 financial statements highlighted that the two continued to pay BRT 4% to the Ministry of Finance's Large Taxpayer Office in this period. The payments to government of Afghan Gas and North Coal indicate that the two companies continued to pay BRT to the LTO in 1397-1398. Table 12 presents the value of each SOE's BRT payments in 1397-1398 combined, and their share of total BRT payments from extractive companies in this period.

Table 12 Value of the two extractive SOEs' payments of Business Receipt Tax (BRT) in 2018-2019 (1397-1398)

Company name	Revenues (USD)	Revenue %
North Coal Enterprise (NCE)	4,722,009	75.51%
Afghan Gas Enterprise	553,586	8.85%

Source: Afghanistan's EITI summary data: http://aeiti.af/en/documents/category/data-for-7th-aeiti-report

While North Coal Enterprise dominates BRT payments by extractive companies, there have been sizable BRT revenues from extractive companies in several of the past 11 years, including in 2013, 2014, 2016 and 2019. Figure 8 presents the BRT's share of total extractive revenues in each of the past 11 years.

Figure 11 Mining, oil and gas companies' BRT payments to the Ministry of Finance over 2009-2019 (1388-1398)

Source: Afghanistan's EITI summary data: https://drive.google.com/drive/folders/0B9Bl74fkjArzakIxaUIQbEN6NUU

Implementing the exemption from BRT for extractive companies would lead to a loss of revenue for the government, of between 2% and 20% of extractive revenues depending on the year. Therefore, further analysis is recommended prior to considering any possible retrospective refund of a past BRT payments moving forward, especially given the pressures on the Afghanistan domestic revenue collection due to COVID-19.

From data collection to data analysis

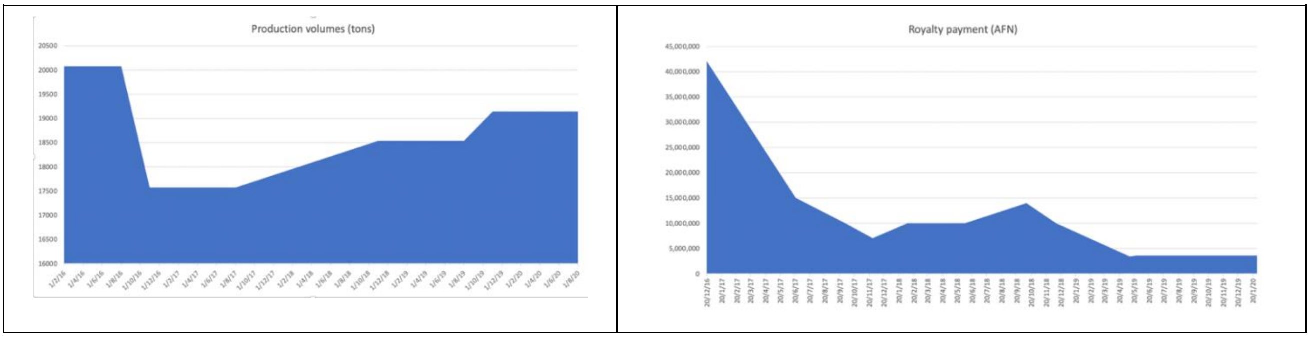
Afghanistan's EITI Reports to date have focused on publishing data on the extractive industries, including extractive companies' payments to government. They have not yet moved towards assessing whether mining, oil and gas companies' payments are in line with the legal, regulatory and contractual framework. Afghanistan's EITI reporting is not meant to duplicate the tax assessment and enforcement responsibilities of the Ministry of Finance's Revenue Department (ARD). Yet it does have a key role to play in communicating the mechanisms for collecting and managing revenues from the extractive industries, to a broad public audience of stakeholders including industry, civil society and the general public.

Analysis of non-tax payments based on Transparency Portal data

The MOMP's Transparency Portal provides license-level data on mining, oil and gas companies' production (on a quarterly basis), fiscal terms (including royalty rates) and non-tax payments to the MOMP (including royalties). On the basis of this information, it is now possible to make basic calculations of the value of royalties that should have been paid based on reported production and the fiscal terms of the specific contract. This data can then be compared to actual payments of royalties, providing for time gaps in the actual settlement of royalty liabilities, which can take place in the subsequent year. This type of analysis can form the basis for public discussion of whether specific mining, oil and gas companies are adhering to their contractual requirements related to non-tax payments to government.

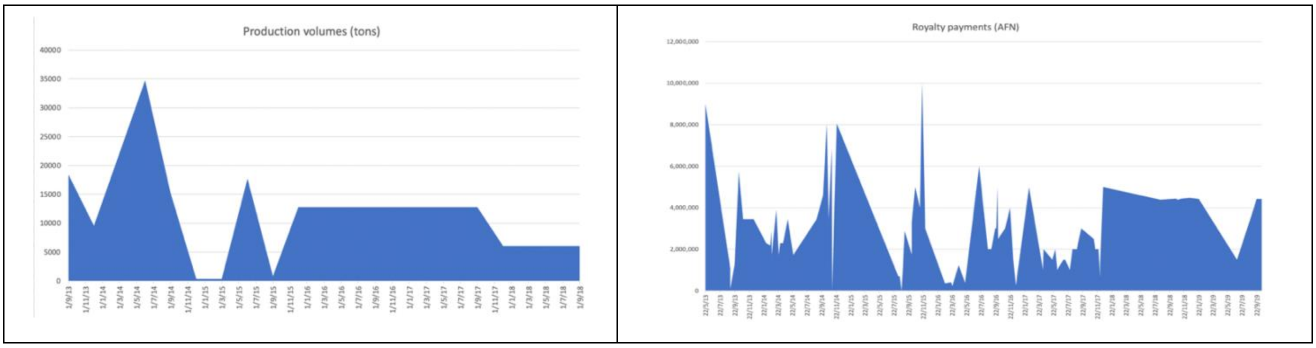
However, there are challenges with the data in the MOMP Transparency Portal. Figures 9-12 present the production volumes and royalty payments associated with specific mining licenses held by four companies.

Figure 12 Qarizada Tomato Paste Company's salt production and royalty payments, License SSML-Fary 5/2015, 2016-2019



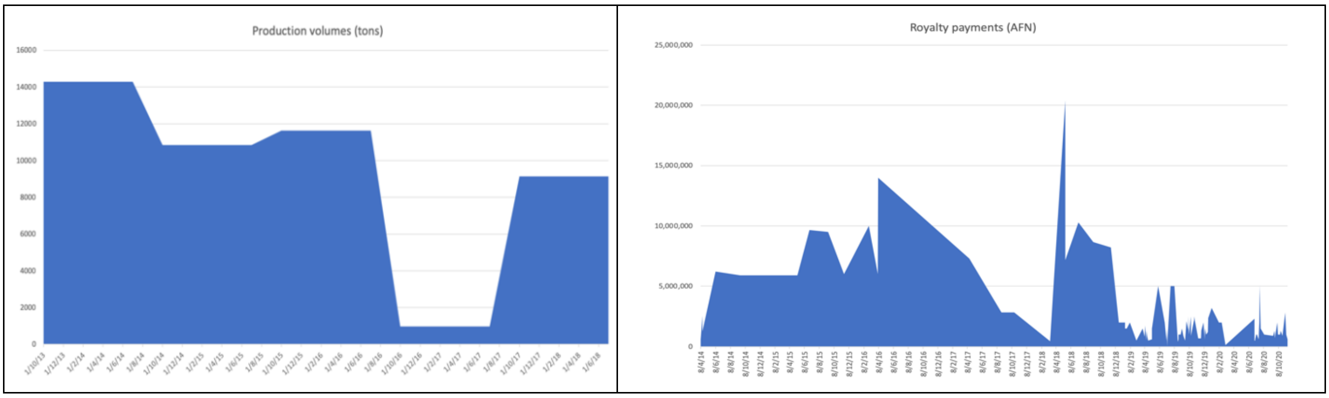
Royalty: AFN 1122 per ton. <u>Source</u>: MOMP Transparency Portal (https://transparency.mom.gov.af/license/7485)

Figure 13 Hashimy Group's coal production and royalty payments, License EXPL 7/2015, 2013-2019



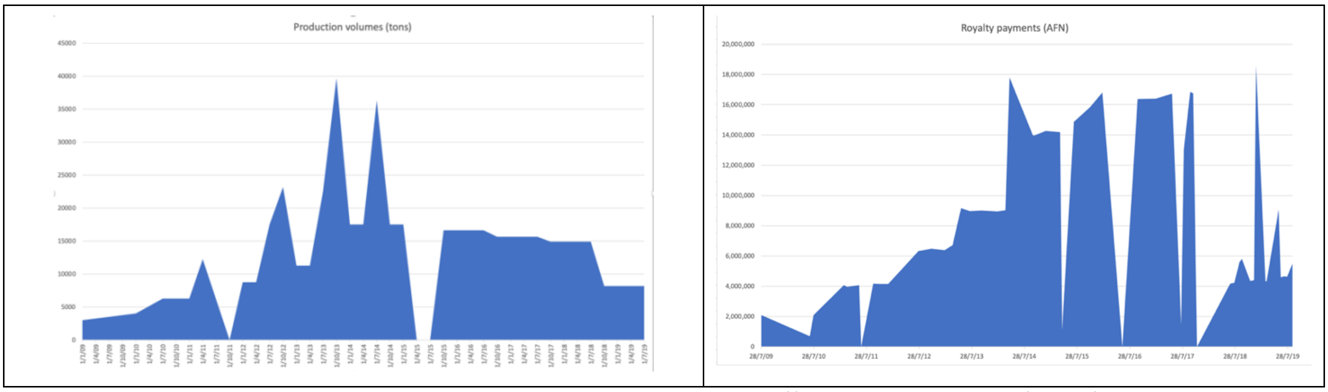
Royalty: AFN 1150 per ton. <u>Source</u>: MOMP Transparency Portal (https://transparency.mom.gov.af/license/696)

Figure 14 Khoshak Brothers Company's coal production and royalty payments, License EXPL 2/2012, 2013-2019



Royalty: AFN 1270 per ton. <u>Source</u>: MOMP Transparency Portal (https://transparency.mom.gov.af/license/358)

Figure 15 Misaq-E Sharq Company coal production and royalty payments, License EXPL 1/2009, 2009-2019



Royalty: USD 14 per ton. <u>Source</u>: MOMP Transparency Portal (https://transparency.mom.gov.af/license/716)

While there appears to be some correlation between production volumes and royalty payments in certain years, there is no such link in the majority of years. There are several possible explanations for this lack of correlation between reported production volumes and royalty payments to government, including:

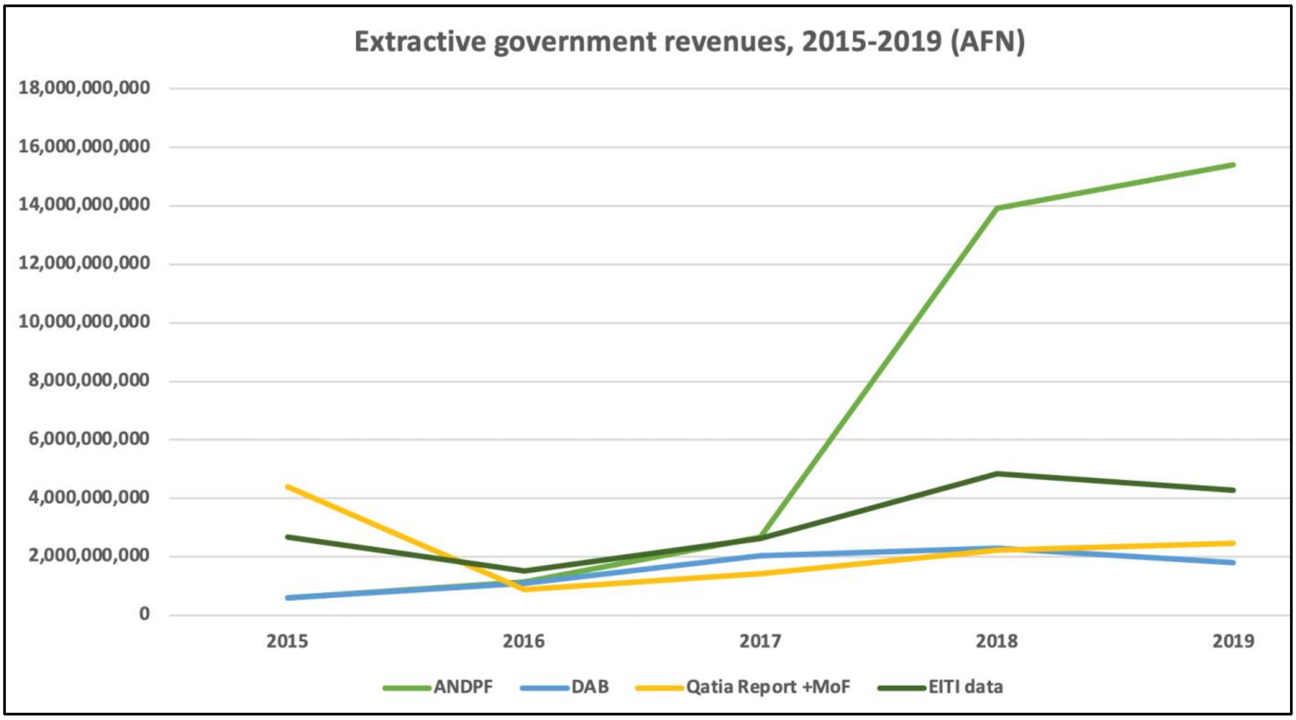
- Gaps in data on production and/or royalties disclosed on the MOMP Transparency Portal.
- Delays in the company's royalty payments, with delayed royalty payments possibly categorized as penalties rather than royalties.
- Significant backlog in royalty liabilities from previous years, which is unlikely given the royalty payments associated with these licenses were paid in previous years.

These four examples of Transparency Portal data for specific companies highlight the need for further explanations and potentially reforms to the Transparency Portal to ensure comprehensive and reliable data. The examples point to the need for caution in estimating specific companies' non-tax liabilities using Transparency Portal data. Further work on assessing the comprehensiveness and reliability of data in the Transparency Portal is needed. The AEITI could play a key role in providing annual diagnostics of the Transparency Portal.

Comparisons of actual extractive revenue collections against targets

Twelve years of AEITI data can also be compared to other sources, such as the aggregate extractive revenue data in the annual Qatia account reports. It is also possible to compare it to the (higher) extractive revenue projections in the 2017-2021 Afghanistan National Peace and Development Framework (ANPDF). Figure 9 presents such a comparison for 2015-2019 (1394-1398).

Figure 16 Government extractive revenues: Qatia, DAB and EITI against ANDPF projections in 2015-2019 (1394-1398)



Source: Government Qatia reports, Da Afghanistan Bank, ANDPF projections and AEITI data

The ANPDF I projections stand out as too optimistic compared to actual extractive revenue collection in the 2015-2019 (1394-1398) period. There are several reasons for this, including security concerns, legal and regulatory reforms in 2018-2019 and lower than projected commodity prices.

The ANPDF II framework[41] agreed at the Geneva Conference on 23-24 November 2020 provide revised projections for extractive revenue growth over 2021-2025.

Granular data: disaggregation to the project level (Requirement 4.7)

In order to ensure disaggregation in public disclosures of company payments and government revenues from oil, gas and mining that enables the public to assess the extent to which the government can monitor its revenue receipts as defined by its legal and fiscal framework, data on company payments to government and government revenues from the extractive industries should be disaggregated by company, revenue flow, recipient government entity and, where applicable, by license.

The MSG has agreed the following definition of project as confirmed at the G1 Working Group's 25 November 2020 meeting[42], for the purposes of EITI reporting:

A project is defined as operational activities that are governed by a single contract, license, lease, concession or similar legal agreement, and form the basis for payment liabilities with a government. The AEITI MSG is not aware of any projects in which multiple such agreements are substantially interconnected, and thus considers that projects are always defined per license in Afghanistan.

The MSG confirms that only non-tax revenue streams are levied on a per-license basis in 1397-1398. From 1399 onwards however, the Ministry of Finance's Large Taxpayer Office has implemented the tax ring-fencing provisions of the 2009 Income Tax Law and has started collecting tax revenues on a per license basis. In preparing this report, the Ministry of Finance clarified that most mining companies only operated one mine and already reported their payments by project. For the few companies holding several licenses, the MOMP would alert the Afghanistan Revenue Department to request the tax clearance for additional extractive projects and split the payments by project. Thus, for EITI reporting covering 1399 onwards, the MSG intends to publish data on both tax and non-tax payments to government disaggregated by project, which in the context of Afghanistan means disaggregated by individual license.

The following revenue streams collected by government were levied and collected either on a consolidated company basis or on a per-license basis, as confirmed by the MSG:

[41] Ministry of Finance (November 2020), 'Afghanistan National Peace and Development Framework (ANPDF II) 2021-2025', accessible on https://www.af.undp.org/content/dam/afghanistan/docs/Events/20201112-ANPDF%20II.pdf
[42] See G1 Working Group meeting minutes available here: http://aeiti.af/en/documents/category/working-group-meeting-minutes

Table 13 List of government extractive revenue streams, project-level vs company-level

Revenue stream	Government recipient	Levied by project or corporate entity
Corporate Income Tax (CIT)	MOF Revenue Department	Levied by corporate entity
Business Receipts Tax (BRT)	MOF Revenue Department	Levied by corporate entity
Export Duty	MoF Revenue Department	Levied by corporate entity
Fixed Tax on Exports	MoF Revenue Department	Levied by corporate entity
Import Duty	MoF Revenue Department	Levied by corporate entity
Other Fee on Exports	MoF Revenue Department	Levied by corporate entity
BRT on Imports	MoF Revenue Department	Levied by corporate entity
Fixed Tax on Imports	MoF Revenue Department	Levied by corporate entity
Other Fee on Imports	MoF Revenue Department	Levied by corporate entity
Withholding Tax	MoF Revenue Department	Levied by corporate entity
Penalties and Fines	MoF Revenue Department	Levied by license/project
Transfers of SOE net profits (dividends)	MoF	Levied by corporate entity
Customs Duty	MoF Customs Department	Levied by corporate entity
Fixed Tax	MoF Customs Department	Levied by corporate entity
Penalties and Fines	MoF Customs Department	Levied by corporate entity
Royalties	MOMP Revenue Department	Levied by license/project
Land Rent	MOMP Revenue Department	Levied by license/project
Late payment penalty	MOMP Revenue Department	Levied by license/project
Exploitation License Fee	MOMP Revenue Department	Levied by license/project
License Extension Fee	MOMP Revenue Department	Levied by license/project
Exploratory License Fee	MOMP Revenue Department	Levied by license/project
Bidding Fee	MOMP Revenue Department	Levied by license/project
Premium and Bonuses	MoMP Revenue Department	Levied by license/project
Penalties and Fines	MoMP Revenue Department	Levied by license/project
Surface Rights/Rental Fees	MoMP Revenue Department	Levied by license/project
Permitting Fee	MoMP Revenue Department	Levied by license/project
Environmental License Fees	NEPA	Levied by corporate entity
Environmental License Renewal Fees	NEPA	Levied by corporate entity
Waste Management License	NEPA	Levied by corporate entity

Source: AEITI, drawing on MOMP and Ministry of Finance Large Taxpayer Office data.

Timely data for policy-making and public debate (Requirement 4.8)

The MSG has agreed the reporting period for the 7th AEITI Report, which is Afghanistan years 1397-1398 (21 December 2017 - 20 December 2019). The disclosures in the 7th AEITI Report are presented on a cash accounting basis.

- For 1397, any payment made prior to 1 Jadi 1397 (21 December 2017) or after 30 Qaws 1397 (20 December 2018) will be excluded;
- For 1398 any payment made prior to 1 Jadi 1398 (21 December 2018) or after 30 Qaws 1398 (20 December 2019) will be excluded.

The AEITI MSG applied to the EITI Board for an extension on its reporting deadline of 20 December 2020 for publishing the EITI Report on fiscal 1397 (2017-2018), citing the impact of the Covid-19 pandemic on the preparations for this EITI Report. The EITI Board granted the extension on 18 February 2021.[43]

[43] EITI (February 2021), 'Afghanistan is eligible for an extension of the reporting deadline', accessible on https://eiti.org/board-decision/2021-07

Is the data complete and reliable? (Requirement 4.9)

Audit and assurance practices in both the government and extractives companies are still relatively weak in Afghanistan. While the rules for government audits are aligned with international standards, these have yet to be fully implemented in practice. The following review of audit and assurance practices is based on public reports including the overview of public-sector audit procedures in the 2018 Public Expenditure and Financial Accountability (PEFA) assessment.

How robust are extractive company audit and assurance practices?

The Corporation and Limited Liability Law has not required most companies in Afghanistan to appoint external auditors for the audit of their financial statements, aside from oil and gas contractors operating under Production-Sharing Contracts. However, the 2019 Mining Regulations have introduced provisions requiring all mining companies to have their annual financial statements audited by an external auditor. Compliance by companies with these audit requirements is unclear.

Companies are now required to follow the International Accounting Standards (IAS/IFRS) from the International Accounting Standards Board (IASB) in the preparation of their financial statements. The 2018 PEFA assessment confirms that most audit firms conduct audits according to the International Standard on Auditing (ISA).

Article 3 of the 2009 Income Tax Act sets the fiscal year from the first day of Hamal (21 March) to the last day of Hoot (20 March). Yet with exemption from the MoF, the majority of extractive companies in Afghanistan aside from SOEs (Afghan Gas and North Coal) appear to operate on accounting periods of 1 January – 31 December, while submitting annual income tax returns for the period 21 December – 20 December.

There is no publicly accessible source for assessing whether extractive companies undertake audits of their financial statements on an annual basis. None of the extractive companies operating in Afghanistan publish their financial statements (audited or not), aside from the two SOEs, Afghan Gas Enterprise and North Coal Enterprise.

How robust are government audit and assurance practices?

The Supreme Audit Office of Afghanistan (SAO) is independent from the executive branch of government, responsible for auditing the public sector's finances, service delivery, management and public assets. The SAO has the mandate to conduct Qatia Statement Audit, Financial Audits, Compliance Audits, Performance Audits, and special audits on pre-determined government institutions. Its mandate, functions, and powers are enshrined in the Supreme Audit Office Law.

Since 2013, the Supreme Audit Office (SAO) has adopted International Standards of Supreme Audit Institutions (ISSAI) as the national standards for its annual audits of budgetary government entities. Headquartered in Kabul, but with four provincial branch offices in Nangarhar, Balkh, Kandahar and Herat, the SAO is a member of the International Organization of Supreme Audit Institutions (INTOSAI). The SAO established a training institute with support from the European Union in 1398 (2019) and recruited 50 new auditors, who were undergoing the one-year training course in 1399 (2020) before assuming their functions at the SAO.

The SAO's independence is based on Articles 50, 75 and 98 of the 2004 Constitution of Afghanistan, which cover accountability in the budgetary process. The 2013 Audit High

Administration Law (AHAL) establishes the independence and neutrality of the SAO, which holds the legal responsibility to audit all budgetary units, the legislative branch, the AGO, independent commissions, ministries, municipalities and public–private partnership organizations at the national and local levels. The 2013 AHAL encouraged closer relations between the SAO and the Parliament's Finance and Budget Committee.

While Article 55 of the PFEM Law requires the MoF to publish both financial statements in line with international accounting principles and the Qatia accounts, it has only published Qatia accounts since 2011 (1390). Since 2013, the SAO has moved from examining public sector financial and accounting records directly to examining the public sector's financial reports to assess the strengths and weaknesses of internal audit practices.[44] The SAO has developed audit and compliance audit manuals consistent with ISSAI 300 and 400. The PEFA assessment notes that documentation is limited to supporting documents for the audit observations, without review of the audit report's compliance with applicable standards. The SAO's audits of the Qatia accounts are based on INTOSAI's International Standards for Supreme Audit Institutions (ISSAIs), as confirmed in its audit opinions on the 1397 and 1398 Qatia accounts.

Since 2002, the SAO has contracted a number of audit consultancy companies (including PKF International, Deloitte and SN Nanda & Co) to provide capacity building to SAO staff. This training has helped improve the SAO staff's technical capacities in audit planning, execution, reporting and adherence to INTOSAI standards. The SAO staff is able to conduct Qatia Audit, Compliance Revenue Audit, Compliance Expenditure Audit and World Bank Grants and ARTF Audit.[45]

The SAO's annual Qatia account audit reports are financial report comparing annual financial performance against budgeted revenues and expenditures. The SAO produces three audit reports on an annual basis: a Compliance Audit Report on revenues, a Compliance Audit Report on operational expenditures and a Compliance Audit Report on development expenditures (investment). While extrabudgetary funds and autonomous agencies are not consolidated in the government financial statements, there do not appear to be any such entities collecting extractive industry revenues in Afghanistan. The Qatia accounts provide information on budget, revenue, expenditure, cash balances, financial assets and liabilities, with a supporting reconciled cash flow statement. The Qatia accounts do not provide information on guarantees and other contingent liabilities, such as those related to PPPs. As confirmed in the SAO's 1398 annual report, its first ever, the SAO's audit of the Qatia accounts is limited to a review of budgetary compliance but does not cover individual transactions at a granular level.[46]

The SAO's Qatia reports focus on audit findings rather than the full set of findings and recommendations, which are communicated separately by the SAO to the relevant Ministries. The SAO reviews support their findings in the Qatia but provide little insight into a Department's operations or performance. In 2015, the civil society organization Integrity Watch Afghanistan quoted a SAO Director of Plan and Policy who noted the uneven implementation of SAO

[44] Integrity Watch Afghanistan and Transparency International (2015), 'National integrity system assessment: Afghanistan 2015', accessible on https://images.transparencycdn.org/images/2015_AfghanistanNIS_EN_V2.pdf

[45] NPA (2017), 'Terms of Reference (tor) for consultancy services firm to support audit operations and capacity development within the Supreme Audit Office (SAO)', accessible on http://legacy.npa.gov.af/Uploads/NPA9990/BiddingOpportunities/2492/BidDocuments/TOR%20Consultancy%20firm%20Services%20to%20Support%20Audit%20Operations%20and%20Capacity%20Development%20within%20the%20%20(SAO).pdf

[46] Supreme Audit Office (September 2020), 'SAO 1398 (2019) annual report', accessible on https://sao.gov.af/en/sao-annual-reports , p.41.

recommendations by public-sector departments, due to a lack of penalties for not following the recommendations.[47]

In the 1397 Qatia, total tax revenues were reported as 113% of advance estimated revenue, and 97% of assessed revenue, while total Customs revenues were reported as 89% of advance estimates and 100% of assessed revenues, according to the Independent Joint Anti-Corruption Monitoring and Evaluation Committee's (IJACMEC) January 2020 vulnerability to corruption assessment of the Ministry of Finance.[48]

In June 2019 (1398), the Minister of Finance issued a memorandum banning investigative and security agencies including the SAO from investigating or monitoring revenue-generating departments of the Ministry of Finance according to the Special Inspector General for Afghanistan Reconstruction's (SIGAR) January 2020 report to the US Congress.[49] However, this directive does not extend to the SAO's audit of the Qatia accounts, as confirmed by the Ministry of Finance and SAO in preparing this report. Indeed, the Ministry of Finance representatives consulted in preparing this report quoted a December 2020 response from the Afghanistan Revenue Department to the SIGAR report, which noted that the SAO continued to audit the Ministry of Finance.[50]

Government audit timeline

The PFEM Law requires all ministries and independent directorates to submit their annual Qatia accounts to the MoF's Treasury Department with a copy to the SAO by the end of the first month of the subsequent fiscal year. Upon receipt, the Treasury Department consolidates these accounts and submits to the SAO for auditing within three months in the next financial year. In turn, the SAO is required to complete and submit an audit report on the Qatia accounts within six months of the end of the fiscal year.

However, the PEFA assessment explains that the three-month timeline for MoF to submit Qatia accounts to the SAO was not complied within the 2016 (1395) Qatia accounts submitted to the SAO on 10 April 2017. In the years 1393-1395, there was some delay in the MoF's submission of Qatia accounts to the SAO, although the SAO respected the six-month deadline. Although the 1397 Qatia accounts were submitted by the MoF to the SAO with only four days delay on the deadline, the 1398 Qatia accounts were submitted to the SAO with 41 days delay on the deadline.

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[47] Integrity Watch Afghanistan and Transparency International (2015), 'National integrity system assessment: Afghanistan 2015', accessible on https://images.transparencycdn.org/images/2015_AfghanistanNIS_EN_V2.pdf

[48] Independent Joint Anti-corruption Monitoring and Evaluation Committee (January 2020), 'Ministry-wide vulnerability to corruption assessment of the Ministry of Finance', accessible on https://mec.af/wp-content/uploads/2020/07/English-MOF-MVCA-Final-Draft-June-2020.pdf

[49] Special Inspector General for Afghanistan Reconstruction (January 2020), 'Quarterly report to the United States Congress', accessible on https://www.ecoi.net/en/file/local/2023927/2020-01-30qr.pdf

[50] See 'Justification to SIGAR Report "claimed banning of MoF audit" document on the AEITI website, '7th AEITI Report data' section, accessible on http://aeiti.af/en/documents/category/data-for-7th-aeiti-report?page=1

Table 14 Timeliness of Qatia account reporting

Fiscal year covered by Qatia report	Date of submission of Qatia accounts to SAO	Date of SAO Audit Report submission to Parliament
1393	26 April 2015	21 June 2015
1394	8 June 2016	21 June 2016
1395	10 April 2017	21 June 2017
1396	13 May 2018	21 June 2018
1397	20 March 2019	7 June 2019
1398	1 May 2020	28 July 2020

Source: Ministry of Finance, Public Expenditure and Financial Accountability (PEFA) Assessment 2018 on https://www.pefa.org/sites/pefa/files/assessments/reports/AF-Jun18-PFMPR-Public-with-PEFA-Check.pdf

The SAO published its audit opinion together with the 1397 (2018) Qatia accounts reports[51] in December 2019 (1398). The SAO published only its audit opinion on the 1398 (2019) Qatia accounts[52] in December 2020, and the Qatia account reports themselves (in Dari) in February 2021.[53] In preparing this 7th AEITI Report, the Ministry of Finance provided the AEITI with a spreadsheet extracting the value of extractive industry revenues from the 1398 Qatia account report.

The Parliament's Public Accounts Committee (PAC) has the responsibility to review the SAO's annual audits of the Qatia accounts. However, it does not receive other SAO audit reports, such as compliance audits or performance audits, as highlighted in the SAO's 1398 (2019) annual report.[54] The list of Parliamentarians member of the Public Accounts Committee (and their contact details) is listed on the Parliament (Wolesi Jirga) website.[55]

SAO audit opinions on 1397 and 1398 Qatia accounts

The SAO's audit of 1397 (2018) Qatia accounts concluded an unqualified opinion on the accuracy of the Qatia accounts, noting that these represented a true and fair representation of budget execution in the year reviewed.[56] The SAO's audit of 1398 (2019) Qatia accounts did not conclude on an opinion on the accuracy of the Qatia accounts.[57] The SAO's disclaimer of opinion noted that it was "not (…) able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion on the Qatia Statements." This disclaimer was based on the delays in the

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[51] Supreme Audit Office (December 2019), 'Auditor General's Report & Opinion Qatia Statements of FY 1397', accessible on https://sao.gov.af/sites/default/files/2019-11/Final%20with%20Cover%20Page%20Qatia%20Audit%20Report%201397-V5.pdf

[52] Supreme Audit Office (December 2020), 'Qatia Audit Report: Independent Audit Report of the Auditor General of Afghanistan on Qatia Statements for the fiscal year ended 30th Qaws 1398, 21st Dec 2019', accessible on https://sao.gov.af/sites/default/files/2020-09/Audit%20Opinion%20on%201398-2019%20Qatia%20Statements.pdf

[53] See '1398 حساب قطعیه' report on the SAO website, 'Government Qatia Account Reports (Dari)', accessible on https://sao.gov.af/index.php/dr/%DA%AF%D8%B2%D8%A7%D8%B1%D8%B4-%D9%87%D8%A7%DB%8C-%D8%AD%D8%B3%D8%A7%D8%A8-%D9%82%D8%B7%D8%B9%DB%8C%D9%87-%D8%AF%D9%88%D9%84%D8%AA

[54] Supreme Audit Office (September 2020), 'SAO 1398 (2019) annual report', accessible on https://sao.gov.af/en/sao-annual-reports , pp.11-12,45.

[55] Wolesi Jirga (House of the People) website, House of People Commissions Members- 16th Term- 17th Year, accessible on http://wolesi.website/pve/showdoc.aspx?Id=6530

[56] Supreme Audit Office (December 2019), 'Auditor General's Report & Opinion Qatia Statements of FY 1397', accessible on https://sao.gov.af/sites/default/files/2019-11/Final%20with%20Cover%20Page%20Qatia%20Audit%20Report%201397-V5.pdf, p.5.

[57] Supreme Audit Office (December 2020), 'Qatia Audit Report: Independent Audit Report of the Auditor General of Afghanistan on Qatia Statements for the fiscal year ended 30th Qaws 1398, 21st Dec 2019', accessible on https://sao.gov.af/sites/default/files/2020-09/Audit%20Opinion%20on%201398-2019%20Qatia%20Statements.pdf, pp.1-2.

Ministry of Finance's submission of documents required for the SAO's audit and the fact that the SAO was not provided access to three key Ministry of Finance information management systems, namely SIGTAS (for Treasury management), ASYCUDA (for Customs management) and the Debt Management Information System. The SAO's disclaimer of opinion means that there are no independent assurances of the comprehensiveness and reliability of revenues reported in the 1398 (2019) Qatia accounts.

A representative of the Afghanistan Revenue Department (ARD) has reported to the AEITI that the 1398 Qatia was certified by the SAO after the necessary corrections. However, the SAO's audit opinion on the 1398 Qatia accounts published on the SAO website retains a disclaimer of opinion on the 1398 accounts.

How robust are SOE audit and assurance practices?

The SAO has the statutory authority to audit the financial statements of the various branches of government, including state-owned enterprises. However, it was only in 1398 that the SAO conducted the first audit ever of Afghan Gas Enterprise and North Coal Enterprise's 1395-1396 financial statements, a financial compliance audit. These audits resulted in adverse opinions by the SAO in both cases, indicating material misstatements.

The MOMP has requested the SAO to undertake audits of the two SOEs' (AGE and NCE) financial statements covering 1397-1398. Following submission of the management response and follow-up on the SAO recommendations in November 2020, the SAO started the audit of the two SOEs' 1397-1398 financial statements in the first quarter of 2021. The audits are expected to be completed in the second quarter of 2021.

Governance risks

The seventh Open Budget Survey (OBS) in April 2020 registered a drop in the SAO's transparency score (from 67 to 50, where scores of 61 or above indicate that a country is likely publishing sufficient material to support informed public debate on the budget) due to the office's weak independence in terms of its budget and the appointment of its top management.[58]

The SAO's financial and administrative management is governed under the Civil Service Act, meaning that positions, recruitment and pay are partly outside the control of SAO management.[59] The U4 Anti-Corruption Resource Centre has highlighted close connections between past SAO leadership and national politicians and considers that "the SAO does not wield the independence necessary for Afghanistan to meet international auditing institution standards", recent reforms notwithstanding.[60] The IJACMEC's January 2020 vulnerability to corruption assessment of the Ministry of Finance quoted Afghanistan Revenue Department (ARD) officials claiming that SAO

[58] Integrity Watch Afghanistan (April 2020), 'Open Budget Survey 2019: Afghan Government fails to further open up its budget as reform efforts stall', accessible on https://iwaweb.org/news/open-budget-survey-2019-afghan-government-fails-to-further-open-up-its-budget-as-reform-efforts-stall/
[59] Swedish National Audit Office website, 'Afghanistan' development cooperation webpage, accessible on https://www.riksrevisionen.se/en/international-operations/development-cooperation/afghanistan.html
[60] U4 Anti-Corruption Resource Centre (2019), 'Corruption in Afghanistan and the role of development assistance', accessible on https://www.u4.no/publications/corruption-in-afghanistan-and-the-role-of-development-assistance

staff were open to bribery to under-report discrepancies between expenditures not justified by supporting documentation, identified during the audit process.[61]

Reform of public-sector audit legislation

The SAO Law was revised through Presidential Legislative Decree 45 on 5 March 2020 (15/12/1398) (the new SAO law is available here in Dari and here in English), expanding the SAO's mandate and operating procedures. The law was implemented upon adoption. The legal changes align the SAO's role and mandate with the Lima Declaration of Guidelines on Auditing Precepts and the Mexico Declaration on Supreme Audit Institutions' Independence. The law expanded the SAO's mandate to include conducting emerging types of audits such as performance, forensic, system and environmental audits.

A full and accurate picture? Assessment of comprehensiveness and reliability

In preparing this 7th AEITI Report under an alternative approach, the MSG has led the data collection and analysis process through its G1 Working Group. This work has been conducted in accordance with the Terms of Reference for this 7th AEITI Report (accessible here), agreed by the MSG on 20 July 2020.

To ensure the reliability of financial data disclosed in this report, the MSG has agreed measures to ensure the reliability of disclosures of government revenues from mining, oil and gas in 1397-1398. These consist of an attestation by each of the reporting government entities that the data submitted for this 7th AEITI Report is complete and accurate. The following government entities provided this attestation: MoMP-GD. Cadaster, MoMP-Mining Inspection Directorate, MoMP-GD of Hydrocarbons, MoMP-Revenue Management Directorate, MoMP-General Directorate-LSM, MoMP- Mining Protection Committee, MoMP- HR Directorate, MoF- SOEs General Directorate, MoF- Large Scale Economy Directorate, MoF- ARD, MoF- ACD, NCE, AGE, JSCE, and NEPA,.

In addition, the MSG requested that the SAO provide a certification of the government revenue data in this report but SAO did not certify the financial data for the 7th AEITI Report. Rather, the SAO referred to the ongoing audit of the two extractive SOEs' 1397-1398 financial statements, expected to be published by the end of April 2021, and its completed audits of the 1397 and 1398 Qatia accounts.

The MSG has reviewed assurances received related to the 1397-1398 financial data on extractive industry revenues submitted for this 7th AEITI Report by the Ministry of Finance (including the LTO and Customs Department) and the Ministry of Mines and Petroleum. The MSG considers that these assurances confirm that the financial data in this report is consistent with the revenue data submitted by the Ministry of Finance as part of the 1397 and 1398 Qatia accounts. Given the SAO's unqualified opinion on the 1397 Qatia accounts, the MSG considers that the financial data related to 1397 in this report represents a comprehensive and reliable representation of government revenues from the extractive industries in 1397 (2018). However, given the SAO's disclaimer of opinion on the 1398 Qatia accounts, the MSG does not consider that

[61] Independent Joint Anti-corruption Monitoring and Evaluation Committee (January 2020), 'Ministry-wide vulnerability to corruption assessment of the Ministry of Finance', accessible on https://mec.af/wp-content/uploads/2020/07/English-MOF-MVCA-Final-Draft-June-2020.pdf

the financial data related to 1398 in this report represents a comprehensive and reliable representation of government revenues from the extractive industries in 1398 (2019).

Recommendations

6. The AEITI MSG is encouraged to pursue a dialogue with the four revenue-collecting government agencies to explore ways of systematically disclosing the extractive revenues they collect, potentially adding aggregate revenue tables to the MOMP's Transparency Portal.
7. The management of Afghan Gas State Owned Corporation and North Coal Enterprise, in collaboration with the National Development Corporation, should develop a response to past audit findings that addresses the two SOEs' ongoing payments for BRT 4% despite their exemption from this tax under the 2009 Income Tax Law. The Afghanistan Revenue Department is advised to consult the SOEs on these payments and how the past payments will be addressed.
8. The AEITI should undertake an annual diagnostic of the comprehensiveness and reliability of production and non-tax revenue data in the MOMP Transparency Portal. The MOMP should draw on the findings of this diagnostic to further improve the coverage, quality and accessibility of data in the Transparency Portal. The AEITI may consider more data visualizations of specific companies' (or groups of companies) payments to government against their reported production.
9. The Ministry of Finance is invited to work with the AEITI to explain the reasons for the lack of achievement of past domestic revenue targets for the extractives (e.g. in ANPDF I), with a view to strengthening the government's domestic revenue mobilization efforts.
10. The Ministry of Finance and the Ministry of Mines and Petroleum should sanitize their extractive revenue data in accordance with the EITI Summary Data Template to ensure that EITI data is prepared in a timely and inter-operable manner. The AEITI to act as advisor for the Ministries in their duration of government extractive revenue data.
11. The EITI to coordinate regular updates of data and statistics published on government and company websites to ensure that publications are institutionalized as systematic disclosures, published in a timely manner (ideally within a year of the end of the fiscal period covered) on relevant websites.
12. The Ministry of Finance is urged to ensure timely cooperation with the SAO's requests for access to internal controls, supporting documents and other related data to enable it to complete audits of the Qatia accounts in accordance with International Standards of Supreme Audit Institutions (ISSAIs). The Ministry of Finance is encouraged to formulate a public response to the SAO's disclaimer of opinion on the 1398 Qatia accounts and to announce plans to remedy such shortcomings in future years.
13. The MSG should ensure that it plans coordination with the SAO as part of the annual AEITI work plan to ensure that the SAO is able to provide some form of certification for the financial data (on government revenues) in future AEITI Reports, ideally in conjunction with its annual audit of the Qatia revenue account.
14. The MSG highly recommends that SAO should strengthen and improve its audit procedures and practices by implementing international audit standards in its audits of government extractive revenues.

Chapter 4

Management of revenues from the extractive industries

WHAT IS CONTAINED IN THIS CHAPTER?

This chapter provides an overview of the management of extractive industry revenues in Afghanistan, information on audits performed by the MOMP and links to the budget execution reports of Afghanistan for further reading (EITI Requirement 5.3). The objective is to strengthen the public's understanding of how extractive industry revenues are managed.

Accounting of Extractives Revenues in Afghanistan

Afghanistan operates a single Treasury account system. Laws in both the mining and oil and gas sectors require that all payments be made to the single Treasury account.

Article 49 of the 2018 Minerals Law requires that all revenue payable under the law, including royalties, surface rent, fees and penalties be paid into the general revenue account of the state. These payments are to be allocated a code in the state's revenue accounts to identify it as mining revenue. In terms of actual implementation, mining revenues are deposited with codes given by the MOMP non-tax revenue sub-account in Kabul or though provincial directorates (Mastofiats). However, the codification of these revenues on a per-company basis as required by the law has not yet been implemented.

Similarly, Article 81 of the 2017 Hydrocarbons Law requires that all revenues generated from hydrocarbons operations, including issuing licenses, be deposited into the state's bank account. In practice this has meant that the revenues from hydrocarbons have also been deposited in the single Treasury account.

There are no earmarked extractive industry revenues in Afghanistan, aside from the provisions related to subnational transfers of mining non-tax revenues that have not yet been implemented as of 1399 (2020) (*see chapter on 'subnational contributions'*).

Budget Execution Reports

The Ministry of Finance publishes the country's budget execution reports several times each month, available here.[62] Annual budget execution reports (Qatia reports) are also published by Afghanistan. For the 1397 and 1398, Afghanistan's budget execution reports provide a good practice example of budget transparency, providing for details such as project-by-project expenditures, and budget utilization details by classifications such as discretionary and non-discretionary expenditures.

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[62] Directorate General of Budget, Ministry of Finance, website, 'Budget execution reports', accessible on http://www.budgetMOF.gov.af/index.php/en/85-news/291-budget-execution-rate1

For the years 1397 and 1398, the Qatia reports have been audited by the Supreme Audit Office.[63] The detailed SAO opinion on the Qatia accounts is available here for 1397, and here for 1398. However, while the English version of the Qatia accounts themselves had been published for previous years on the SAO website, it was not published for 1398 (2019).

Recommendation

15. It is recommended that the AEITI MSG follow up with the Ministry of Finance and SAO on the reasons for non-publication of the detailed Qatia account reports in Dari, Pashto and English.
16. The MOF should ensure that the annual Qatia report is completed on time and submitted to the SAO in a timely manner to ensure that the SAO's for on annual audit of the Qatia accounts can be completed in accordance with the timelines set out by law.

[63] Supreme Audit Office website, 'Government Qatia Accounts', accessible on https://sao.gov.af/index.php/en/government-qatia-accounts-reports

Chapter 5

Overview of the extractive industries

WHAT IS CONTAINED IN THIS CHAPTER?

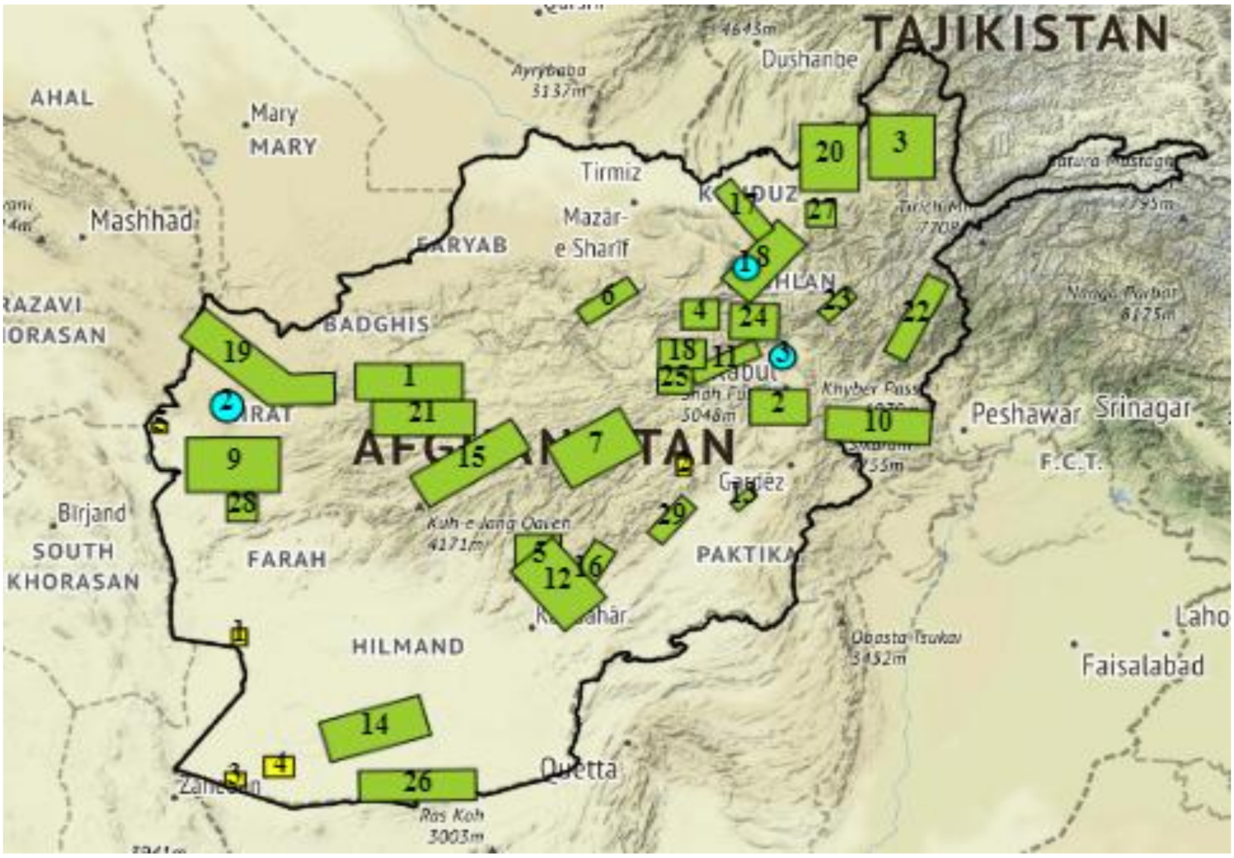
This chapter provides information on the exploration activities ongoing in the extractives sector (EITI Requirement 3.1) and the contribution of the extractives sector to the economy (EITI Requirement 6.3). Going beyond the requirements of the EITI Standard, 2019, the geological data of Afghanistan is also provided in this Chapter. Together, these datasets provide a comprehensive overview of the extractives sector in Afghanistan.

Mineral Occurrences in Afghanistan

There are considerable mineral deposits in Afghanistan which have been mapped in detail by the United States Geological Survey (USGS). Figure 22 below provides an overview of mineral occurrences in Afghanistan in the form of *Areas of Interest*- the green boxes denoting minerals, blue circles denoting cement and yellow boxes denoting lithium. The details of these deposits, as well as geological data pertaining to each individual area of interest are available by clicking the online interactive map available here: https://afghanistan.cr.usgs.gov/infopack-index.

Figure 17 below displays the areas of interest identified by USGS for mining feasibility studies for the Government of Afghanistan.

Figure 17 Areas of interest in mining



Source: https://afghanistan.cr.usgs.gov/infopack-index

The government has found the USGS geological data to be accurate and comprehensive, but has argued that making Afghanistan's detailed geological datasets available online was necessary to abide by the principle of treating geological data as a public good, as a means of promoting investment in the mining sector.

Informal and illegal mining in Afghanistan

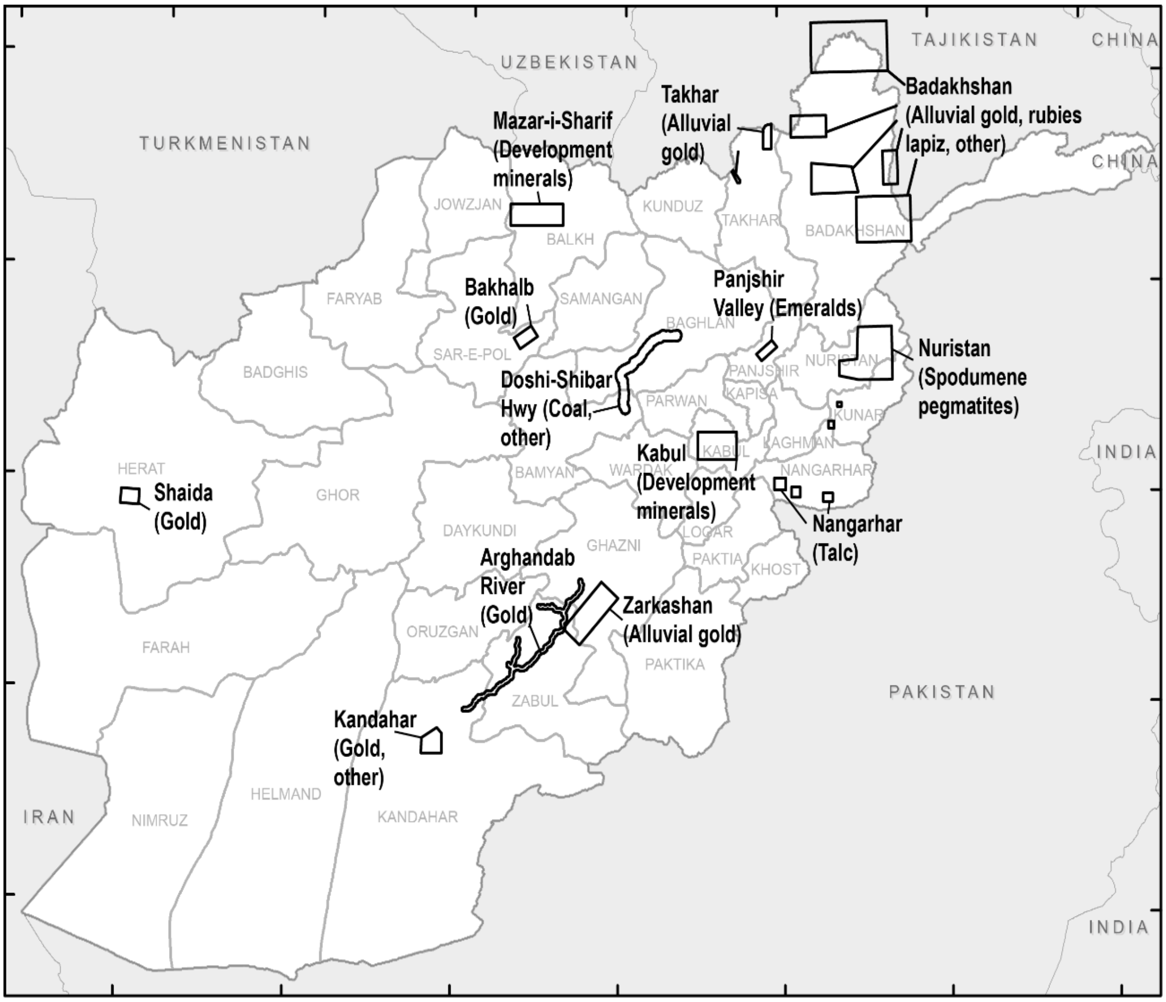
One of the challenges globally is to accurately estimate volumes, values and locations of informal mining. There is often a challenge of defining informal mining vis-à-vis illegal mining. Broadly, mining that is outside the scope of the formal sector is of three types in Afghanistan: (i) informal mining by artisanal miners which can be formalized into the economy, (ii) illegal mining in Taliban controlled territories, and (iii) illegal mining by licensed companies. The issue is complex, especially in case of illegal mining by licensed companies. Some of them have commenced mining with just exploration licenses or mining in areas adjacent to their mining license illegally[64]. However, in other cases, the issue is also administrative, where the license holders of small-scale mining licenses have continued production during the period of lapsing of a license because the mining licenses/contracts are given for durations that are too short and take long periods to renew.[65] Thus, the companies continue production without a valid mining contract during the interim.

These varying interpretations of the terms illegal and informal mining have also, in part, resulted in varying figures on the contribution of informal mining (for gemstones, gold dimension stones, and some industrial minerals) to the economy. There is anecdotal evidence that suggests informal mining plays a significant role in the livelihoods of Afghans, particularly in the rural areas. For example; the MoMP published a list of "illegitimate mining activities" in June 2020, identifying more than 480 sites following an inspection of 16 provinces[66] by the Mines Protection Committee; and a study by Alcis (commissioned by the US Institute of Peace) uses satellite imagery to analyze and monitor extractive activities in Afghanistan.[67] Both datasets indicate that mechanized mining is prevalent across the country, however the reports neither quantify the scale nor value of the informal mining sector.

The USGS has identified areas of informal mining, as described in Figure 18 below. However, it does not estimate the volumes or values of production from these areas.

[64] "A study conducted among five mines across the country showed that mines either operated under an exploration contract, or mined in areas adjacent to the areas to which the mining contract applied." Pitfalls and Promise: Minerals Extraction in Afghanistan, Afghanistan Human Development Report 2020, UNDP (2020) at p. 51.
[65] "Of 821 small mining contracts, about 15 per cent were issued for periods ranging from one to eight months, another 56 per cent were issued for one or two years, and the remaining 29 per cent were issued for longer than two years." Pitfalls and Promise: Minerals Extraction in Afghanistan, Afghanistan Human Development Report 2020, UNDP (2020) at p. 51.
[66] Kabul, Parwan, Herat, Nangarhar, Kapisa, Laghman, Panjshir, Bamyan, Nuristan, Khost, Paktia, Samangan, Balkh, Jawzjan, Kandahar and Kunar.
social[67] In Plain Sight - Use of Satellite Imagery to Analyze and Monitor Extractive Activities in Afghanistan, February 2019, United States Institute of Peace and Alcis; available at: https://sway.office.com/Yz2A365TI20FATmz.

Figure 18 Select areas of informal mining activities



The government and various international agencies have attempted to quantify the lost fiscal revenue. The government through the *Afghanistan National Peace and Development Framework (ANPDF) 2017 to 2021*, estimates lost revenues from the informal mining sector at about USD 300m a year, a report to NATO estimates Taliban revenue of approximately USD 464 million per annum from the mining sector, and UNDP estimates for 2017 revenue from royalties and export duties should have been USD 123.4 million.

Table 15 below summarizes estimates of illegal mining from various sources.

Table 15 Estimates of illegal mining from various sources

Author	Estimated Revenue
Report to NATO (2020)	USD 464 million mining revenue per annum generated by the Taliban
UNDP (2020)	Potential total revenue (royalties and export duties) for 2017 USD 123.4 million
Afghanistan National Peace and Development Framework (2016)	USD 300 million Estimate revenue lost per annum

The Mines Protection Support Directorate was established in 1398 and has identified 388 illegal mining sites at 16 provinces of Afghanistan in 1398. Prior to its establishment in 1398, data was sourced by AEITI from the MOMP's Mining Inspection Directorate for 1397[68] that has identified 92 illegal mining sites. Below is the summary table of 1398 illegal mining sites. The data on illegal mining sites in 1398 provided by the MOMP Mining Inspection Directorate and the new Mines Protection Support Directorate is publicly available in Dari here. Below, Table 16 presents the data on illegal mining for 1397, while Table 17 presents the data on illegal mining for 1398 from the Mines Protection Support Directorate available here.

Table 16 Illegal mining sites in 1397 (2018) as reported by MOMP's Mining Inspection Directorate

Province	Number of Sites	Mineral Types
Kapisa	19	Construction Materials
Baghlan	1	Gypsum
Baghlan	1	Construction Material
Samangan	4	Coal
Samangan	1	Construction Material
Khost	13	Construction Materials
Paktia	10	Construction Materials
Ghazni	6	Construction Materials
Takhar	3	Gold
Takhar	2	Coal
Takhar	1	Salt
Badakhshan	5	Tourmaline
Herat	8	Construction Materials
Daikundi	1	Gypsum
Daikundi	4	Construction Materials
Sare Pol	1	Coal
Ghor	8	Construction Materials
Ghor	3	Coal
Ghor	1	Gypsum
TOTAL	92	

Source: MOMP Mines Protection Support Directorate

[68] Illegal Mining Sites list provided by Mining Inspection Directorate of MOMP in Dari is accessible on https://momp.gov.af/illegitimate-activities-mining

Table 17 Illegal mining sites in 1398 (2019) according to MOMP's Mines Protection Directorate

Province	Number of Sites	Mineral Types
Kandahar	34	Construction Materials
Kapisa	14	Construction Materials
Paktia	12	Construction Materials
Khost	20	Construction Materials
	5	Chromite
Nooristan	18	Tourmaline
	4	Construction Materials
Samangan	13	Construction Materials
	2	Gypsum
	3	Coal
	1	Dolomite
Nengarhar	23	Construction Materials
Herat	16	Construction Materials
	6	Gypsum
	1	Barite
Kabul	41	talc
	48	Construction Materials
	1	Travertine
Parwan	11	Construction Materials
	1	talc
Panjsher	13	Construction Materials
	4	Emerald
Bamyan	24	Construction Materials
	10	Coal
	7	Gypsum
	3	Travertine
	1	Turquoise
	1	Serpentine
Balkh	14	Construction Materials
	4	Gypsum
Jawzjan	6	Construction Materials
Konar	12	Construction Materials
	1	talc
Laghman	14	Construction Materials
TOTAL	388	

Source: MOMP Mines Protection Support Directorate

Chapter 6

Extractive production and exports

WHAT IS CONTAINED IN THIS CHAPTER?

This chapter provides information on the oil, gas and mining production data, including production volumes and values by commodity, in Afghanistan (EITI Requirement 3.2). The chapter also provides information on the extractives exports from Afghanistan by volumes and values per commodity, and provides details on how they are calculated (EITI Requirement 3.3).

Public disclosure of production and export data for the mining, oil and gas industries is critical to understanding Afghanistan's extractive industries. The volumes of output, the official valuation of these commodities and the location of production and exports is key for the public's understanding of extractive activities.

Certain government non-tax revenues from the mining sector are calculated based on production volumes. Most importantly royalty that is calculated as a fixed price (in AFN) per volume produced. Royalty rates varied per license, until royalty rates for all new license awards were standardized with the 2018 Minerals Law. There is widespread illicit and informal production and exports of mineral commodities in particular (*see overview of the extractive industries*).

This chapter focuses on formal production and exports in areas licensed by the government, addressing Requirements 3.2 and 3.3 of the EITI Standard. It also aims to contextualize this official government data with estimates of illicit and unrecorded activities, such as illicit mining in areas outside of the government's control.

Production Data (EITI Requirement 3.2)

Mineral, oil and gas production data is collected by the MOMP's Mines Inspectorate Department, based on self-reporting of production volumes and values by each extractive company. The MOMP Mines Inspectorate Department undertakes verification of the reported production data, with a staff of some 90 mines inspectors covering only solid mineral contracts in the 34 provinces on ad-hoc basis (two to three times) while ongoing inspections are the responsibility of the provincial directorate. Most producing mines were small-scale in 1397-1398.

What are the different government data sources?

Afghanistan's production data is disclosed in the country's Transparency Portal. These disclosures are by volumes on a per-license basis, and by values overall. This production data per license is updated manually, based on reports from the MOMP Mines Inspectorate Department. It is not possible to download production volumes data for all licenses combined in open data however: it is necessary to search for individual licenses and access production data per individual license.

The MOMP website[69] has published mineral production data for the first time for 1395-1396 in 2020 (1399) as part of Afghanistan's preparations for its second Validation under the EITI Standard. This data in open format (.xls file) is broken down by company and by mineral commodity, with production volumes and values provided. In preparing this 7th AEITI Report, the MOMP has prepared and published (here) production data for 1397-1398.

The National Statistics and Information Authority (NSIA) publishes production volumes and values data on an annual basis, aggregated by mineral commodity. The NSIA's annual Statistical Yearbooks are published on its website[70], usually with around 9-12 months delay on the end of the period covered. The latest annual publication reviewed for this 7th AEITI Report are the Afghanistan Trade Statistics Yearbook 2019[71] published in October 2020 and the Afghanistan Statistical Yearbook 2019 [72] published in May 2020.

The United States Geological Survey publishes annual 'Minerals Yearbooks' for Afghanistan with around three years' time-lag. At the time of publication, the latest Afghanistan Minerals Yearbook for 2015 had been published in October 2018, with only statistical tables for 2016 available on the USGS website.[73]

Comparing official production data for mining, oil and gas

There are differences in the data sets of official mining production data published by the three government sources. Tables 18 and 19 present comparisons of mining production data between the two main sources, the MOMP and NSIA, in 1397 and 1398 respectively. There are important discrepancies both in the volumes and values of reported production, but also in terms of the types of minerals that were produced in this period.

[69] MOMP website, 'Central and provincial production value and volume information', accessible on https://MOMP.gov.af/central-and-provincial-production-value-and-volume-information .
[70] National Statistics and Information Authority (NSIA) website, 'Annual Publications' accessible on https://nsia.gov.af/library
[71] National Statistics and Information Authority (October 2020), Afghanistan Trade Statistics Yearbook 2019', accessible on https://www.nsia.gov.af:8080/wp-content/uploads/2020/10/Afghanistan-Trade-Statistics-Yearbook-2019.pdf
[72] National Statistics and Information Authority (May 2020), 'Afghanistan Statistical Yearbook 2019', accessible on https://www.nsia.gov.af:8080/wp-content/uploads/2020/05/Afghanistan-Statistical-Yearbook-2019-1st-Version.pdf
[73] United States Geological Survey (USGS), 'National Minerals Information Center: Asia Pacific', accessible on https://www.usgs.gov/centers/nmic/asia-and-pacific

Table 18 Comparison of Afghanistan's 1397 (2018) extractive industry production data from various sources

Commodity	NSIA 2019 Statistical Yearbook (here)		MOMP	
	Volume	Value	Volume	Value
Coal	2,444,600 tons	AFN 3,620.3m	859.6 tons	AFN 696,276
Natural gas	153.2m cu meters	AFN 519.6m		
Salt	47,943.5 tons	AFN 119.9m		
Marble	43,594.3 tons	AFN 27.4m	4,446 tons	AFN 1,042,474
Stucco	36,160.7 tons	AFN 24m		
Stone mortar	322,200 cu meters	AFN 6.3m		
Sand and gravel	379,200 cu meters	AFN 16.4m	119,938 cu meters	AFN 68,250,261.87
‘Other minerals’	N/A	AFN 213.9m		
‘Construction materials’			215,275 cu meters	AFN 205,398,033
Halite			55.59 tons	AFN 172,579.26
Gypsum			32,574 tons	AFN 41,321,882
Aragonite			84,777 tons	Not provided
Travertine			142,768 tons	Not provided

Table 19 Comparison of Afghanistan's 1398 (2019) extractive industry production data from various sources

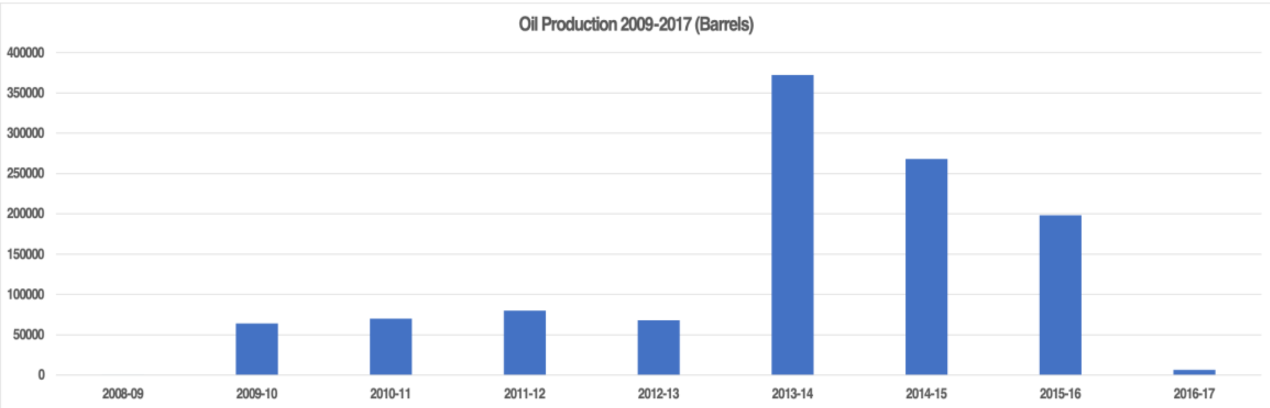
Commodity	NSIA 2019 Statistical Yearbook (here)		MOMP	
	Volume	Value	Volume	Value
Coal	2,139,200 tons	AFN 3.390.3m	25,438 tons	AFN 3,717,706.0
Natural gas	128.7m cu meters	AFN 417.7m		
Salt	114,244.5 tons	AFN 119.9m	77,211.9 tons	AFN 83,202,075.7
Marble	49,178.9 tons	AFN 30.7m	27,616.7 tons	AFN 16,664,718.8
Stucco	24,370.9 tons	AFN 11.3m		
Stone mortar	604,600 cu meters	AFN 14.9m	9,605.9 cu meters	AFN 2,909,985.0
Sand and gravel	2,260,200 cu meters	AFN 24m	136,364 cu meters	AFN 33,375,559.2
‘Other minerals’	N/A	AFN 166.2m		
‘Construction materials’			38,978.7 cu meters	AFN 11,598,168.0
Halite				
Gypsum			23,538 tons	AFN 10,742,400.0
Aragonite			500 tons	AFN 22,500,000.0
Travertine			3,000.2 tons	AFN 1,344,123.2
Talc stone			238,746.6 tons	AFN 595,466,442.5
Chromite			1,648.9 tons	Not provided
Fluorite			10,812.5 tons	AFN 194,624.1

Meanwhile the latest data accessible on the USGS website, covering 2016, indicates production of the following mineral and fossil fuel commodities: cement, hydraulic chromite, fluorspar, precious stones, semi-precious stones, gypsum, lime, nitrogen, salt, stone, marble, coal, natural gas and petroleum condensate.[74]

However, the MSG takes note of the large differences both in the values reported but also the types of mineral commodities reported as produced in 1397 and 1398. The MSG understands that the reasons for these discrepancies were due to several factors, including lack of coordination between NSIA and the directorates from which it collects information, employee turnover and lack of reconciliation in the collection of NSIA data.

There was no longer any crude oil production in 1397-1398, given that production from the oil blocks in the Amu Daryan basin had been suspended by the operator, CNPCI Watan Energy Afghanistan in 1396. All commercial natural gas production in Afghanistan is operated by Afghan Gas Enterprise, a SOE whose production figures are overseen by government.

Figure 19 Afghanistan's oil production, 1388-1396



Source: AEITI summary data: https://drive.google.com/drive/folders/0B9Bl74fkjArzakIxaUlQbEN6NUU

The March 2020 Human Development Report on Afghanistan, by the UN Development Program (UNDP), attempts a review of estimates of total production and exports in the country up to 2017, estimating that the government could have collected over $123 million from minerals in royalties and export duties on unrecorded and illicit mining in 2017 alone.[75]

Export data (EITI Requirement 3.3)

There are two main sources of export data in Afghanistan: the Afghanistan Customs Department (ACD)[76], and the NSIA.[77] The MOMP website has republished the Customs data on mineral exports in 1398 (2019) on its website (here).[78] Discrepancies exist between the manner in which exports are recorded by both these departments, in terms of the types of mineral commodities exported as well their volumes and values. Oil and gas are not exported from

[74] United States Geological Survey (USGS), 'National Minerals Information Center: Asia Pacific', accessible on https://www.usgs.gov/centers/nmic/asia-and-pacific

[75] United Nations Development Programme (UNDP) (March 2020), 'Afghanistan 2020 Human Development Report: Pitfalls and promise, minerals extraction in Afghanistan', accessible on http://hdr.undp.org/sites/default/files/2020_nhdr_afganistan_en.pdf

[76] Available at: https://customs.MOF.gov.af/afghanistan-customs-statistics-reports/

[77] Available at: https://nsia.gov.af/services

[78] Ministry of Mines and Petroleum website, 'Export data', accessible at https://momp.gov.af/export-data

Afghanistan. Table 20 presents the mineral commodities export data from both NSIA and the Customs Department for 1397 (2018) while Table 21 presents the same data for 1398 (2019).

Table 20 Comparison of Afghanistan's 1397 (2018) extractive industry export data from various sources

Commodity	Afghan Customs Department (here)		NSIA 2019 Statistical Yearbook (here)	
	Volume	Value	Volume	Value
Coal	1,116,654,719 kg	AFN 6,461,836,240	1,116,655,000 kg	$89,390,000
Talc stone	356,358,475 kg	AFN 689,536,476	356,789,000 kg	$9,492,000
Alabaster stone	12,444,635 kg	AFN 62,573,485	0	0
Marble and fluorite	2,398,593 kg	AFN 1,002,000	15,140,000 kg	$1,002,000
Lapis lazuli	0	0	0	0

Table 21 Comparison of Afghanistan's 1398 (2019) extractive industry export data from various sources

Commodity	Afghan Customs Department (here)		NSIA 2019 Statistical Yearbook (here) and 2019 Trade Statistics (here)	
	Volume (Kg)	Value (AFN)	Volume	Value
Coal	772,248,547.15	1,241,778,749	772,137,457 kg	$69,549,235
Talc stone	370,926,285	106,846,578	370,926,295 kg	$18,569,603
Fluorite	9,942,230	4,889,953		
Marble and fluorite			13,901,000 kg	$409,000
Lapis lazuli			726 kg	$8,034
Construction material			N/A	$79,012
Marble	105,640	24,557	13,900,680 kg	$408,816
Precious stones			43,531 kg	$33,942

From an analysis of the export data from NSIA and the ACD, data regarding coal which is the largest mineral commodity of export from Afghanistan both by volumes and values, tallies between the two sources. There is, however, a mismatch in how all other commodities are reported in terms of their codes, volumes as well as values.

Therefore, there are two values generated for the percentage of mineral exports as a share of total exports, based on the NSIA and ACD data. However, due to the coal values tallying, the difference in exports does not appear large when expressed in terms of percentage of total exports.

Table 22 Mineral exports as a share of total exports

Year	Total Exports (USD Million)	Mineral Exports (USD Million)	Mineral Exports (USD Million)	Mineral Exports as Share of Total Exports	Mineral Exports as Share of Total Exports
1397 (2018)	875	91	93.89990549	10%	11%
1398 (2019)	864	70	NA	8%	NA
Source	*NSIA*	*NSIA*	*Customs Department*	*NSIA*	*Customs Department*

Recommendations

17. It is recommended that the MOMP publish mineral commodity production data in a systematic manner every quarter and year, both on the MOMP website in aggregate and on the Transparency Portal, broken down by license.
18. The NSIA and Afghan Customs Department should agree upon a common template of reporting exports, with harmonization of the reporting codes based on the internationally-recognized Harmonized System (HS) codes.
19. It is recommended that Afghanistan continue to publish its export data in a periodic and systematic manner on the Custom website, provided the website is maintained and operational at all times. It is recommended that the Afghan Customs Department publish an explanation of the methodology for collecting mining export volumes and values, to support an assessment of the reliability of export data by users of the information.

Chapter 7

Legal framework and fiscal regime governing the extractive industries

WHAT IS CONTAINED IN THIS CHAPTER?

This chapter provides information on the legal framework and fiscal regime governing the extractive industries in Afghanistan (EITI Requirement 2.1). It also details the significant legal and fiscal reforms that government is currently undertaking or has recently completed.

Legal Framework

Constitution

The fundamental legal basis for the government to regulate Afghanistan's extractive resources lies in the Constitution of Afghanistan.[79] Article 9 of Afghanistan's Constitution specifies that mines and other subterranean resources shall be the property of the State, and that the management of natural resources shall be regulated by law.

Policies

The government has established several policies to govern the mining sector. On the other hand, while there are detailed laws and regulations to govern the oil and gas sector, Afghanistan has National Priority Program[80] for five years (1396 – 1400) and a CNG policy but Afghanistan does not have a national policy for hydrocarbons.

The key strategic document related to the mining sector is the Mining Sector Roadmap, originally approved by the government in December 2017[81] and updated in 2019.[82] The roadmap provides an overview of Afghanistan's natural resources, the regulatory and oversight challenges of sector, the legal framework and proposed reforms, including prospects for establishing industries and markets.

Figure 20 below describes the various policies of the government related to the governance of the mining, oil and gas sectors.

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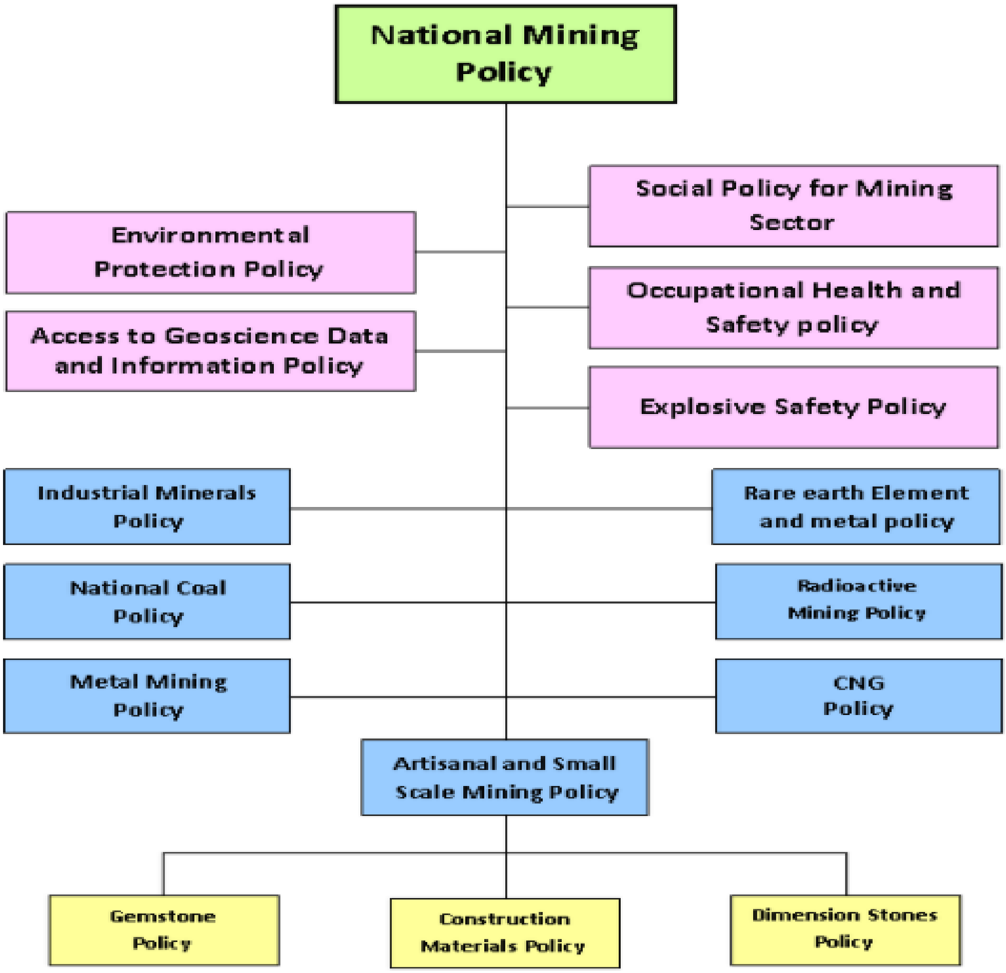
[79] See: Article 9, The Constitution of the Islamic Republic of Afghanistan (January 2004), accessible at www.president.gov.af

[80] http://policymof.gov.af/home/wp-content/uploads/2019/01/Extractive-Industries-NPP.pdf

[81] Ministry of Mines and Petroleum (December 2017), 'Islamic Republic of Afghanistan: Mining Sector Roadmap', accessible only on a third-party (civil society) website at https://miningwatch.af/wp-content/uploads/2018/02/MoMP-Road-Map.pdf

[82] Ministry of Mines and Petroleum (2019), 'Mining Sector Roadmap', accessible at https://momp.gov.af/sites/default/files/2020-07/MoMP%20Roadmap-1-merged.pdf

Figure 20 Government policies pertaining to the extractive industries



Source: MoMP Website

The original texts of the Policies governing extractive industries in Afghanistan are available here.

Laws and regulations

For the Afghanistan year 1397 (2017-18), the mining sector of Afghanistan was regulated by the Minerals Law, 2014 and the Minerals Regulation, 2010. The Minerals Regulation 2010 was in turn a legacy of the Minerals Law, 2010. No Minerals Regulations were drafted to correspond to the Minerals Law, 2014.

From the Afghanistan year 1398 (2018-19) and until presently, the mining sector has been regulated by the 2018 Minerals Law , and 2019 Minerals Regulation. The MOMP in June 2019 (Saratan 1398) issued a Gemstone Export Facilitation Procedure, through which the MOMP has awarded seven Gemstone Export permits in FY 1397 and 1398. Currently, the Cadaster Directorate of the MoMP has reported that the Gemstone Export Facilitation Procedure is suspended and the MoMP is working on drafting a new procedure. The texts of the 2018 Minerals Laws, 2019 Mining Regulation, 2010 Minerals Law and 2010 Mineral Regulation are available on the website of the MoMP here. The English text of the 2014 Minerals Law is available at a third-party website here.

However, it is worth mentioning that the majority of active contracts awarded in previous years are still governed by previous laws under which the contracts were granted[83].

Afghanistan's hydrocarbons sector was governed by the 2017 Hydrocarbons Law and the 2014 Hydrocarbons Regulation in 1397 and 1398. The Hydrocarbons Regulations were a legacy from the 2009 Hydrocarbons Law. While both the 2009 and 2017 Hydrocarbons Laws are available online, the Hydrocarbons Regulations are not.

Afghanistan has also published the other important Laws and Regulations that impact the sector governance. These include the 2004 Customs Law; the 2007 Environmental Law; the 2009 Income Tax Law; the 2015 Tax Administration Law; and the 2007 Afghanistan National Standards Law.

The 2018 State-Owned Companies Law is also an important addition to the above list of laws that govern the extractives sector, having significant implications on State-Owned Enterprises such as Afghan Gas Enterprise (AGE) and North Coal Enterprise (NCE) and Jabal-Siraj Cement. The Dari version of SoCs law is published at the time of data collection for this report but the unofficial translated English version of SoCs law is not available. It is also recommended that the NDC shall perform an analysis of the governance of the extractives sector SoEs, the changes ongoing and expected under the new SOCs law, and its implementation status. For more information on state participation in the extractive industries, including the new National Development Co., see *State Participation Chapter*.

Roles and responsibilities of government agencies

The 2018 Minerals Law describes the functions of the main Government Agencies involved in regulation of the mining sector. Apart from these agencies, the Ministry of Finance (the main departments are Treasury, Budget, Afghanistan Revenues Department (ARD) and Afghan Customs Department (ACD)) is also involved in regulation of the mining sector, from the angle of tax and non-tax revenue collection.

On the allocation of mining concessions or the mining exploration and exploitation licenses, the main agencies described in the 2018 Minerals Law are:

1. MOMP
2. Afghanistan Geological Survey
3. Mining Technical Committee
4. High Economic Council (HEC)
5. National Procurement Authority
6. National Procurement Commission
7. The cabinet of the Islamic Republic of Afghanistan.

Apart from the above agencies, the Administrative Office of the President of Afghanistan given the strategic importance of the country's extractives sector, also performs an overall supervisory

[83] See article 74 located on page 48 and as of Jan 02 accessible at minerals_law_2019english.pdf (MOMP.gov.af)

function. The Office of the President provides strategic oversight to sector governance, particularly through its Investment Facilitation Unit and Legal Advisor Office.

A brief overview of the activities of these entities is available in the 6th AEITI Report (1395-1396) at P. 32-35, available here.

The main Government Agencies involved in the regulation of the oil and gas sector in Afghanistan are:

(i) MoMP;

(ii) Afghanistan Oil & Gas Regulatory Authority.

A brief overview of the activities of these entities is available in the 6th AEITI Report (1395-1396) on pp.36-38, available here. The Afghanistan Oil & Gas Regulatory Authority was established in 2013 as the sector regulator, although there is little information on its work available online.[84]

Organization of the MoMP and its regulatory functions

The general vision, mission and purpose of the MoMP is available here. The MoMP is organized into various Directorates whose duties and descriptions are available online. These include: Chief of Staff, Human Resource Directorate , Directorate of information & Public Communication, Afghanistan Petroleum Authority, Directorate of Cadaster, Directorate of State Owned Enterprise, Internal Audit Directorate, Directorate of Mines Inspection, Directorate of Information Technology, Directorate of Procurement, Directorate of Legal Services and Directorate of Policy.

The MoMP has a Directorate of Investment Promotion & Small-Scale Mining and a Directorate of Finance and Accounting whose roles and responsibilities have not yet been published online. It is recommended that this be done so in order to further enhance the transparent and accountable functioning of the MoMP.

The MoMP also has a Program Coordination and Design (Donor Coordination Unit) which holds regular Donor Coordination Meetings, the minutes of which are published here (although there are only three meetings listed, most recent in 2019). The MoMP has also published a list of its MoUs online, available here.

Ministry of Mines and Petroleum reforms since 2020

In early 2020, the Presidency announced a restructuring of the Ministry of Mines and Petroleum, splitting the Afghan Geological Survey from the Ministry. According to the MOMP leadership, the re-structuring of the MoMP since is ongoing and was required given that the old ministerial structure was considered outdated and did not allow the MoMP to address recent challenges. As of 2021, the documentation underpinning the Ministry's restructuring has been completed and approved. A number of reforms involving the MOMP are ongoing.

A focus of reform is currently on the digitization of MOMP functions. A Cabinet decision was issued in 2020 requiring the digitization of processes and procedures of all state institutions. To implement this decision, the MOMP established a team to assess the usage of existing information

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[84] Ministry of Mines and Petroleum website, 'Afghanistan Petroleum Authority', accessible at https://momp.gov.af/afghanistan-petroleum-authority

systems within the MOMP's administration. By 30 March 2021, a total of 17 different information systems were found, although analysis of MOMP systems was ongoing in April 2021. Building on this analysis, the MOMP plans to re-design its information architecture and integrate all existing systems into one integrated mining information system. The MOMP plans to engage the private sector in this process, soliciting feedback on the use of the current information systems to plan improvements in the accessibility of the MOMP's planned new integrated mining information system. The Ministry hopes to improve the efficiency of mining certifications, hoping to reduce the time for administrative procedures to a few hours.

Second, the MoMP plans to establish a Mining Institute, intended to cover the internal technical capacity building needs of the Ministry's staff. To avoid confusion and potential duplication of mandates and functions between the "KPU" and the Mining Institute, the latter will be designed to serve the needs of the MoMP only. The Mining Institute will provide technical trainings not only to government staff, but will also cater to capacity building needs of the private sector. The MoMP plans to seek support for the establishment of the Mining Institute from development partners, potentially through the GiZ-MinGov project. The MOMP leadership considers that past capacity building measures provided by the GiZ-MinGov project (such as technical courses from accredited universities) could be integrated into the Mining Institute's operations.

Third, the MOMP is currently conducting analysis on how to legalize the gemstone mining sector and increase its attractiveness to investors. The aim is to create enabling conditions for gemstone exporters by offering competitive royalty rates. The ministry plans to develop a plan for formalizing and legalizing the gemstone mining sector, for review and approval by the High Economic Council (HEC). Another aim of this planned mechanism is to build trust between the Government and gemstone dealers, bridging the past gap in trust and cooperation between the MOMP and the private sector. The MOMP is identifying ways to establish a legal procedure for issuing licenses for gemstone dealers and has requested support from the GiZ-MinGov project to introduce companies in this sector to the MOMP in order to gather initial insights. The GiZ-MinGov project has supported the MOMP in conducting workshops for developing MOMP's Gemstone Action Plan in the past. Moreover, GIZ has also supported the gemstone sector in the past through various programs (including NaWi, GFA and GIZ-IS). While these programs were since phased out, the information generated from the programs could be collected by GiZ-MinGov and made available to the MOMP.

The MOMP is also focusing on developing policies on mineral value chains. The Ministry has developed a concept note related to marble blocks, which it anticipates will facilitate increased exports of marble. Finally, the MOMP is working on improving the attractiveness of the mining sector to investors and plans to develop Investment Packages with sufficient information on mines and tenders.

Fiscal regime

The fiscal regime governing the extractives sector was governed by the following legislations in the Afghanistan reporting years 1397 and 1398:

(i) 2009 Income Tax Law

(ii) 2010 Income Tax Manual

(iii) 2015 Tax Administration Law

(iv) 2014 (1393) Minerals Law and 2018 (1397) Minerals Law

(v) 2010 (1398) Mining Regulations and 2019 (1398) Mining Regulations

(vi) 2017 Hydrocarbons Law and 2014 Hydrocarbons Regulations

(vii) 2005 Customs Law

(viii) 2007 Environmental Law

(ix) 1955 Commercial Code

(x) 2015 Tax Administration Law

An overview of the various revenue streams from the extractives sector in Afghanistan and their collecting entities for the specific years 1397 and 1398 are provided in Table 23 below. The table also provides the corresponding Government Finance Statistics Manual (GFS) classification codes as per the IMF that correspond to each revenue stream, to enable possible comparisons with other countries. It is to be noted that this table differs from the list of government revenue streams provided in the 'revenue collection' chapter of this report, which provides the entire ambit of tax and non-tax revenues that *could be* levied under the laws of Afghanistan.

Table 23 Types of Governmental Revenue Streams in Afghanistan in 1397 and 1398

GFS Classification	Revenue stream name	Collecting Government Entity	Sector
Emission and pollution taxes (114522E)	Waste Management Fee	National Environmental Protection Agency	Oil & Gas
Emission and pollution taxes (114522E)	Environmental License Fee	National Environmental Protection Agency	Mining
Emission and pollution taxes (114522E)	Environmental License Renewal Fee	National Environmental Protection Agency	Mining
Taxes on exports (1152E)	Export Duty	Ministry of Finance (Customs Department)	Not applicable
Royalties (1415E1)	Royalty	Ministry of Mines and Petroleum (Revenue Department)	Mining
Other rent payments (1415E5)	Surface Rent	Ministry of Mines and Petroleum (Revenue Department)	Mining
Fines, penalties, and forfeits (143E)	Penalty Fee	Ministry of Mines and Petroleum (Revenue Department)	Mining
Administrative fees for government services (1422E)	Bidding Fee	Ministry of Mines and Petroleum (Revenue Department)	Mining
Other rent payments (1415E5)	Site Accommodation Rent	Ministry of Mines and Petroleum (Revenue Department)	Mining
License fees (114521E)	License fee – Exploitation	Ministry of Mines and Petroleum (Revenue Department)	Mining
Administrative fees for government services (1422E)	Document Fee	Ministry of Mines and Petroleum (Revenue Department)	Mining
License fees (114521E)	License Fee	Ministry of Mines and Petroleum (Revenue Department)	Mining
Administrative fees for government services (1422E)	Guarantee Fee	Ministry of Mines and Petroleum (Revenue Department)	Mining
Fines, penalties, and forfeits (143E)	Penalty for Late Payment	Ministry of Mines and Petroleum (Revenue Department)	Mining
From state-owned enterprises (1412E1)	Transfer of 75% of SOE's net profits	Ministry of Finance (Revenue Department)	Mining, Oil and Gas
Ordinary taxes on income, profits and capital gains (1112E1)	Corporate income tax (CIT)	Ministry of Finance (Revenue Department)	Mining, Oil and Gas
General taxes on goods and services (VAT, sales tax, turnover tax) (1141E)	Business Receipts Tax (BRT) 4%	Ministry of Finance (Revenue Department)	Mining, Oil and Gas
Taxes on payroll and workforce (112E)	Withholding Tax on Contractors	Ministry of Finance (Revenue Department)	Mining, Oil and Gas

Other rent payments (1415E5)	Other Tax	Ministry of Finance (Revenue Department)	Mining, Oil and Gas
Fines, penalties, and forfeits (143E)	Penalties of Delay	Ministry of Finance (Revenue Department)	Mining, Oil and Gas
Taxes on exports (1152E)	Fixed Tax on Exports	Ministry of Finance (Customs Department)	Mining
Customs and other import duties (1151E)	Penalty on Imports	Ministry of Finance (Customs Department)	Mining
Taxes on exports (1152E)	Other Fee on Exports	Ministry of Finance (Customs Department)	Mining
Taxes on exports (1152E)	Penalty on Exports	Ministry of Finance (Customs Department)	Mining

A detailed description of how these various revenue streams are levied and collected, their materiality and amounts paid by companies and received by the government are described in the chapter on revenue collection of this report. The details of how the fiscal regime provides for devolution of extractives sector revenues between the federal and provincial levels are contained in the chapter on 'subnational contributions' of this report.

An examination of the overall fiscal regime reveals one particular issue that Afghanistan would benefit from addressing. Afghanistan's 2009 Income Tax Law[85] (Article 80) exempts extractives sector SoEs and companies, categorized as 'Qualified Extractive Industries Taxpayer', from the payment of the Business Receipts Tax (BRT). This was also affirmed in the AEITI facilitated audits of AGE and NCE by the State Audit Office of Afghanistan for 1395-1396. However, the extractive sector SoEs and most companies, unaware of this provision, have continued paying BRT to the government of Afghanistan. It is recommended that the government consider how to treat these excess tax payments and refund them to the extractives SoEs in a manner that is not too disruptive to governmental revenues and the State budget in an already fragile fiscal situation in Afghanistan.

Updates on legal reforms

Considerable legislative and regulatory changes are being undertaken in Afghanistan. A new Hydrocarbons Law and Hydrocarbons Regulations have been drafted and are pending consideration in the parliament.

Importantly, a new State-Owned Companies (SoC) Law has been passed, on October 24, 2018, accessible in Official Gazette No. 1322. The SOCs law consolidates different categories of government owned companies in Afghanistan into a single type of entity known as State Owned Companies. Previously these were of three types, namely: State-Owned Enterprises, State Owned Companies and Mixed Companies.

The SoC Law has the following objectives[86]:

- To set out the process for the establishment and liquidation of state-owned corporations.

[85] Afghanistan Income Tax Law 2009, English version accessible at https://momp.gov.af/sites/default/files/2019-03/Income_Tax_Law.pdf
Dari version accessible at https://mof.gov.af/sites/default/files/2019-02/Income-Tax-Law_0.pdf
[86] See: Article 2 of the SOC Law, 2018

- To encourage -state owned corporations to operate as commercial entities on a level playing field based on the principles of efficiency, profitability and competitiveness.

- To clarify the ownership responsibilities of the government authorities charged with the oversight of state-owned corporations.

- To ensure the governance of state-owned corporations is carried out in a transparent, responsible and accountable manner.

- To ensure the audit, supervision and evaluation of activities and affairs related to the finance/accounting of state-owned corporations.

- To ensure that state owned corporations are effective in the management and delivery of public services.

- To promote fiscal sustainability and ensure that the fiscal risks associated with state owned corporations are effectively managed.

- To contribute to the broader national objectives of economic growth, social development and job creation.

- To promote an environment that enables investment into Afghanistan.

Preparations were made in Afghanistan years 1397 and 1398 for implementing the ring-fencing of Corporate Income Tax in the mining sector, which was required by the 2009 Income Tax Law. The provision was implemented from the Afghanistan year 1399 onwards.

An artisanal mining formalization policy was adopted by the MoMP in FY 1397, available here. The document provides a baseline study of the ASM sector in Afghanistan, defines the roles and responsibilities of various government entities in regulating ASM, and provides recommendations to formalize the ASM sector through licensing and capture of tax and non-tax revenues.

There have been efforts by Parliament to propose reforms of the 2018 Minerals Law and ensuring that it is submitted to and enacted by Parliament. For more information please read (updates in Dari) on the MOMP website. The MOMP leadership has confirmed that it is considering amending the 2018 Mining Law, plans which have been discussed with the Cabinet and the Ministry of Justice as well as with the World Bank. The MOMP has submitted to the Cabinet for approval a list of large- and small-scale mines that it plans to tender.

Recommendations

20. On Hydrocarbon Regulations, it is recommended that the government incrementally construct separate, subject-specific, regulations , essentially “breaking up” the draft Hydrocarbon Regulations into distinct parts.
21. While the Government of Afghanistan has published copies of some of the legislations mentioned in this Chapter, a number of these legislations are not available online. Publishing the laws of Afghanistan that regulate the extractives sector online would greatly increase investor awareness and confidence in the sector. It will also greatly enhance citizen awareness of the functioning of the sector. Thus, the MoMP and AEITI MSG should undertake a review of the legislations that are published online with reference to those listed in this chapter and ensure their publication.
22. It is recommended that the National Development Corp. publish the English version of new SOC law (published on the MOMP website here) on its own website and ensure that all relevant regulations are published online. The National Development Corp. jointly with MoMP is encouraged to perform an analysis of the governance of the extractives sector SoEs, the changes ongoing and expected under the new SOCs law, and their implementation status. Benchmarking or comparing these reforms to global good practices with the help of technical assistance from development partners would enable the strengthening of good governance in state-owned enterprises in Afghanistan.
23. The AEITI MSG/MoMP should ensure that updated information on the reforms and developments in the legal framework and fiscal regime are displayed on the MoMP website after adequate fact-checks and approvals. The MOMP may wish to establish a single page on its website that consistently tracks all reforms, clearly categorizing them as completed (and including a link to the full text of the legal, regulatory or administrative amendment or reform), ongoing or planned.
24. The MoF and MoMP should consider how to treat the excess Business Receipt Tax (BRT) payments by extractives sector and devise mechanisms to refund them if possible, to the extractives sector in a manner that is not disruptive to the State budget in an already fragile fiscal situation in Afghanistan.
25. It is recommended that the 2018 Minerals Law be revised to eliminate the duplicative, multi-tiered review of all but the most significant projects, and simplifying the current 18-step review process with multiple levels of review and approvals to ensure transparency in the license allocation process.
26. It is recommended that a comprehensive review and harmonization of other laws applicable to the mining sector be undertaken, so that legal provisions in laws related to tax, labor and customs work effectively together with the Minerals Law to promote mining investment.

Chapter 8

Contracts, permits and license management

WHAT IS CONTAINED IN THIS CHAPTER?

This chapter provides information on the register of mining, oil and gas licenses (EITI Requirement 2.3), the way in which licenses and contracts are awarded and transferred (EITI Requirement 2.2) and the publication of the full text of licenses and contracts (EITI Requirement 2.4). The objective is to inform the public of the rules and practices governing property rights in the extractive industries of Afghanistan.

Register of mining, oil and gas contracts and licenses (EITI Requirement 2.3)

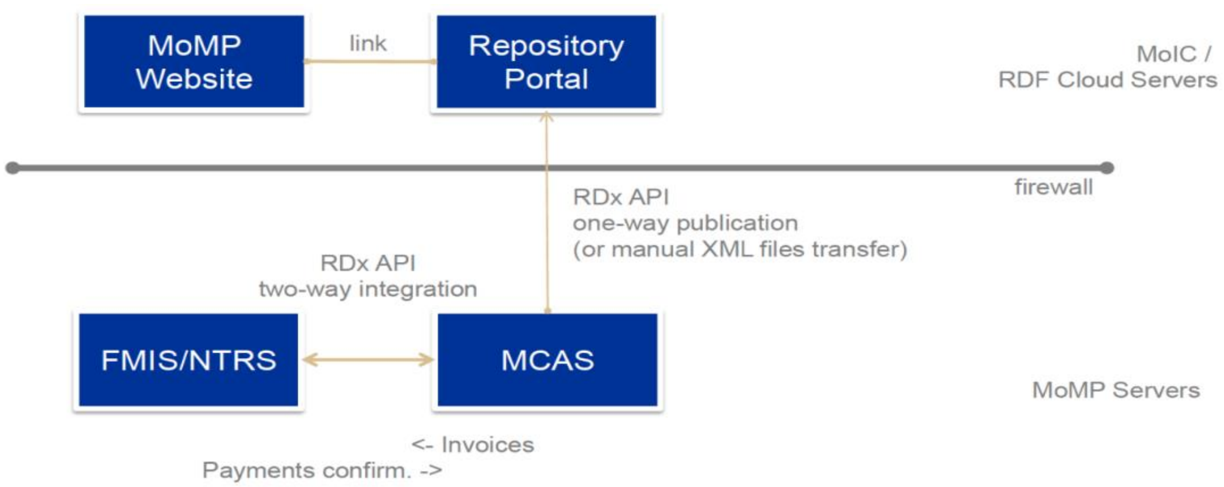
Afghanistan's cadastral management system is now publicly accessible since mid-2018. The MOMP Transparency Portal provides information on licenses and permits covering mining, oil and gas exploration and production, including small-scale and large scale projects. The Transparency Portal integrates license and ownership data directly from the MCAS and non-tax revenue data from the NTRS payment processing system. This AEITI Report serves as a diagnostic of the Transparency Portal, assessing whether the data disclosures are complete and reliable. The Transparency Portal is regulated by the 2018 Minerals Law and its implementing regulation.

Data **specifications**

The information available for all licenses from the Transparency Portal includes license and license-holder names, dates of application, award and expiry, commodities covered for production licenses, and license coordinates. In addition to the license data from the MCAS system, the Transparency Portal integrates other data per license including fiscal terms, production volumes, beneficial ownership and non-tax payments (royalties, license fees, etc.) to the MOMP.

Figure 21 presents a diagram of the integration of the MCAS and NTRS systems through the Transparency Portal.

Figure 21 Technical diagram of the cadaster (MCAS) and non-tax revenue system (NTRS)



Source: Revenue Development Foundation

A total of 15 of the 34 provinces of Afghanistan have been connected to the MCAS system, as of November 2020. A total of four new provinces (Nangarhar, Herat, Balkh and Parwan) were connected to the MCAS in 2018 (1397) and five new provinces (Logar, Kandahar, Panjshir, Bamyan and Kapesa) were connected in 2019 (1398). The MOMP's Cadaster Department has published a standard operating procedure (SOP) on Data Collection and Data Quality Control for the MCAS and NTRS systems in March 2020, with two dedicated chapters on Data Collection and Data Quality Control.87

According to the MOMP, the number of registered users with access to the Transparency Portal has grown from 130 in 1397 (2018) to 183 in 1398 (2019) and 225 in 1399 (2020). It should be noted that unregistered users can still access basic license information without registered access to the Transparency Portal, although more advanced functionalities such as open data format downloads are only accessible to registered users.

Property rights: permits, licenses and contracts

The EITI Standard provides a definition of licenses and contracts under Requirement 2.4.d-e, which defines the term 'license' as any license, lease, title, permit, contract or concession by which the government confers on a company or individual the rights to explore or exploit mineral resources, oil and/or gas. In the Afghan context, the extractive industries are governed by both contractual and licensing regimes. With regards to 'hard rock' mining, a 'Mining Concession' is defined in the 2018 Minerals Law and its 2019 implementing regulation as a "*written agreement entered into by the State and a Concession Holder in connection with the conduct of Mineral Activities which provides for the grant of an Exploitation License , or provides for the grant of an Exploration License and a right of priority for the grant of an Exploitation License".*[88] The term license applies to both large-scale and small-scale mining, and refers to Exploration Licenses, Exploitation Licenses and Small-Scale Mining Licenses[89].

There are four types of the licenses, three types of permits, and two types of mining concession defined in the 2018 Minerals Law and its 2019 implementing regulation:

Four types of licenses in the mining sector:

- Investment License: a license issued by the Afghanistan Central Business Registry which identifies that the Person is engaged in mining industry activities.[90]
- Exploration License: a license granted under Article 28(1) and Article 28(1), which authorizes Exploration in respect of large-scale mining projects in accordance with this Law.[91]
- Exploitation License: a license granted under Article 28(3), Article 28(3) or Article 28(9), which authorizes Exploitation in respect of large-scale mining projects in accordance with this Law.[92]

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[87] The SOP on Data Collection and Data Quality Control for MCAS and NTRS SYSTEMS is accessible here in Dari (https://momp.gov.af/sites/default/files/2020-06/MCAS.pdf)
[88] Article 4.10 of mineral law 2018
[89] Article 4.12 of mineral law 2018
[90] Article 4.15 of mineral law 2018
[91] Article 4.16 of mineral law 2018 accessed on Dec 12,2020
[92] Article 4.17 of mineral law 2018 accessed on Dec 12,2020

- Small-Scale Mining License: a license granted under Article 29, which authorizes Exploration and Exploitation in respect of small-scale mining projects, including artisanal operations, in accordance with this Law.[93]

Four types of permits in the mining sector:

- Processing Permit: a permit issued in accordance with the 2019 Mining Regulations, which authorizes the holder to conduct processing on land other than a license area.
- Environmental Permit: a permit granted under Article 16 of the Environment Law, to cover the environmental impacts of extractive activities.
- Permit for infrastructure construction: a permit under Article 37 required to be issued prior to the constructing any small-scale infrastructure, including for mining operations.
- Mineral Export Permit: a permit awarded by MOMP's Cadaster Department under Article 35 of the 2019 Mineral Regulation for exporting minerals.

Review of data on the Transparency Portal

According to data from the Transparency Portal as of February 2021, there are a total of 1132 mining, oil and gas licenses listed, covering exploration, exploitation and small-scale mining. This total number of licenses listed on the Transparency Portal includes all licenses that are active, cancelled, expired, surrendered, suspended and currently under review.

In preparing this 7th AEITI Report, the MOMP's Cadaster Department confirmed that there were a total of 153 small scale Mineral Licneses in 1397 (2018), 131 active licenses in 1398 (2018) and only 90 active licenses in 1399 (2020). The list of active licenses reported by the MOMP Cadaster Department for 1397, 1398 and 1399 is published in open format (.xlsx) on the AEITI website94 and in PDF format on the MOMP website.95

On the other hand, the 2020 UNDP human development report noted that there were 161 small-scale and six medium-scale mines with active contracts (licenses), and additional 660 mines with expired or cancelled contracts, as of November 2018.96

The differences in numbers of active licenses relates to mining, not oil and gas. As confirmed by the MOMP's Hydrocarbon Directorate and a review of the Transparency Portal, there were three active oil and gas contracts and licenses in 1397-1398 (2018-2019), although one of these contracts was terminated in June 2020. Table 24 presents the status of the three oil and gas contracts, as of 1399 (2020).

[93] Article 4.18 of mineral law 2018 accessed on Dec 12,2020
[94] See 'List of Active Contract list FY 97,98,99' spreadsheet on AEITI website, 'Data for 7th AEITI Report', accessible on http://aeiti.af/en/documents/category/data-for-7th-aeiti-report?page=1
[95] See 'Active Contracts List for Fiscal Year' 1397, 1398 and 1399 on MOMP website, 'EITI Disclosures', accessible on https://MOMP.gov.af/eiti-disclosures
[96] UNDP (March 2020), 'Afghanistan Human Development Report 2020: Pitfalls and promise, mineral extraction in Afghanistan', accessed on http://hdr.undp.org/en/content/national-human-development-report-2020-afghanistan

Table 24 Active crude oil active contracts in 1397-1398

S. No.	Project Name	Company Name	Date of project award	Initial Exploration Period	End of Initial Exploration Period	Project Current status
1	Amu Darya Exploration and Production Sharing Contract "EPSC"	Chinese National Petroleum Corporation International Watan Oil and Gas Afg Ltd "CNPCIW"	December 26, 2011	Four Years and Six Months	June 25, 2016 (Estimated Date)	Terminated on June 15, 2020.
2	Sanduqli Exploration and Production Sharing Contract "EPSC"	Consortium (Dragon Oil Sanduqli Ltd ("DOSL"), Turkish Petroleum Afghanistan Ltd ("TPAL"), Ghazanfar Investment Ltd ("GI")	October 8, 2013,	Four Years	As per the request of the Contractor and the approval of Cabinet, the Initial Exploration Period had been extended till December 31, 2021	in operation
3	Mazar-e-Sharif Exploration and Production Sharing Contract "EPSC"	Consortium (Dragon Oil (Mazar-e-Sharif) Ltd ("DOML"), Turkish Petroleum Afghanistan Ltd ("TPAL"), Ghazanfar Investment Ltd ("GI")	October 8, 2013,	Four Years	As per the request of the Contractor and the approval of Cabinet, the Initial Exploration Period had been extended till December 31, 2021	in Operation

A first key findings of this AEITI Report relates to the inconsistencies in mining license data provided by the MOMP Transparency Portal and the MOMP Cadaster Department. The MOMP Cadaster Department has explained that the Transparency Portal categorizes mining licenses as "active" even if this includes licenses whose termination is pending but not yet decided as well as licenses that are technically active but where the mining company has ceased activities due to technical, financial, social and/or environmental problems. On the other hand, the Cadaster Department explained that the Transparency Portal marked as either "under review" or "expired" those licenses where an application for a license renewal had been submitted to the MOMP but not yet approved, given the time-consuming nature of the license renewal process.

A second key finding is that the Transparency Portal categorizes all construction material licenses as a separate category of license, distinct from exploration, exploitation and small-scale mining licenses.

A third key finding is that a total of eight small-scale mining licenses were found to share a license code with other small-scale mining licenses already listed on the Transparency Portal. This duplication of license codes on the MCAS system and the Transparency Portal raises concerns over the accuracy of license data available on the Transparency Portal. Table 25 presents the list of eight small-scale mining licenses that have duplicate codes on the Transparency Portal.

Table 25 Eight licenses with duplicate license codes in the Transparency Porta

Date of award	License code	Name of license-holding company	Type of license	Commodity(ies) covered
11/28/2017	SSML-Takh 1/2017	تفاهمنامه های وزارت معادن پترولیم (Ministry of mines and Petroleum Agreements)	Small Scale Mining License - TAKHAR	Gravel Sand Construction Stone
11/28/2017	SSML-Bagh 1/2017	تفاهمنامه های وزارت معادن پترولیم (Ministry of mines and Petroleum Agreements)	Small Scale Mining License - BAGHLAN	Construction Stone Sand Gravel
8/20/2016	SSML-Takh 1/2017	شرکت خدمات لوژستیکی ترکان	Small Scale Mining License - TAKHAR	Gravel
7/23/2016	SSML-Hera 6/2016	عبدالعزیز ولد حاجی عبدالطیف, عبدالعزیز	Small Scale Mining License - HERAT	Gravel Sand
3/6/2016	SSML-Bagh 1/2017	فضل اکبر, محمد نعیم	Small Scale Mining License - BAGHLAN	Construction Stone
1/2/2016	SSML-Hera 6/2016	شرکت ساختمانی یونیک بلدر	Small Scale Mining License - HERAT	Gravel
12/7/2015	SSML-Kapi 4/2015	شرکت ساختمانی جامی آریا	Small Scale Mining License - KAPISA	Gravel
10/4/2015	SSML-Kapi 4/2015	خواجه هارون, خواجه هارون	Small Scale Mining License - KAPISA	Construction Stone

Source: MOMP Transparency Portal

The MOMP's Cadaster Department explained that this duplication of certain license codes was due to the uploading of historical license information in bulk in the MCAS system, when it was first established. Given that the license codes relate to the date of award of the license, certain licenses were erroneously given the same license code. The MOMP Cadaster and its service provider RDF have started addressing these inconsistencies in the MCAS and Transparency Portal data, focusing first on sanitizing license data related to licenses awarded in 1397 and 1398.

The MSG has found that there have been gaps in some of the 15 MOMP provincial offices uploading new license award data in the MCAS system (which feeds into the Transparency Portal). Although the provincial branch offices were given rights to the MCAS system and funds for Internet connectivity, the MSG found instances when data was not uploaded on the MCAS system. The MSG was not able to identify the reasons for the lack of updating of some license information by certain MOMP Provincial offices, but considers that further work is needed to clarify the reasons for gaps in data uploaded on the MCAS system.

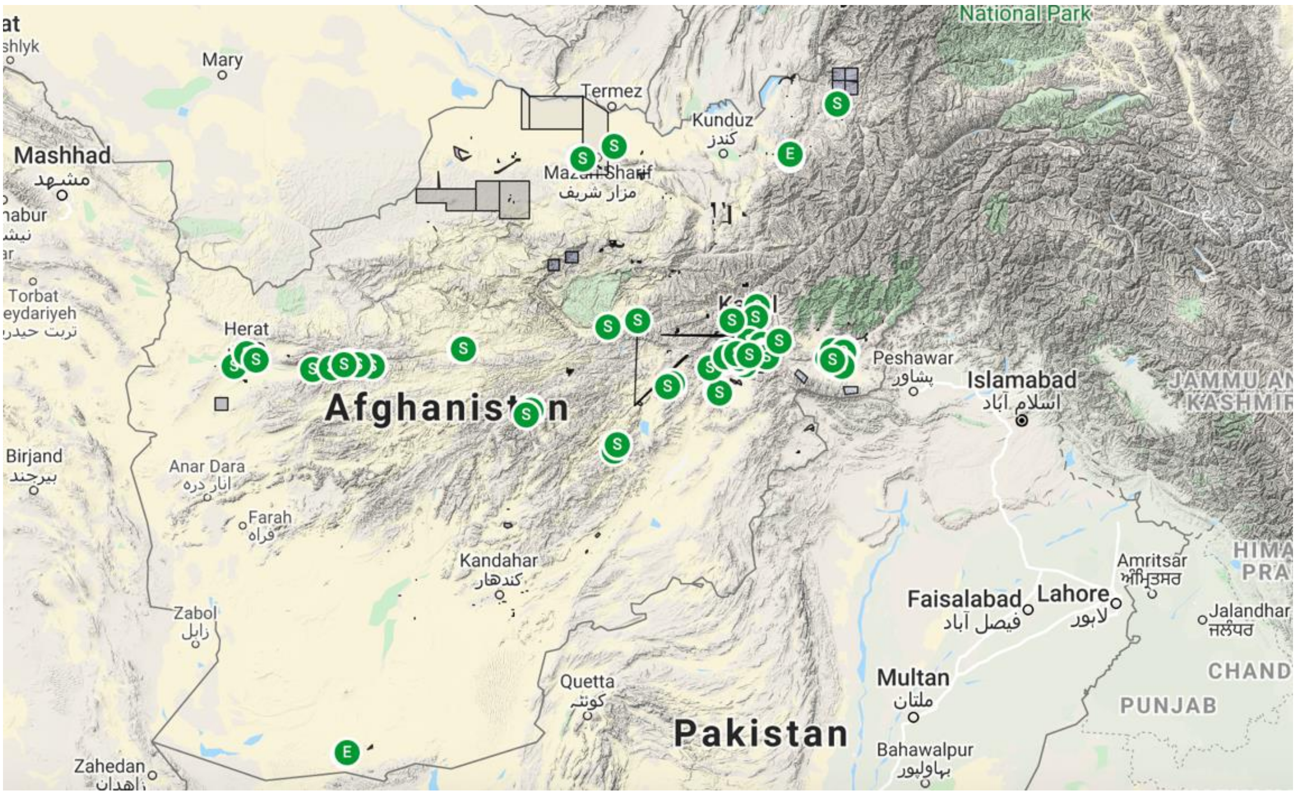
The MOMP Cadaster Department has prepared an action plan for further improvements (categorized as customization and configuration) to the MOMP's MCAS, NTRS and Transparency Portal systems. The plan, developed with technical assistance from the EU, was pending Ministerial approval as of March 2021. The action plan includes a total of 156 recommendations, of which eight are related to coordination between government officials and departments, 58 are related to the MCAS system, 55 to the NTRS system and 35 to the Transparency Portal itself.

Finally, the MSG has reviewed the license data available on the Transparency Portal, based on the MCAS system, to assess whether it is complete. The MSG considers that the data on licenses awarded since 1396 (2017) appears to be complete. However, the MSG considered that information on licenses now expired that had been awarded in earlier years (since 2006) was not comprehensively published on the Transparency Portal. Therefore, the MSG considered that there are gaps in the retention of older historical data that predates the establishment of the Transparency Portal. The MSG recommends to the MOMP Cadaster Department, in collaboration with its service provider RDF, to more clearly indicate the coverage of the MCAS system and Transparency Portal in terms of the time period covered and whether the system covers both licenses awarded at the national government level and licenses granted at the provincial level (in the past).

Accessibility of the Transparency Portal

The MOMP Transparency Portal is available in English, Dari and Pashto languages. The system allows for bulk downloads of certain types of data, such as basic license information and data on license applications in open data format (e.g. .xls). However, bulk download functionality is not available for other types of data such as production volumes, non-tax revenues and company ownership data, which can only be downloaded in open data format per individual license, not for all licenses combined.

Figure 22 Map-based user interface of the cadastral system



Source: MOMP Transparency Portal

Recommendations:

27. It is recommended that the MOMP Cadaster Department ensure that the Transparency Portal includes information on all types of licenses and contracts, including licenses related to construction materials. It is recommended that the AEITI MSG together with the MOMP Cadaster Department investigate the reasons for the lack of uploading of certain license data by certain MOMP Provincial offices, and publish an explanation on the MOMP website.
28. It is recommended that the MOMP should create the MOMP's Transparency Portal Maintenance Committee to provide regular updates to the AEITI MSG on the status of implementation of its MCAS/NTRS customization action plan, to seek the MSG's input on new data that could potentially be required and to solicit feedback from the MSG on further improvements that could potentially be required from a user's perspective.
29. It is recommended that the MOMP provide more clarifications on the Transparency Portal of the scope of data available through the MCAS and NTRS systems, including the time-periods covered in terms of license data and (ii) the geographical scope of the system, i.e., whether it covers older licenses awarded at the provincial level.
30. The AEITI MSG is encouraged to undertake an annual diagnostic of license data available on the MOMP Transparency Portal to provide regular feedback to the MOMP on any gaps or ambiguities that should be addressed in order to ensure that license data on the Transparency Portal is both complete and reliable.
31. The MOMP-RMD department is highly recommended to complete the data entry of revenues from companies on a daily basis, and the MOMP should provide required resources to the service provider (RDF) to maintain the Transparency Portal.

How are rights to mining, oil and gas awarded and transferred? (EITI Requirement 2.2)

The MOMP Transparency Portal tracks applications for new mining, oil and gas licenses. This EITI Report provides an overview of the way in which the award and transfer process should be conducted and a diagnostic of the actual practice in 1397-1398. In particular, this section reviews the reforms to the regulatory framework for awarding and transferring licenses, with the 1396 (2017) Hydrocarbons Law and the 1397 (2018) Minerals Law. It then reviews the actual awards and transfers of mining, oil and gas licenses that took place in 1397-1398, including an assessment of whether these awards and transfers were in accordance with the regulatory framework.

Evolution of the mining license award process

There have been several reforms of the legal and regulatory framework for the management of mining rights, including licensing and contracting. Although the 2014 Mining Law enacted reforms to mining licensing, regulations were never issued or implemented to implement the law.

The 2018 Minerals Law was passed by the Government Cabinet on 14 June 1397 (2018) and it was published in the official gazette on 21 July 1397 (2018), the date from which it became effective. The 2019 Mining Regulations were issued as implementing regulations for the 2018 Minerals law. The licensing regime has moved from a contract-based system under the 2014 Mining Law in which the MOMP negotiated the terms of each mining contract separately to a concession-based licensing system in the 2018 Minerals Law in which standard model agreements – one for exploration and one for exploitation – reduce the need for lengthy negotiations. Royalties are now set by the 2018 Minerals Law, which eases the administrative burden on the

MOMP and, according to UNDP[97] and some law firms' commentary[98], reduces the scope for corruption. The 2019 Mining Regulations are key to defining more detailed aspects of the licensing process, including describing the contents of applicants' 'capability statements'.

Table 26 presents the evolution in mining licensing procedures under the different regulatory frameworks, including technical and financial capacities assessed during the licensing phase.

Table 26 Procedure for mining license awards, including technical and financial criteria

Law/regulation	Period of effectiveness	Statutory license award procedure	Technical and financial criteria assessed
[2010 Minerals Regulations]()	2010 – 2018	The procedures cover the license and contract allocation procedure through competitive tender for mineral rights (Articles 8-20), first come first served for mining exploration licenses (Articles 23-29), exploitation licenses through competitive tender (Articles 35-41), first come first served for small-scale mining licenses (Articles 46-50) and quarrying licenses (Articles 52-60).	The Regulations refer to applicants and bidders technical and financial capacity, without defining the criteria considered in the assessment of applicants' technical and financial capacities.
[2014 Mining Law]()	2014 – 2019	The 2014 Law defines the statutory procedure for awarding mining licenses (Articles 16-23), including Reconnaissance Licenses (Articles 42-44), Exploration licenses (Articles 47-50), Exploitation Licenses (Articles 55-57), Small-Scale Mining Licenses (Articles 61-63), Artisanal Mining Licenses (Articles 67-69), and Construction Materials Authorizations (Articles 73-78).	The Law includes reference to assessment of an applicant's technical and financial capacity, but without defining clear criteria considered in the assessment of applicants' capacity.
[2018 Minerals Law]()	2019 – present	The Law describes the lengthy procedure for awarding mineral rights by approval from Mining Technical Committee, NPA, Cabinet, HEC and MOMP, including Mining Concession for exploration and exploitation, the exploration licenses, exploitation licenses, small-scale mining licenses, and permits for construction materials, Infrastructure authorization, Environmental, and Processing permit (Articles 4, 26-33). The MOMP website publishes a business process map for large-scale mining licenses.	Article 29 requires that applicants demonstrate their capacity to undertake the work programs through the 'capability statement', but without describing the 'capability statement' any further.
[2019 Mining Regulations]()	2019 – present	Articles 9 to 18 of the 2019 Mining Regulations describe the statutory process for mining license awards. Articles 19-20 describe the process for small-scale mining licenses.	Schedule 3 in annex of the Regulations define the elements considered as part of the applicant's capability statement, relevant both for exploration, exploitation and small-scale mining licenses.

[97] UNDP (March 2020), 'Afghanistan Human Development Report 2020: Pitfalls and promise, mineral extraction in Afghanistan', accessed on http://hdr.undp.org/en/content/national-human-development-report-2020-afghanistan

[98] Kakar Advocates Law Firm LLC (May 2019), '2019: The Year of Investment in the Afghan Mining Sector', accessible on https://www.kakaradvocates.com/2019-the-year-of-investment-in-the-afghan-mining-sector/

The MOMP website publishes the bidding documentation (including the list of interested companies, the companies short-listed, evaluation criteria, etc.) for small-scale mining licensing awarded under the previous (2014) Mining Law.[99]

How are mining licenses to be granted?

The 2018 Minerals Law defines small-scale mining licenses and large-scale licenses. It replaces the previous bidding-based system of royalties with a set of fiscal terms (e.g., royalty) codified in law. The law establishes an independent Mining Technical Committee to assist in the fair assessment of mining applications. It also requires all mining license applications, including small-scale licenses, to be approved by the High Economic Council, composed of cabinet-level government officials.

For large-scale mining licenses, the law defines both exploration and exploitation (production) licenses, but anticipates that in most cases large-scale mining concessions will be awarded in a two-step process, with an exploration license subsequently converted into a exploitation (production) license. Large-scale mining licenses are awarded based on competitive tender conducted by the MOMP. The bids are reviewed by the Mining Technical Committee, whose recommendation is submitted to the High Economic Council, and then Cabinet, for approval. The MOMP finally awards the license to the successful bidder.

Small-scale licenses are reserved for Afghan nationals and companies. The artisanal mining licenses and quarrying permits under the 2014 Mining Law have been replaced by the single type of small-scale mining license. The 2018 Minerals Law replaces the previous tender process for small-scale licenses with a first-come-first-served application process, through the MOMP's MCAS system, publicly-accessible through the Transparency Portal. The MOMP's Mining Technical Committee reviews applications and makes a recommendation to the High Economic Council for approval. The MOMP finally awards the license to the successful applicant.

The 2018 Minerals Law requires the MOMP to publish all mining concessions and licenses, including beneficial owners of companies involved. License applicants are required to submit an environmental protection plan and an employee safety plan. Large-scale license holders are required to submit a local content plan and a community development plan.

Tables 27 and 28 provide a description of the types of mining licenses under the (previous) 2014 Minerals Law and under the current 2018 Minerals Law.

[99] MOMP website, 'Information on small-scale mining', accessible on https://MOMP.gov.af/information-about-small-scale-mining

Table 27 Description of License Types in Accordance with the ***2014 Mining Law***

Type of Mining	Area	Duration
Reconnaissance License	A Reconnaissance License Area shall consist of contiguous blocks such that its Area shall not exceed twenty thousand (20,000) square kilometers	A Reconnaissance License shall be granted for up to two (2) years and may not be extended.
Exploration License	An Exploration License Area shall be made up of adjacent blocks and the area of land on which an Exploration License may be granted shall not exceed two hundred and fifty (250) square kilometers	From the date of registry, the Exploration License period shall be for up to three (3) years and may be extended for two (2) additional consecutive term
Exploitation License	Exploitation License may be granted shall not exceed fifty (50) square kilometers or be less than one (1) square kilometer	The duration of an Exploitation License shall not exceed thirty (30) years from the time of its registry,
Small Scale Mining License	The Area defined in a Small-Scale Mining License shall be of adjacent blocks and shall not exceed one (1) square kilometer and a depth of sixty (60) meters	A Small-Scale Mining License shall be for a period ten (10) years from the date of registration and is extendable
Artisanal Mining License	The area in respect of an Artisanal Mining License shall not exceed one (1) hectare, as adjusted to the cadastral block system and its area cannot be expanded	An Artisanal Mining License shall be valid for five (5) years after its registration and can be extended for (5) years till finish deposit
Development Contract	The holder of a Minerals Development Contract may be granted up to (5) Exploitation Licenses in the Area of the Exploration License of its Contract	
Application for Quarry	The area in respect of a Quarry and Construction Materials Authorization shall not exceed one (1) hectare, and thirty (30) meters in depth	A Quarry and Construction Materials Authorization shall be valid for five (5) years after its registration and may be extended for continuous terms up to five (5) years each

Source: 2014 Mining Law as cited by addendum to 6th AEITI Report available on *https://eiti.org/files/documents/6th_aeiti_addendum_report_20200515.pdf*

*Table 28 Description of License Types in Accordance with the **2018 Mineral Law***

Type of Mining	Area	Duration	License award procedure	Technical and financial criteria for license awards
Mining Concession for large scale mining	Article 28. (1): Upon execution of a Mining Concession which provides for the grant of an Exploration License and a right of priority for the grant of an Exploitation License, Article 30. (2) The area of an Exploration License shall not exceed a total area of 250 square kilometers and be reduced in area by 50% by partial relinquishment as a condition of renewal and always comprise adjacent cadastral blocks. Article 30. (3) The area of an Exploitation License shall not exceed the area reasonably required for the conduct of Exploitation Activities.	Article 31: (1) An Exploration License shall be granted for an initial term of 3 years and up to 2 additional terms of 3 years with the approval of the Ministry. (2) An Exploitation License shall be granted for a term of 30 years and additional terms of up to 15 years with the approval of the Ministry.	Competitive bidding Article 41. (2): A bidding process for the award of a Mining Concession may be initiated by the publication of a notice on the Ministry's website, international websites, local and national newspapers, and if required international newspapers	Article 15 (4) of the 2019 Regulation: The weight to be given to the tender evaluation criteria shall be specified in the request for proposal Article 15. (2) of the 2019 Regulation: The Mining Technical Committee shall evaluate tender proposals having regard to the following evaluation criteria. Article 15. (3) of the 2019 Regulation: The criteria to assess the capacity of the bidder in regard to execution of promises, is as follows: 1. technical capacity; 2. Financial capacity; and 3. experience in Afghanistan or any other similar jurisdiction.
Exploration License	The area of an Exploration License shall not exceed a total area of 250 square kilometers and be reduced in area by 50% by partial relinquishment as a condition of renewal and always comprise adjacent cadastral blocks.	An Exploration License shall be granted for an initial term of 3 years and up to 2 additional terms of 3 years with the approval of the Ministry.	Competitive bidding	Article 29 of the 2018 Minerals Law and Schedule 3 of in annex of the 2019 Mining Regulations define the Capability Statement, which includes technical and financial criteria assessed.
Exploitation License	The area of an Exploitation License shall not exceed the area reasonably required for the conduct of Exploitation Activities.	An Exploitation License shall be granted for a term of 30 years and additional terms of up to 15 years with the approval of the Ministry.	Competitive bidding	Article 29 of the 2018 Minerals Law and Schedule 3 of in annex of the 2019 Mining Regulations define the Capability Statement, which includes technical and financial criteria assessed.
Small Scale Mining License	The maximum area of Small-scale Mining Licenses in the relevant Small-scale Mining Area which shall not exceed one (1) square kilometer. The maximum depth of Small-scale Mining Licenses in the relevant Small-scale Mining Area which shall not exceed 60 meters.	A Small-scale Mining License shall be granted for a term of 5 years and additional terms of up to 5 years with the approval of the Ministry.	First come first served	Article 29 of the 2018 Minerals Law and Schedule 3 of in annex of the 2019 Mining Regulations define the Capability Statement, which includes technical and financial criteria assessed.

Source: 2018 Minerals Law available on https://momp.gov.af/sites/default/files/minerals_law_2019english.pdf

One component of a USD 20m five-year USAID-Department of Commerce agreement is to improve the legal and regulatory regime in the mining sector and building capacity of MOMP's staff in granting and administering mining contracts.[100]

How are oil and gas licenses to be granted?

The Afghanistan Oil and Gas Regulatory Authority (AOGRA) was established in 2013 and is tasked with project management, governance, regulation and supervision of the oil and gas sector.[101] Under the 2017 Hydrocarbons Law, the Afghanistan Oil and Gas Regulatory Authority (AOGRA) is responsible for awarding oil and gas exploration and production licenses, subject to approval by the High Economic Council.

During 1397-1398 (2018-19), Afghanistan's oil and gas sector was governed by the 2017 Hydrocarbons Law and the 2009 Hydrocarbons Regulations. The 2009 Hydrocarbons Regulations are a legacy that correspond to the previous 2009 Hydrocarbons Law. Regulations to implement the 2017 Hydrocarbons Law have been developed but are awaiting formal adoption by the MOMP. Table 29 below describes the types of licenses as applicable to the hydrocarbons sector.

Table 29 Description of contract types under 2017 Hydrocarbons Law

Type of License	Definition
Exploration and production sharing contracts (EPSC)	Exploration and Production Sharing Contracts shall allow the Contractor to explore for Hydrocarbons in accordance with the terms and conditions of the Contract and, in the event of a Commercial Discovery, to develop and produce Hydrocarbons, in accordance with the provisions of this Law and the Contractor shall be entitled to the specified share from the Hydrocarbons produced.
Service and production sharing contracts (SPSC)	Under a Service and Production Sharing Contract, the Contractor shall be granted the exclusive operating right to upgrade and rehabilitate Hydrocarbons production facilities, including well servicing operations, the provision of services and the production of Hydrocarbons in accordance with the provisions of this Law, and shall be entitled to the specified share from production.
Contracts for geological/geophysical/geochemical services	These Contracts grant the right to conduct geological, geophysical and geochemical services in an identified area in accordance with the provisions of this Law and the Contract; provided that the identified area is not within the Contract Area of a first or second type Contract.
Contracts for pipeline operations	The construction and operation of pipelines, pumping stations, storage tanks or valves, and transportation of Hydrocarbons shall take place on the basis of a Contract for Midstream Hydrocarbons Operations, and issuance of a related License. The terms and conditions related to the construction and operation of such pipelines and related facilities, including design, route selection and safety requirements, shall be set forth in the Contract for Pipeline Operations and the Hydrocarbons Regulations. A separate Contract for Midstream Hydrocarbons Operations and License will not be required for the construction and operation of pipelines and related facilities by Contractors under the first and second type Contracts; provided that the terms and conditions for the construction and operation of such pipelines and related facilities, including design specifications, route selection, required rights of way, safety requirements, and all other relevant information, shall be specified in the Development Program and approved by the Authority in accordance with provisions of this Law.

Source: 2017 Hydrocarbons Law available here, as cited by 6th AEITI Report available on http://aeiti.af/Content/Media/Documents/AEITIReport1395-1396290619revised107201950198675533253251211201965988015533253 25.pdf

[100] Special Inspector General for Afghanistan Reconstruction (January 2020), 'Quarterly report to the United States Congress', accessible on https://www.ecoi.net/en/file/local/2023927/2020-01-30qr.pdf

[101] Ministry of Mines and Petroleum, Afghanistan Petroleum Authority, accessible on https://MOMP.gov.af/afghanistan-petroleum-authority

Table 30 maps the award procedures for the different types of oil and gas licenses available in Afghanistan.

Table 30 Types of oil and gas exploration and production contracts and their award procedures

Type of oil and gas rights	Area size	Duration	Contract award procedure	Technical and financial criteria for license awards
Exploration and production sharing contracts (EPSC)	Depends on block size	Up to 10 years	International competitive tender	Articles 39 and 40 of the 2017 Hydrocarbons Law refer to documents to establish technical and economic capacities of the bidder, but don't further define them.
Service and production sharing contracts (SPSC)	Depends on block size	Up to 25 years	International competitive tender	

Source: 2017 Hydrocarbons Law: *https://momp.gov.af/sites/default/files/2020-06/2017%20Hydrocarbons%20Law%20vEnglish.pdf*

Afghanistan's first tender of oil blocks in the Amu Darya Basin awarded in December 2011 the Kashkari, Bazarkhami and Zamarudsay blocks to a consortium made up of CNPCI and the Watan Group. While oil production commenced in 2013, the further development of the oil fields did not progress and production averaged approximately 2,000 barrels per day as of 2016-2017.[102] CNPCI-Watan Oil and Gas ceased making royalty payments since January 2018.[103] The European Council on Foreign Relations described the project as inactive due to security issues and disagreements over terms between the consortium partners.[104] The General Directorate of Hydrocarbons Resources (GDHR) of MoMP reported that Amu Darya Exploration and Production Sharing Contract "EPSC" was terminated as of mid-2018.

Out of the six blocks of the Afghan-Tajik Basin tendered, the Sanduqli and Mazar-e-Sharif blocks were awarded in Q4 2013 to a consortium of Dragon Oil, Turkish Petroleum and the Ghazanfar Group. The other four blocks have been tendered, but contracts have not yet been awarded.[105] The two awarded blocks are at the exploration stage.

How many licenses and contracts were awarded in 1397-1398?

The government of President Ashraf Ghani halted in September 2014 all major mining contracts issued by its predecessor over concerns of corruption. Since then, the majority of mining licenses awarded were small-scale mining licenses. In 1395-1396 (2016-2017), all mining licenses awarded were small-scale.

In addition to data on license applications from the Transparency Portal, the MoMP website has published a list of license applications in 1397-1398, including 371 applications for small scale mining[106] and seven (7) for large scale mining over the two years.[107] The MOMP also published a

[102] Friedrich Ebert Stiftung (August 2018), 'Integrating Afghanistan into the Belt and Road Initiative Review, Analysis and Prospects', accessible on http://library.fes.de/pdf-files/bueros/kabul/15587.pdf
[103] MOMP Transparency Portal, License P-EXP 1/2011, accessible on https://transparency.mom.gov.af/license/54104
[104] European Council on Foreign Relations (July 2018), 'Fear and loathing on the New Silk Road: Chinese security in Afghanistan and beyond', accessible on https://www.ecfr.eu/publications/summary/new_silk_road_chinese_security_in_afghanistan_beyond
[105] Friedrich Ebert Stiftung (August 2018), 'Integrating Afghanistan into the Belt and Road Initiative Review, Analysis and Prospects', accessible on http://library.fes.de/pdf-files/bueros/kabul/15587.pdf
[106] 'GD- Cadaster report', accessible at http://aeiti.af/Content/Media/Documents/ApplicationsforSSMLthroughonlinesubmittingapplicationssysinFY13971398202202116377645533253325.xlsx
[107] http://aeiti.af/Content/Media/Documents/DG-LSMdetailedlistofallProjectsfor1397and139810520212184046555325325.xlsx

list of 50 processing permit applications[108] and a list of 11 gem export permit applications.[109] A total of seven gem export permits were awarded through the Gemstone Export Permit Facilitation Procedure in 1397-1398, including three permits for precious and semi-precious stones and four permits for exporting samples of talc and other minerals (no infrastructure permit was awarded in this period). The details of the seven gemstone export permits awarded in 1397-1398 are published on the AEITI website.[110]

The list of licenses available on the Transparency Portal includes applications for mining licenses that were submitted in 1397-1398, but that were not awarded in that period. In total, the MOMP Cadaster Department reported that there were 371 applications for small-scale mining licenses in 1397-1398, all of which were submitted in 1398 (2019). Of these applications, the Cadaster Department reported that only 124 small-scale mining license applications were deemed eligible for further processing as the application fee had been paid. The full list of eligible license applications for the 1397-1398 period is published in open data (.xls) format on the AEITI website.[111]

The first three large-scale (exploration) mining licenses awarded in several years were granted on 5 October 2018, following a period of only small-scale license awards since 2014.

The award of large-scale copper exploration license (EXPL 1/2018) in Sar-e Pol Province and a large-scale gold exploration license (EXPL 2/2018) in Badakhshan Province to Afghan Gold and Minerals Company (AGMC) and Turkish Afghan Mining Company (TAMC) respectively on 5 October 2018 attracted significant media attention. The contracts, with prospects of USD 1bn in economic impact, represented the largest mining exploration effort in Afghanistan's recent history.[112] The AGMC and TGMC companies are owned by Centar Ltd., a company whose beneficial owners were alleged by some civil society organizations to include an Afghan politically-exposed person.[113][114][115]

The third large-scale exploration license award, marked as in 1398 (2019), was a copper license (EXPL 3/2018) in Herat Province to Silk Road Mining, on 16 August 2019. Silk Road had previously been awarded the right to enter into a mining contract for Shaida through a competitive tender by

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[108] https://bit.ly/3i1gG87
[109] https://bit.ly/3sci8sQ
[110] See 'Awarded Gemstone Exporting Permits in FY 1397 & 1398' on AEITI website, accessible at http://aeiti.af/Content/Media/Documents/AwardedGemstoneExportingPermitsinFY139713982022021171792553325325.xlsx
[111] See 'Applications for SSML through online submitting applications system in FY 1397 & 1398' spreadsheet on AEITI website, 'Data for 7th AEITI Report', accessible on http://aeiti.af/Content/Media/Documents/ApplicationsforSSMLthroughonlinesubmittingapplicationssysinFY1397139820220211637764553325325.xlsx
[112] BusinessWire (October 2018), 'CENTAR Announces Signing of Historic Afghan Gold and Copper Mining Agreements', accessible on https://www.businesswire.com/news/home/20181005005243/en/CENTAR-Announces-Signing-Historic-Afghan-Gold-Copper/?feedref=JjAwJuNHiystnCoBq_hl-d0q77hRjGWvCunvqSsMC5PkKuEqWGdtYcKRejd3o8qMqnKfqP6Z7nZVMLG-WqUNUuIFBOuQU34x9_qUrqnb9IFt3G9xeKEyIFKgj2nxZILuWb2_mZzaa2HVGkrPJ34F1Q==
[113] The New York Times (October 2018), 'Afghanistan Signs Major Mining Deals Despite Legal Concerns', accessible on https://www.nytimes.com/2018/10/06/world/asia/afghanistan-signs-mining-deals.html
[114] Office of Senior Advisor to the President on Banking and Finance (2018), 'Press Release: Mining Sector Update', accessible on http://static.ow.ly/docs/Press%20Release_Mining%20Sector_7Zc1.pdf
[115] Global Witness (October 2018), 'New Afghan mining contracts 'appear to breach law', say CSOs', accessible on https://www.globalwitness.org/en/press-releases/new-afghan-mining-contracts-appear-breach-law-say-csos/

the MOMP several years ago.[116] The first phase of the copper exploration project was expected to attract investment of USD 21.3m over three years.[117]

In December 2019, the Office of the President announced the cancellation of two of the large-scale mining exploration licenses[118], claiming that the license-holders had not fulfilled their contractual obligations.[119] Both companies (AGMNC and TAMC) had failed to post the contractually required performance bonds and neither company had started exploration work as of October 2019.[120] The MOMP has confirmed these cancellations, together with a third small-scale (Herat) Salt contract also cancelled in 1398 (2019).

In April 2019, the MOMP launched bids for 14 mining licenses. The MOMP announced at the Dubai Investment Event that some 43 large- and small-scale mining projects located in 16 of the 34 provinces of Afghanistan would be available for private-sector investment. The MOMP hoped to attract some $100m in investment over the first year in exploration for commodities including oil and gas, marble, iron, construction materials, gemstones, cement, gold, copper, and talc.[121] These contracts had not yet been awarded as of the end of 1398 (2019), according to data from the Transparency Portal.

According to the MOMP Cadaster Department, MoMP awarded in 1397 one small-scale exploitation license of chromite for five years to *Metal Mining UK* Company and one small scale Salt contract to Nasir Omaid Salt mining Company for five years. In 1398, there was no award of small-scale exploration contract or license awards. However, there was one small-scale exploitation license of chromite awarded for five years to *Stana Baba Mining* Company. The General Directorate of Large Scale Mining reported that one large-scale exploration license of copper was awarded for five years to Silk Road Mining Company.

Details of the license awards according to the MOMP reports are in Table 31.

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[116] Silk Road Mining (September 2018), 'Silk Road Mining Signs Mineral Development Contract', accessible on https://www.silkroad-mining.com/press-single.html
[117] Silk Road Mining (September 2019), 'Silk Road Mining issued mineral license', accessible on https://www.silkroad-mining.com/press-single2.html
[118] Mining.com (December 2019), 'Afghanistan cancels contract to US gold, copper miner', accessible on https://www.mining.com/afghanistan-cancels-contract-to-us-gold-copper-miner/
[119] The Financial Times (March 2020), 'A lost struggle to mine Afghan gold', accessible on https://www.ft.com/content/3b0cb42d-5fc8-4319-9f83-79b5ca76cbd7
[120] https://www.sigar.mil/pdf/quarterlyreports/2020-01-30qr-section3-economic.pdf
[121] USAID Invest (April 2019), 'Ministry of Mines and Petroleum Announces 14 New Projects for Tender', accessible on https://MOMP.gov.af/sites/default/files/invest_news_release_-_afghanistan_mining_investment_forum-final.pdf

Table 31 List of awarded licenses in 1397-1398

	License Code	Company name	Dates			License type	Status	Commodity	province
			Application	Award	Expiry				
1	EXPL 8/2012	Metal Mining UK	19/2/1395	2/8/1397	15/9/1401	Small scale	Active/ Exploitation	Chromite	Logar & Maidan wardag
2	EXPL 3/2018	Silk Road Mining Company	1/2/2011	16/9/2019	15/9/2022	Large Scale	Active/ Exploration	Copper	Herat
3	EXPL 1/2014	Stana Baba Mining Company	12/1/1398	17/2/1398	21/4/1403	Small scale	Active/ Exploitation	Chromite	Logar
4	EXPL 1/2018	Afghan Gold and Minerals	16/12/2011	Not reached to license awarding stage		Large-scale	**Cancelled** in November 2019	Copper	Sar-e-Pol, Balkhab
5	EXPL 2/2018	Turkish Afghan Mining Company	16/12/2011	Not reached to license awarding stage		Large-scale	**Cancelled** in November 2019	Gold	Badakhshan
6	SSML-Hera 1/2018	Nasir Omid Salt Mining Company	27/4/1395	12/10/1396	11/10/1401	Small Scale	**Cancelled** on 30 Hamal 1397	Salt	Herat

Source: MOMP Cadaster and Large-Scale Mining Departments

The MOMP's Hydrocarbon Directorate confirmed that had been no oil and gas contract award, rejection, cancellation or suspension in 1397-1398.

More recently in 1399 (2020), the government concluded an exploration agreement with the Australian company Fortescue Future Industries Pty Ltd framed as a "Framework Deed of Agreement for the development of Mining in Afghanistan" in 2020 September, which raised controversy over the terms of the nationwide scope of the agreement.[122] The agreement itself has since been published on a national media website (Padjhwok).[123]

Diagnostic of actual licensing practices in 1397-1398

The MSG understands that the 2018 Minerals Law was applied immediately upon enactment by Presidential Decree. Since 2019 with its work in preparing the 6th AEITI Report and its addendum, the MSG has adopted a type of performance audit approach to assessing non-trivial deviations in license awards. It effectively took a sample of license awards – 10 out of a total of 120 license awards in 1395-1396 – and reviewed the application and award process in detail for each license. The MOMP Cadaster Department's conclusions, certified by the EU technical advisor, were published on the MOMP website (here).

[122] Tolo News (March 2021), 'Govt's Agreement with Australian Company Sparks Controversy', accessible at https://pajhwok.com/2021/03/10/govt-fortescue-mining-agreement-sparks-concerns/ and, also https://tolonews.com/business-170454
[123] "Framework Deed of Agreement for the development of Mining in Afghanistan" (September 2020), accessible at https://pajhwok.com/wp-content/uploads/2021/03/%D8%AA%D9%88%D8%A7%D9%81%D9%82%D9%86%D8%A7%D9%85%D9%87.pdf

In terms of the three licenses awarded in 1397-1398, the length of time between application and award for two of these three mining licenses is considerable. The license application process took 2.5 years in the case of Metal Mining UK and eight years in the case of Silk Road Mining, while it took only one month in the case of Stana Baba Mining's small-scale mining license.

The MSG undertook a review of the process followed for the six mining license awards in 1397-1398. With the support of GiZ-MinGov, it contracted a consultant to review the documentation on the procedure followed for these awards. The review of these license awards is published on the AEITI website (here). In practice, it identified non-trivial deviations in two contracts that were since cancelled, as well as a number of more minor deviations such as the lack of translation of contracts in the Dari language. The MSG plans to undertake this diagnostic of licensing every year, as foreseen in the 2021 AEITI work plan.

Stalled tender of talc licenses

On April 17, 2018, the MOMP's Large Scale Mining Directorate together with The National Procurement Authority (NPA) launched the tender of two blocks of talc rights in Nangarhar Province (*Achin and Sherzad*), announced through the MOMP and NPA websites, as well as national newspapers (Arman e Mili, Outlook Afghanistan and DG Market). Four proposals were received for the Sherzad block and two proposals for the Achin block.

For the Sherzad block, the preferred bidder was Core Drillers Company while the reserved bidders was Amin Karimzai Talc and Marble Extraction and Processing Company (د امین کریمزی د شوکانو او مرمرو د استخرج او پروسس شرکت). When the evaluation report of the Sherzad block was submitted to High Economic Council for final approval, the Council decided that it should be divided into three equal parts, with one part for each of the two bidders and the third to be re-tendered. For the Achin block, the HEC found after evaluation of the proposals that there were no eligible company bids and decided to re-tender the block divided into four distinct licenses.

Construction materials quarrying under MoUs with other Ministries

Given delays in the award of new small-scale licenses for construction materials on 2018 Mineral Law, companies with contracts for public works with the *Ministry of Public Works, Ministry of Rural Development, Ministry of Urban Development, Ministry of Water and Energy, Ministry of Economy and Kabul Municipality* have faced challenges in securing access to the key construction materials of use in public works, namely construction stone, gravel and sand. As a consequence, these government Ministries have concluded MoUs with the MOMP on 22 November 2017 to allow companies holding construction contracts with these six Ministries to pay royalties to these Ministries and for these royalties to subsequently be transferred to the MOMP where the contract award and contract management is on these six entities.

The MOMP Cadaster Department published a justification for these MoUs for construction materials on the AEITI website.[124] The MOMP's Legal Department has also provided a justification (in Dari) for the MoUs, published on the MOMP website.[125] The signed MoU between the MOMP and the six Ministries in Dari is published with the help of AEITI – MSG on the MOMP website

[124] See 'Cadaster Justification to Construction Material MoUs' on AEITI website, 'Data for 7th AEITI Report', accessible on http://aeiti.af/Content/Media/Documents/CadasterJustificationtoConstructionMaterialMoUs2322021225553514553325325.pdf
[125] MOMP (2020), Justification for the MoUs on construction materials is published at AEITI website, accessible here.

(here). An entry in the MCAS system has since been created for each of the MoUs in order for non-tax (royalty) payment information associated with these agreements to be recorded in the NTRS system. These are visible in the Transparency Portal.[126]

Evolution in the mining license transfer process

There have been several reforms in the transfer of mining licenses. The 2014 Mining Law codified the general process for transferring mining licenses, but the lack of implementing regulations for the law meant that the detailed process for transferring mining licenses was not codified.

The 2018 Minerals Law and 2019 Mining Regulations clearly define the process for transferring mining licenses, including the detailed technical and financial criteria assessed in the process of license transfers. Companies to which mining licenses are transferred are required to demonstrate the same technical and financial capacities as companies applying for new mining licenses, through the 'capability statement' that is submitted to the MOMP.

Table 32 provides an overview in the evolution of the legal and regulatory framework for transferring mining licenses since 2010.

Table 32 Procedure for mining license transfers, including technical and financial criteria

Law/regulation	Period of effectiveness	Statutory license transfer procedure	Technical and financial criteria assessed
2010 Minerals Regulations	2010 – 2018	The Regulations describe the general statutory procedures for transfers mining exploitation license (Article 43), noting that exploration licenses cannot be transferred without explicit authorization of the Ministry of Mines (Article 32).	Article 43 (1) requires that the transferee demonstrates the necessary technical and financial capabilities to undertake the approved work program, without defining the specific criteria assessed.
2014 Mining Law	2014 – 2019	The Law defines the procedure for transferring mining licenses (Article 29), Articles 23 and 26 confirm that approval from the MOMP is required for transfers of Minerals Development Contracts.	Article 29 states that the transferee meets all the requirements in the Mining Law, implying that the same technical and financial criteria are assessed as for license awards.
2018 Minerals Law	2019 – present	The Law describes the statutory procedure for transferring a part or the whole of a mining license (Article 39).	Article 39 (2) states that transferees of exploration and exploitation licenses are required to have "adequate' technical and financial capacity, without further defining the specific criteria.
2019 Mining Regulations	2019 – present	The Regulations describe the statutory procedures for transferring mining licenses and interests in licenses (Article 32).	Article 32 (1) confirms that the transferee is required to submit a statement of capability in the same way as for license awards. Schedule 3 in annex of the Regulations define the components of the capability statement, including technical and financial criteria assessed.

[126] See for example 'License SSML-Nang 2/2019' (or any license registered to an owner marked as the MOMP) on MOMP Transparency Portal, accessible on https://transparency.mom.gov.af/license/101659

How are mining licenses meant to be transferred?

The transfer of mining licenses is allowed under the 2018 Minerals Law and the 2019 Mining Regulations. The 2019 Mining Regulation detail the process for transferring large-scale mining licenses, but does not cover small-scale license transfers. The company seeking to transfer the license must seek prior approval from the MOMP and demonstrate its compliance with the 2018 Minerals Law in terms of capacity and technical criteria. In the case of large-scale exploration and exploitation licenses, the license-holder must demonstrate that it has complied in all material aspects with the terms of the Mining Concession. The technical and financial capacities of the transferee company are to be assessed in the case of transfers of large-scale exploration and exploitation licenses through the transferee's 'Capability Statement' in the same way as for license awards.

The 2018 Minerals Law introduces legal requirements for the MOMP to formally approve any transfer of more than 50% of the beneficial ownership of a license-holding company for the first time (*see Company ownership Chapter*).

An overview of the general procedures for transferring different types of mining licenses is summarized in Table 33.

Table 33 Types of mining licenses and their transfer procedures under the 2018 Minerals Law

Type of mineral rights	Area size	Duration	License transfer procedure	Technical and financial criteria for license transfers
Exploration license	Adjacent blocks not exceeding 250 square km.	Up to 3 years, renewable twice.	Upon prior written approval of the MOMP. Transferring company complied with any additional requirements under the Mining Concession.	Transferee must have adequate technical and financial capacity. Capacity to be assessed based on transferee's 'Capacity Statement', the same as for license awards in accordance with 2019 Mining Regulations.
Exploitation license	Not exceeding 50 square km (more than 1 square km).	Up to 30 years.	Upon prior written approval of the MOMP. Transferring company complied with any additional requirements under the Mining Concession.	Transferee must have adequate technical and financial capacity. Capacity to be assessed based on transferee's 'Capacity Statement', the same as for license awards in accordance with 2019 Mining Regulations.
Small-scale mining license	Adjacent blocks up to 1 square km to depths up to 60 m.	Up to 10 years, extendable.	2019 Mining Regulation is silent on the transfer of small-scale mining licenses.	N/A
Development contract	A Minerals Development Contract holder is eligible to be granted up to 5 exploitation licenses. The area size and duration of the contract is the same as for the related exploitation licenses.		In accordance with the procedure for transferring large-scale mining exploration and/or exploitation licenses.	Transferee must have adequate technical and financial capacity. Capacity to be assessed based on transferee's 'Capacity Statement', the same as for license awards in accordance with 2019 Mining Regulations.

Source: 2018 Minerals Law and 2019 Mining Regulations

How are oil and gas licenses meant to be transferred under the 2017 Hydrocarbons Law?

Article 58 of the 2017 Hydrocarbons Law defines the general process for transferring contract rights. It requires the contractor and license-holding company to seek approval for any transfers from the Afghanistan Oil and Gas Regulatory Authority (AOGRA) and the Cabinet. However, it does not explicitly confirm whether the same technical and financial criteria are assessed as for license awards. In preparation of this report, the MOMP's General Directorate of Hydrocarbons Resources (GDHR) confirmed that the same technical and financial criteria were assessed in transfers of participating interests in oil and gas consortia as for the original award.

How many licenses, contracts and permits were transferred in 1397-1398?

Information received from the MOMP General Directorate of Cadaster and General Directorate of Hydrocarbon indicates that there was a single transfer of license in the Mineral mining sector and a single change in an operating contract in the oil and gas sector.

In the mining sector, the D-75489 construction materials mining license in Kabul was transferred by Darzi brothers Extraction and Processing Company (شرکت استخراجی و پروسس برادران درزی) to Zar afshan Safid Extraction and Processing Company (شرکت استخراجی و پروسس سنگ زر افشان سفید) on 21 June 1398 (2019), the request to transfer having been submitted to the MOMP on 12 June 1398 (2019). The date of expiry remained unchanged at 22 August 1399 (2020). The MOMP Cadaster Department confirmed that the Transparency Portal was updated with this transfer.

However, the MOMP Cadaster Department reported that "*no information is currently available from other provinces if they have transferred any contract at provincial level*", raising questions about whether the information on transfers of mining licenses disclosed here is complete.

In the oil and gas sector, the consortium operating the Sanduqli and Mazar-i-Sharif Exploration and Production Sharing Contracts (EPSCs) amended the participating interests of the three contractors. Previously the B.O. controlling percentage was that Dragon Oil had 40%, Ghazanfar 20%, and TPAL 40%. Currently, the new participating interests are that Dragon Oil is 49%, Ghazanfar 2% and TPAL 49% which means that there is no major change to the Majority Control Percentage.

Table 34 presents the change in participating interest in the EPSCs in 1397:

Table 34 Change in participating interests in the Sanduqli and Mazar-i-Sharif EPSCs in 1397 (2018)

Contractor entity	Pre-change in participating interest	Post- change in participating interest
Dragon Oil	40%	49%
Ghazanfar	20%	2%
Türkiye Petrolleri Anonim Ortaklığı (TPAL)	40%	49%

Source: MOMP

In the years under review, the Hydrocarbon Directorate has reported that Amu Darya Exploration and Production Sharing Contract "EPSC" that was awarded to Chinese National Petroleum Corporation International (CNPCI) Watan Oil and Gas Afghanistan Ltd was terminated in mid-2018 (1397). The oil and gas industry representative on the MSG confirmed that there were no other rejection, cancelation or suspension of any oil and gas license or contract in 1397 and 1398.

The Transparency Portal was recently modified to add a functionality tracking license transfers, in the 'License history' tab of a specific license page.[127] However, this functionality was only implemented in late 2020 and tracks only license transfers from 2020 onwards. In addition, the date of transfer date provided in the Transparency Portal consists of the date of recording of the license transfer, rather than the actual date of transfer.

How efficient is the current system of license allocations and management under the 2018 Minerals Law?

The MSG has reviewed the process for awarding licenses under the 2018 Minerals Law. There has been a large number of applications, particularly for small-scale mining licenses, from 2019 onwards. However, these license applications can take more than two years in practice to be awarded. This is partly due to lengthy procurement and multiple approval required by the 2018 Mineral Law for each license award approval from the High Economic Council, the Government Cabinet, the National Procurement Authority (NPA), Mining Technical Committee and award by Ministry of Mines and Petroleum.

The MSG considers that there is scope for improving the efficiency of the mining licensing process. The need to conclude MoUs for construction materials for public works and building is a reflection of the poor efficiency of the licensing system, with even small-scale mining licenses i.e. Construction Stone requiring HEC approval. The re-tender of the two talc mining licenses in Nangarhar Province also raised concerns over inefficiencies and scope for discretion in the mining license process and mining investment attraction.

Recommendations

32. It is recommended that the MOMP's Large-Scale Mining Department regularly publishes reviews of mining license processes followed in practice for large-scale mining license awards and transfers.
33. It is recommended that the MOMP closely coordinate with Government department and the MSG to consider legal and regulatory reforms to improve the efficiency in the minerals licensing and contracting process, with a view to streamlining steps in the approval process.
34. It is recommended that the MOMP liaise with its service provider RDF to ensure that the terminology in the Transparency Portal clearly distinguishes application dates from award dates. The MOMP is encouraged to explore ways of retaining historical information on the Transparency Portal to ensure that transfers of licenses are published for all licenses (e.g., ownership history of licenses).
35. The AEITI MSG is encouraged to work with the MOMP Cadaster Department and Hydrocarbon departments to institutionalize the annual post-award licensing procedure audit to review at least a risk-based sample of mining, oil and gas license awards and transfers.
36. It is recommended that the MOMP's Cadaster Department and its service provider RDF regularly review the data in the Transparency Portal on license applications by removing test data entries, correct duplicates and typos due to mistyping.

[127] See for instance the transfer of License SSML-Kabu 1/2020 from شرکت استخراج و پروسس سنگ برادران دورزی to شرکت استخراج وپروسس سنگ بری زرافشان سفی, under the 'Transfer History' tab of the license page accessible at https://transparency.mom.gov.af/license/107461

Public access to mining, oil and gas contracts (Requirement 2.4)

Before its international commitment to the public disclosure of all contracts in the mining, oil and gas sector at the London Anti-Corruption Summit in May 2016, Afghanistan had already introduced procurement reforms to open up public sector contracting since 2014. The government established the country's first national procurement authority to oversee all aspects of the government's procurement process. The National Procurement Authority (NPA) has a team of contracting data technicians that regularly makes improvements to the portal.

Open contracting

Afghanistan has been a member of the Open Government Partnership since 2017[128] and has committed to principles of open contracting. Afghanistan started publishing data according to the Open Contracting Data Standard (OCDS) since August 2018, through a new portal, the Afghanistan Government Electronic Open Procurement System (AGEOPS). This portal allows users to search, download and visualize procurement contracts, providing individual downloads of releases and records, bulk monthly downloads and an API. The system also publishes a history of changes in the contracting processes so that any modifications or new steps in the process for specific contracts are visible.

A February 2020 review by the Open Contracting Partnership of disclosures to date identified a total 6,952 contracting processes involving 71 procuring entities and 1,392 suppliers in the database covering October 2007 to January 2020.[129] It highlighted some record-keeping challenges, including the lack of identifier from the Afghanistan Chart of Accounts register (AF-COA) for some of the procuring entities' names and the lack of Tax Identification Numbers (AF-TIN) for some suppliers.

What are the rules? Legal framework for contract disclosure in mining, oil and gas

Recent reforms to the legal framework for mining and oil and gas, in 2018 and 2017 have included legal provisions for the publication of all contracts governing the exploration or exploitation of minerals, oil and gas within two weeks of signature.

Article 25(1) of the 2018 Minerals Law requires the full text of all contracts and licenses to be published within 14 days of signature. Article 85 of the 2017 Hydrocarbons Law requires the same for oil and gas contracts. In addition, oil and gas contracts include a standard stipulation based on a review of oil and gas contracts published on the MOMP website:[130]

"The Ministry shall have the right to keep a copy of this Contract in the Hydrocarbons Register, publish and keep publicly available and distribute to provincial offices such information and reports on the Contract, related documents and the Contractor as is required pursuant to the Hydrocarbons Law."

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[128] Open Government Partnership, 'Afghanistan country page', accessible on https://www.opengovpartnership.org/members/afghanistan/

[129] Open Contracting Partnership (February 2020), 'What does Afghanistan's open contracting data look like?', accessible on https://www.open-contracting.org/2020/02/02/what-does-afghanistans-open-contracting-data-look-like/

[130] See concluded Petroleum Contracts on the MOMP website under 'MOMP Hydrocarbons Contracts', accessible on https://MOMP.gov.af/MOMP-hydrocarbons-contracts

What's the practice? Contract disclosure in mining, oil and gas

A total of 439 mining contracts have been published on the MOMP website categorized by commodity for large-scale mining contracts and per province for small-scale contracts. The AEITI MSG confirms its understanding, based on consultations with the MOMP Cadaster Department, the Revenue Development Foundation and MOMP Provincial Department that there were a total of 153 active small scale minerals contracts in FY 1397, and 131 in FY 1398, while the number of active contracts in the hydrocarbons sector remained only two in both years. These figures included all contracts concluded at both the headquarters and provincial branches of the MOMP. The AEITI website has published a list of all active mining contracts per year for 1397-1399 (2018-2020) in open data format.[131]

The AEITI MSG has cross-referenced the licenses on the MOMP Transparency Portal with the contracts published on the MOMP website, under the 'Transparency' tab. The Transparency Portal provides the following types of contracts, for large-scale mining:

- Oil and gas: the MOMP website provides three oil and gas contracts (Amu Darya and the two Afghan-Tajik PSCs). This is consistent with the three oil and gas licenses listed on the Transparency Portal.
- Copper: the MOMP website provides three large-scale copper contracts. This is in line with the three companies holding copper licenses as listed in the Transparency Portal.
- Gold: the MOMP website provides one large-scale gold contract. This is consistent with the one active gold license listed on the Transparency Portal.
- Marble: the MOMP website provides one large-scale marble contract. This is consistent with the one active marble license listed on the MOMP Transparency Portal.
- Travertine: the MOMP website provides one large-scale travertine contract. While several small-scale travertine licenses are listed on the MOMP Transparency Portal, no large-scale travertine mining license is listed as either active, expired or cancelled.

With regards to small-scale mining contracts, the Transparency Portal website provides the full text of all reported small-scale mining contracts, linked to the contract or license.

The low number of active small-scale mining contracts in certain provinces may seem surprising at first sight, when there are documented reports of widespread mining in those provinces. For example, the three active small-scale mining contracts in Panjshir Province are difficult to reconcile with public reports, for instance of lapis lazuli mining in Panjshir by Global Witness in 2016 (here). The MSG's understanding is that these activities are unlicensed by the MOMP or other government entity and that these mining activities take place without legal contract in place.

Although the system for publishing contracts seems to be ad hoc when mining, oil and gas contracts are signed, the MOMP is establishing internal mechanisms to systematically publish the full text of all contracts and amendments within 14 days of their signature, in accordance with provisions of the 2018 Minerals Law and the 2017 Hydrocarbons Law.

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[131] See 'List of small scale Active Contract list FY 97,98,99' spreadsheet on AEITI website, '7th AEITI Report data', accessible at http://aeiti.af/en/documents/category/data-for-7th-aeiti-report?page=1

Chapter 9

Extractive company ownership

WHAT IS CONTAINED IN THIS CHAPTER?

This chapter provides information on the shareholders and beneficial owners of companies operating in the mining, oil and gas sectors (EITI Requirement 2.5). The objective is to inform the public of the identity of the immediate and ultimate investors that benefit from developing extractive projects in Afghanistan.

Who owns the companies extracting minerals, oil and gas? Legal and beneficial ownership (Requirement 2.5)

There is a vibrant public debate on the ownership of companies operating in the mining, oil and gas sectors in Afghanistan. Since 2020, information on the legal and beneficial owners of companies has started to be published online, through the Transparency Portal.

What kinds of companies exist in Afghanistan?

All legal entities are regulated by the 2007 Commercial Law. The types of legal persons that can be established by law are corporations, limited liability companies, partnerships and sole proprietorships. There are no trusts or other legal arrangements. Table 36 presents an overview of the types of legal entities in Afghanistan.

Table 35 Types of business structures in Afghanistan

Business structure	Individual liability	Ease of ownership transfer	Ease of continuity of existence	Centralized management structure	Registration with government required	Tax
Sole proprietorship	Yes	Yes	Yes	No	No	Natural person
Partnership	Yes	No	No	No	Yes	First 1.2 million (10%)
Corporation	No	Yes	Yes	Yes	Yes	20%
Limited liability company	No	No	Yes	Yes	Yes	20%

Source: American University of Afghanistan (April 2015), 'A guide to business structures in Afghanistan'[132]

[132] American University of Afghanistan (April 2015), 'A guide to business structures in Afghanistan', accessible on https://www-cdn.law.stanford.edu/wp-content/uploads/2015/12/A-Guide-to-Business-Structures-in-Afghanistan-AUAF-Legal-Clinic-Program.pdf

The Afghan Central Business Registry (ACBR), under the Ministry of Commerce and Industry (MoCI), is responsible for registering all companies in Afghanistan. The ACBR maintains offices in Kabul and 22 provincial capitals.[133] The ACBR website provides a searchable database[134] of companies, providing names of management but not of legal ownership (shareholders).

The MOMP Transparency Portal provides information[135] on legal owners (shareholders) of mining, oil and gas companies.

How is beneficial ownership defined by law?

The government has included beneficial ownership transparency among its international commitments since the Self-Reliance Through Mutual Accountability Framework agreed at the Brussels Conference in 2016. At the 2016 London Anti-Corruption Summit, the government made 18 commitments, of which five were related to beneficial ownership transparency.[136]

The 2018 Minerals Law introduced requirements for mining companies to disclose their beneficial ownership. Articles 25, 29, 35, 40 and 43 of the 2018 Minerals Law require beneficial ownership disclosure for applicants, bidders and transferees of all types of mining licenses. Articles 10, 34 and 54 of the 2019 Mining Regulations provide more detail on the reporting of beneficial ownership data.

Article 43(1) of the 2018 Minerals Law requires bidders to include details of their beneficial ownership in any tender proposal. Article 29(1) requires the applicant for a Small-scale Mining License to disclose details of their beneficial ownership in the application. Articles 35(2)3, 35(3)2, 35(4)1 and 40(2)5 require a license holder or concession holder to notify the Ministry of any change of beneficial ownership. Articles 17(5) and 17(6) require a person to notify the Ministry within 30 days if they become a beneficial owner of a private company or a substantial (i.e., 5% or more) beneficial owner of a listed company that is a license holder or concession holder.

Article 21 of the 2018 Minerals Law requires the Ministry to maintain a publicly available register which includes details of applicants for license, license holders, bidders and concessions holders and their beneficial ownership. Article 25(1) requires the Ministry to publish on its website details of the beneficial ownership of license holders and concession holders within 14 days of grant or execution. Article 25(2) requires the Ministry to publish a quarterly report summarizing beneficial ownership of license holders and concession holders.

Table 37 presents references to the three key laws that provide the legal framework for beneficial ownership transparency in Afghanistan.

[133] ACBR website, 'Provincial Offices', accessible on https://www.acbr.gov.af/en/provincial
[134] ACBR website, 'Online verification', accessible on http://203.215.33.115/CompanyVerification/Pages/BuReVerification.aspx
[135] MOMP Transparency Portal, 'Owners', accessible on https://transparency.mom.gov.af/owner
[136] AntiCorruption Summit – London 2016, 'Islamic Republic of Afghanistan: Country Statement', accessible on https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/522697/Afghanistan.pdf

Table 36 Legal framework for beneficial ownership in Afghanistan

Law	Source
2018 Minerals Law	https://momp.gov.af/sites/default/files/minerals_law_2019english.pdf
2018 amendments to the 2004 Anti-Money Laundering and Proceeds of Crime Law	https://dab.gov.af/sites/default/files/2018-12/AntiMoneyLaunderingandProceedsofCrimeLaw%28last%29304201895828593553325325.pdf
2004 Anti-Money Laundering and Proceeds of Crime Law	https://www.aba.org.af/pdf_view_server.php?file=./uploaded/pdf/laws/Afghanistan%20Anti-Money%20Laundering%20and%20Proceeds%20of%20Crime%20Law#:~:text=The%20purpose%20of%20this%20law,for%20the%20financing%20of%20terrorism.&text=or%20without%20recourse%3B%20and%20finance%20of%20commercial%20transactions%20(including%20forfaiting)%3B&text=Financial%20guarantees%20and%20commitments%3B,vii.

There are slight differences in the definitions of 'beneficial ownership' in the 2018 Minerals Law and in the 2018 amendments to the 2004 Anti-Money Laundering and Proceeds of Crime Law.

Article 4 (34) of the 2018 Minerals Law defines beneficial ownership as:

- "*the natural persons who ultimately enjoy a share of ownership or control whether formally or informally and whether directly or indirectly, including by holding shares in a Legal Entity or as beneficiaries of a trust but shall be deemed not to extend to Persons who hold shares in a Publicly Listed Company provided that the Listing Details are identified*."

Article 3(f) of the 2018 amendments to the 2004 Anti-Money Laundering and Proceeds of Crime Law defines beneficial ownership as:

- "*the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement*."

The MSG's agreed[137] definition of 'beneficial ownership' is:

- "*a beneficial owner in respect of a company means the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity*."

A new Beneficial Ownership registration and evaluation regulation (number 1393) has been published in the Official Gazette (here).

The Beneficial Ownership Registration and Evaluation Regulation is passed through a presidential Decree number (2175) dated 23 August 1399 (2020), consisting of four chapters and 36 articles. According to the regulation, the ACRB is responsible for creating a Beneficial Ownership Register and maintaining it, including information on public officers that are beneficial owners of companies. Article 23 mentions that the NSIA, in coordination with the Ministry of Information and Technology, is responsible for creating a Safe Inspection System for beneficial ownership and make it accessible to the Attorney General Office, the MOMP, the Financial Reports

[137] See MSG meeting minutes on the AEITI website, accessible on http://aeiti.af/en/documents/category/minutes-2015-2021?page=3

and Deals Analysis Centre of the Da Afghanistan Bank, the ARD and the ACD. Article 26.1 makes the MOIC responsible for publishing the beneficial owner name, surname, father's name, date and place of birth, and share type (without percentage of shareholding) within sixty days of business registration. Clause two of article 26 renders the MoIC responsible for publishing and making freely available beneficial ownership information on the ACBR website. Clause three of article 26 requires the MoIC to be responsible for maintaining the beneficial ownership information and ensure it is publicly accessible for ten years after a legal entity is dissolved. Article 28 permits the sharing of beneficial ownership information with other governments on a needs basis or upon request.

Politically exposed persons (PEPs)

Afghanistan has general asset disclosure legislation requiring public officeholders to disclose their assets. Article 154 of Afghanistan's Constitution and Article 12 of the Law on Overseeing Implementation of Anti-Administrative Corruption Strategy, the High Office of Oversight and Anti-Corruption (HOOAC) is mandated to register and publish assets of high-ranking officials. In 1398, the Asset Registration Directorate under Administrative Office of the President was consolidated with the Anti-Corruption Commission.

Specifically to mining, Article 16 of 2018 Minerals Law bans the president, his deputies, ministers, head and members of the Supreme Court, Attorney General Office, members of parliament, heads and members of independent commissions and their relatives from obtaining mining licenses under the law. These prohibitions continue for five years after leaving the post.

With regards to the definition of politically exposed persons, Article 4 (29) of the 2018 Minerals Law provides a definition of politically exposed persons that lists specific senior government officials and government directors, including their relatives, as politically exposed persons. The AEITI MSG's definition of politically exposed persons is the same as that provided in the 2018 Minerals Law.

What beneficial ownership information is now published?

The Afghanistan Central Business Registry (ACBR) does not collect information on who ultimately owns or controls a company (the beneficial owner) in a systematic way. In line with the 2018 Minerals Law, the MOMP established the Transparency Portal, based on the MCAS and NTRS systems, to publish data on mining, oil and gas licenses. This includes information on the beneficial ownership of companies holding mining, oil and gas licenses.

Beneficial ownership details requested from extractive companies include nationality, country of residence, politically exposed persons, national identity number, date of birth, residential or service address, contact. However, the Transparency Portal only discloses the beneficial owner's name, ownership type, country(ies) of residence and citizenship, sex, position and political affiliation.

However, the Transparency Portal does not disclose any forms of non-equity control, given that this information is not requested in practice from companies.

For extractive licenses held by legal entities that are subsidiaries of companies listed on stock exchanges, the license-holder is required to report the name and address of the public stock exchange and the stock exchange code of the company.

Expanding beneficial ownership transparency to public procurement

As part of its commitments under the IMF's Rapid Credit Facility in response to the Covid-19 pandemic as well as the longer-term Extended Credit Facility, Afghanistan has pledged to expand beneficial ownership disclosures to all companies obtaining public contracts.[138] A precondition for concluding the new ECF with the IMF in November 2020, Afghanistan's National Procurement Agency (NPA) started publishing quarterly reports, with information on the beneficial ownership of companies contracted by the government within 30 days of the contract's signing.[139]

The online procurement portal on the National Procurement Agency's website is here.

Data quality: How do we know disclosures are reliable?

Beneficial ownership information aggregated through the MCAS system is collected by the Directorate General of Cadaster and its sub-Directorates, who are responsible for ensuring the accuracy or data collected. Data on beneficial ownership of mining exploration, exploitation and small-scale licenses verified prior to be disclosed on the Transparency Portal.

The quality assurances required for beneficial ownership disclosures consist of signatures by the company's management. Company management is required to sign off on their reporting of the company's beneficial ownership to the MOMP's Cadaster Department. The 2019 Mining Regulations prescribe penalties for failure to report or accurate reporting of beneficial ownership.

Having previously been delisted by the Financial Action Task Force (FATF), Afghanistan has been making efforts to improve its Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) mechanisms. Among other measures, the government established a Financial Intelligence Unit (FinTRACA) located in the central bank. However, the European Union (EU) Commission has been unable assess progress in Afghanistan's addressing its previous deficiencies given constraints related to the security situation and lack of public information.[140] Afghanistan has not undergone a comprehensive assessment under the FATF since May 2011.

Data comprehensiveness: What data has been published to date?

There has not been a full review of beneficial ownership disclosures to date. Beneficial ownership data has been systematically collected since January 2020, including form companies applying for mining licenses. In practice, this means that ownership data is not yet available for all license-holders, particularly for older licenses.

The MSG has decided to focus on disclosures related to the largest companies by payments to government in this EITI Report. In 2021, the MSG plans a more comprehensive review of beneficial ownership disclosures. The following is an analysis of the availability of legal and beneficial ownership information for the top 13 companies by payments to government in 1397 and 1398

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[138] IMF (May 2020), 'Afghanistan: Request for disbursement under rapid credit facility', accessible on https://www.imf.org/en/Publications/CR/Issues/2020/04/30/Islamic-Republic-of-Afghanistan-Request-for-Disbursement-Under-the-Rapid-Credit-Facility-49386

[139] IMF (November 2020), 'Afghanistan: Request for a 42-month arrangement under the Extended Credit Facility — press release; staff report; and statement by the Executive Director for the Islamic Republic of Afghanistan," accessible on https://www.imf.org/en/Publications/CR/Issues/2020/11/13/Islamic-Republic-of-Afghanistan-Request-for-a-42-Month-Arrangement-Under-the-Extended-Credit-49888

[140] European Commission (May 2020), 'Questions and Answers – Commission steps up fight against money laundering and terrorist financing', accessible on https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_821

respectively, as well as combined. There are clear gaps in the availability of ownership information for the largest companies by payment to government in 1397 (2018), as highlighted in Table 38:

Table 37 Beneficial ownership information on largest companies by payments to government (1397)

Company name, Transparency Portal link	Share of payments to government (1397)	Beneficial ownership according to Transparency Portal	Beneficial ownership according to other public sources
North Coal Enterprise (here)	58.94%	100% state-owned, with equity held by the Ministry of Finance Transparency Portal link here	
Ghulam Sarwar Stanikzai Ltd	4.89%	A downstream company with no MOMP license, had exports in 1397 and 1398 and that's why it is not registered at Transparency Portal while appeared in top paid companies list.	ACBR registration (for Ghulam Sarwar Stanikzay Ltd) here
Sang Siya Afghanistan Ltd	3.37%	A downstream company with no MOMP license, had exports in 1397 and 1398 and that's why it is not registered at Transparency Portal while appeared in top paid companies list.	
Mohammad Omar Noorzai Ltd	2.47%	A downstream company with no MOMP license, had exports in 1397 and 1398 and that's why it is not registered at Transparency Portal while appeared in top paid companies list.	ACBR registration here
Hakeem Tareen Ltd	2.17%	A downstream company with no MOMP license, had exports in 1397 and 1398 and that's why it is not registered at Transparency Portal while appeared in top paid companies list.	
Khoshak Brothers Co.	1.87%	According to TP (here): (Direct shares) Mohammad Reza, AF (50%) Hadi, AF (50%) Hadi AF (50%) Khan Ali AF (50%)	
Zakir Fareed Ltd	1.65%	A downstream company with no MOMP license, had exports in 1397 and 1398 and that's why it is not registered at Transparency Portal while appeared in top paid companies list.	
Nasib Usmaan Ltd	1.44%	A downstream company with no MOMP license, had exports in 1397 and 1398 and that's why it is not registered at Transparency Portal while appeared in top paid companies list.	
Dragon Oil Sanduqli Ltd	1.39%	According to TP (here): Ismail Ghazanfar AF (2%) DOSL AE (49%) TPAL (49%)	
TP Afghanistan	1.24%	According to TP (here): TPAL TR (49%) Ismail Ghazanfar AF (2%) DOSL(49%)	
Afghan Gas Enterprise (here)	1.24%	100% state-owned, with equity held by the Ministry of Finance TP link here	
Nek Hakimzada Ltd	1.16%	A downstream company with no MOMP license, had exports in 1397 and 1398 and that's why it is not registered at Transparency Portal while appeared in top paid companies list.	
Hikmat Mohammad Sherzad Ltd	1.11%	A downstream company with no MOMP license, had exports in 1397 and 1398 and that's why it is not registered at Transparency Portal while appeared in top paid companies list.	

The picture is only very slightly more complete for 1398 (2019), as shown in Table 39:

Table 38 Beneficial ownership information on largest companies by payments to government (1398)

Company name	Share of payments to government (1398)	Beneficial ownership according to Transparency Portal	Beneficial ownership according to other public sources
North Coal Enterprise (here)	58.7%	100% state-owned, with equity held by the Ministry of Finance TP link here	
Ghulam Sarwar Stanikzai Ltd	3.75%	A downstream company with no MOMP license, had exports in 1397 and 1398 and that's why it is not registered at Transparency Portal while appeared in top paid companies list.	ACBR registration (for Ghulam Sarwar Stanikzay Ltd) here
Usman Izzat Ltd	2.63%	A downstream company with no MOMP license, had exports in 1397 and 1398 and that's why it is not registered at Transparency Portal while appeared in top paid companies list.	
Sang Siyyaa Afghanistan Ltd	2.12%	A downstream company with no MOMP license, had exports in 1397 and 1398 and that's why it is not registered at Transparency Portal while appeared in top paid companies list.	
Khoshak Brothers Co.	1.95%	According to TP (here): (Direct shares) Mohammad Reza, AF (50%) Hadi, AF (50%) Hadi AF (50%) Khan Ali AF (50%)	
Mohammad Omar Noorzai Ltd	1.84%	A downstream company with no MOMP license, had exports in 1397 and 1398 and that's why it is not registered at Transparency Portal while appeared in top paid companies list.	ACBR registration here
Afghan Gas Enterprise (here)	1.46%	100% state-owned, with equity held by the Ministry of Finance TP link here	
Yasir Mohmand Ltd	1.37%	Same as شرکت حقیار مهمند(Haqyar Mohmand Co)? (TP link here)	
Sahil Bilal Ltd	1.29%	This company is having MOMP license and is missed from Transparency Portal but now is available at TP.	ACBR registration here
Noor Abas Khoshiwal Ltd	1.11%	A downstream company with no MOMP license, had exports in 1397 and 1398 and that's why it is not registered at Transparency Portal while appeared in top paid companies list.	ACBR registration (for Noor Abas Khushiwal Ltd.) here
Farshad Mohidi Ltd	1.11%	A downstream company with no MOMP license, had exports in 1397 and 1398 and that's why it is not registered at Transparency Portal while appeared in top paid companies list.	
TP Afghanistan Ltd	1.06%	According to TP (here): TPAL TR (49%) Ismail Ghazanfar AF (2%) DOSL(49%)	
Misaq-E Sharq Co.	1.05%	According to TP (here): Sayed Ghulam Hossain Hossain AF (31%) Mohammad Hossain AF (17%) Yaqoob AF (12%) Ruslan KZ (40%)	ACBR registration here

This brief review of company ownership disclosures for the largest companies by payments to government in 1397-1398 (2018-2019) is revealing. There is beneficial ownership information for only three companies (in the two years combined), and this is only due to their holding direct shares in the company. There is legal ownership (shareholder) information for another two companies. In total, there is some legal ownership information for only half of these companies, which is an issue that requires urgent attention by authorities, reminded by the AEITI MSG.

AEITI's assessment of completeness and reliability of disclosures

The MSG has reviewed the disclosures of the largest extractive companies by payments to government in 1397 and 1398. Its assessment focuses on legal and beneficial ownership.

Shareholder information: With regards to public disclosures of legal ownership (shareholdings), the Afghanistan Central Business Registry (ACBR) no longer provides legal ownership information for any of the companies registered in Afghanistan. The only public source of information on shareholders in Afghanistan is now only the MOMP's Transparency Portal.

The lack of listing in the Transparency Portal for many of the companies listed above means that there is no information available on either their legal or beneficial ownership information.

Beneficial owner information: There had been disclosures of beneficial ownership for 127 mining companies as of August 2020. A review of pending applications on the MOMP Transparency Portal indicates that beneficial ownership information is available for some, but not all, of the companies that applied for a mining license since January 2020. The addendum to the 6th AEITI Report indicates that data collection has focused on direct and indirect ownership of companies, not forms of non-equity control.

There are some apparent inconsistencies between beneficial ownership data in the Transparency Portal and other public-domain sources. For example, the Silk Road Mining entry on the Portal[141] lists an Afghan national (60%) and a Canadian national (40%) as beneficial owners. However, the company's own website[142] describes itself as 'world class exploration skills from Canada, and strong financing from Kuwait'. These kinds of apparent inconsistencies raise concerns over the reliability of some of the beneficial ownership disclosures.

There also appear to be weaknesses in the system for disclosing any politically exposed persons linked to extractive licenses. In 2018, Transparency International raised concerns over the lack of systematic identification of beneficial owners under the AML-CFT Law.[143] The Open Government Partnership has also noted that "a number of officials" have not completed their asset declaration forms.[144] A United States Institute of Peace (USIP) report from 2017 highlighted the practice of

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141 MOMP Transparency Portal, 'Owners of Silk Road Mining', accessible on https://transparency.mom.gov.af/owner/32838
142 Silk Road Mining website, accessible on https://www.silkroad-mining.com/
143 Transparency International (2018), 'Policy, SDGs and fighting corruption for the people', accessible on https://images.transparencycdn.org/images/2018_Report_PolicySDGsandFightingCorruption_EN.pdf
144 Open Government Partnership, 'Registering Assets of Government Officials (AF0005)', accessible on https://www.opengovpartnership.org/members/afghanistan/commitments/AF0005/

politically-exposed persons holding mineral rights, "*including members of the Afghan parliament (MPs), their family members, their associates and power holders with access to armed groups and their networks*".[145] The MOMP's 2018 Ministry-Wide Vulnerability to Corruption Assessment found parliamentarians and local officials of various "[g]overnment agencies, who own, control or have an interest in mining activities, despite bans on this involvement", including in areas outside the government's control.

Recommendations

37. It is recommended that the AEITI conduct a systematic and comprehensive review of beneficial ownership information available from public sources such as the Transparency Portal, in order to produce a complete and public assessment of the comprehensiveness and reliability of legal and beneficial ownership disclosures related to extractive companies. The MSG is urged to consult with the Office of the President on the need to expand the beneficial ownership disclosure requirements to form of non-equity control.
38. It is recommended that the MOMP Cadaster Department work with its service provider RDF, with advice from the AEITI, to amend the Transparency Portal to clearly distinguish legal ownership and beneficial ownership, and publish both on the Transparency Portal for all mining, oil and gas companies.
39. It is recommended that the AEITI MSG consult and work closely with the ACBR to explore the systematic publication of shareholder information for all companies on the ACBR corporate register.
40. It is strongly recommended that the AEITI MSG work with relevant stakeholders including the MOMP, ACBR, Ministry of Justice and others to ensure that the legal and beneficial owners of all companies holding or applying for mining, oil and gas licenses be publicly disclosed by the deadline of 1 January 2022, in accordance with EITI Requirement 2.5.c.

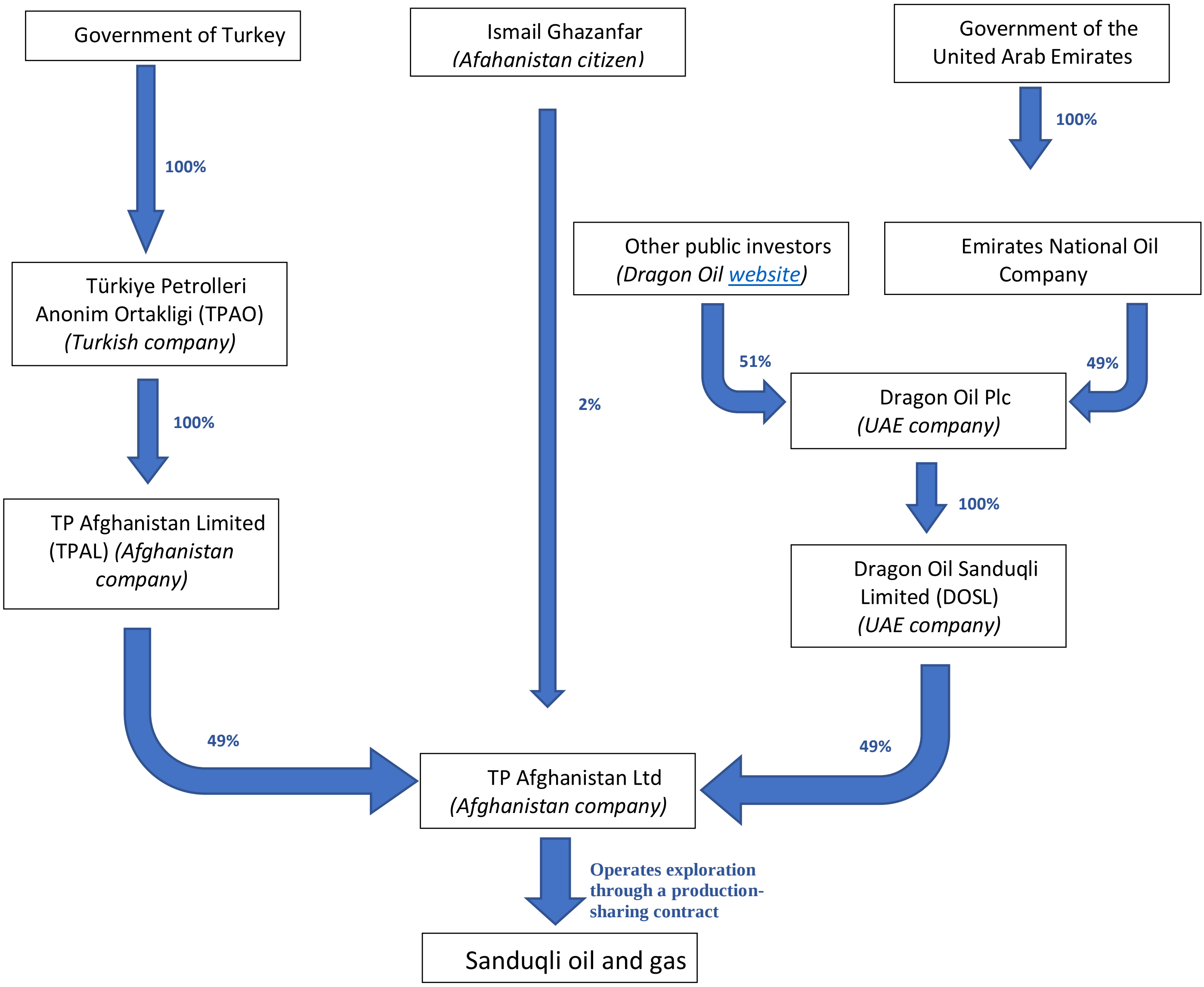
Data visualizations

With more disclosures of ownership data, there is more opportunity to make use of this data with visualizations mapping company ownership. The majority of small-scale mining licenses are held directly by their beneficial owners, Afghan nationals. However, large-scale mining and oil and gas projects and licenses involve companies with multiple layers of ownership, often involving foreign-invested companies.

Figure 23 provides one example of the possible visualizations that can be developed of company ownership, using TP Afghanistan Ltd. as an example.

[145] United States Institute of Peace (2017), 'Industrial-Scale Looting of Afghanistan's Mineral Resources', accessible on https://www.usip.org/sites/default/files/2017-05/sr404-industrial-scale-looting-of-afghanistan-s-mineral-resources.pdf

Figure 23 Diagram of the ownership of TP Afghanistan Ltd.



Source: AEITI illustration based on Transparency Portal and other public information

Chapter 10

State Participation in the extractive industries

What is contained in this Chapter?

This chapter provides information on the state-owned enterprises in the mining, oil and gas sectors, including their financial relations with government (EITI Requirement 2.6), transactions involving SOEs (EITI Requirement 4.5), their in-kind revenues and sales (EITI Requirement 4.2) and their quasi-fiscal expenditures (EITI Requirement 6.2). The objective is to inform the public of the way in which state-owned enterprises in the mining, oil and gas sectors are managed and how they contribute to government revenues, both directly and indirectly.

Beyond collecting tax and non-tax revenues, the state also actively participates in the mining, oil and gas sectors (fossil fuels such as coal and natural gas in particular) through its 100% ownership of two companies. These two state-owned enterprises play a key role in their sectors and accounted for over half of government revenues from the mining, oil and gas sector in the past 12 years (1388-1398).

How does the state directly participate in the mining, oil and gas sectors? (EITI Requirement 2.6)

Definition of state-owned enterprises (SOEs)

The Law on State-Owned Enterprises (Law n.459) of 29 May 2005[146] governs state-owned enterprises (SOEs) that are 100% owned by the state, and state-owned corporations (SOCs), with varying levels of state ownership. This law was updated by a new Law on State-Owned Corporations in 2018, although that law was only implemented from 1399 (2020). In total, the Afghanistan has 35 SOEs and 16 SOCs operating in different sectors including energy, mining, manufacturing, tourism, transportation, water, trade, telecommunications, insurance and industry, alongside 3 state-owned commercial banks.[147]

For Afghanistan's EITI reporting, the MSG has agreed on the EITI's definition of SOEs (in Requirement 2.6.a.i), which covers companies that are majority-owned by the government and that operate in the upstream mining, oil and gas sectors. It has identified only extractive companies that are wholly owned by the state, as there do not appear to be any extractive companies that are only part-owned by the state.

There are four companies that are wholly owned by the government and operated in the mining, oil and gas sectors in 1397-1398. The two main SOEs are North Coal Enterprise (NCE) and Afghan Gas Enterprise (AGE). In the cement sector, there are two companies that are wholly

[146] Law on State-Owned Enterprises (Law n.459) of 29 May 2005, accessible on Ministry of Finance websites on https://MOF.gov.af/en/documents
[147] Ministry of Finance (September 2020), '1400 (2021) Fiscal Strategy Paper Medium Term Fiscal Framework', accessible on https://MOF.gov.af/sites/default/files/2020-09/Fiscal%20Strategy%20Paper%202021.pdf

owned by the government that appear to mine limestone to produce cement for the domestic market. The first cement-sector SOE, Jabal Saraj Cement Enterprise (JSCE), was not operational in 1397-1398 according to the MSG. The second cement-sector SOE, Ghouri Cement Company, was nationalized in January 2019 (1398) when the government acquired all of the company's shares from a private investor, Afghan Investment Company (AIC) (*see changes in state ownership below*).

A fifth state-owned company, Kod-e-Barq Enterprise (KeBE), was established in 1964 in Mazar-e-Sharif as an integrated fertilizer factory and associated power plant, which sources natural gas from Afghan Gas Enterprise to produce fertilizer and electricity (for its own operations). KeBE is not a SOE for EITI reporting because it is an integrated fertilizer and power plant that does not produce mineral or petroleum commodities, but is only a consumer of natural gas. Therefore, KeBE is covered in this 7th AEITI Report only as it is a recipient of quasi-fiscal expenditures by Afghan Gas Enterprise (*see off-budget subsidies below*).

Which SOEs were relevant in 1397-1398? Materiality of SOEs

State participation is important to public finance management in the extractive industries, since two state-owned enterprises (SOEs) have represented over half (and often more) of the government's extractive industry revenues in most years in the 1388-1398 period, aside from in specific years (1388, 1391 and 1392).

The MSG reviewed the value of the four SOEs that operate in mining, oil and gas in order to select only those SOEs considered to have made material payments to government for the purposes of EITI reporting. Although Afghan Gas Enterprise and North Coal Enterprise make significant payments of tax to MoF and non-tax to MOMP, the two state-owned cement companies make only minimal tax and non-tax payments to government. Therefore, the MSG used the value of each SOE's net transfers of profit to the MoF as a basis for assessing the materiality of each SOE. (*see disclosures of SOEs' transfers of net profits to government in the section on 'SOE transactions' below*).

Jabal Saraj Cement and Ghouri Cement did not make any transfers of their net profits, because neither made a profit in these two years. Therefore, the MSG only considered Afghan Gas Enterprise and North Coal Enterprise as material SOEs in the 7th AEITI Report. Table 40 presents an overview of the MSG's materiality decisions on SOEs, including basic information on SOEs' locations and activities.

Table 39 Overview and materiality of SOEs in Afghanistan in 1397-1398

Company name	Government equity interest	Location	Primary activity(ies)	Material in 1397-1398?
Afghan Gas Enterprise	100%	Jowzjan	Coal mining and sales.	Yes
North Coal Enterprise	100%	Baghlan and Samangan	Natural gas production and sales	Yes
Jabal Saraj Cement Co.	100%	Parwan	Cement production	No
Ghouri Cement Co.	100%	Pul-e-Khumri	Cement production	No
Kod-e-Barq Enterprise	100%	Mazar-e Sharif	Power production, fertilizer production – not extractives	No

Source: AEITI, based on information from Ministry of Mines and Petroleum

The coal mining SOE, North Coal Enterprise, has been by far the largest contributor to government revenues in 1388-1398. The natural gas SOE, Afghan Gas Enterprise, has made payments to government in this period, but has only transferred a share of its net profits in some years given that it has been loss-making in most years.

Table 41 presents the value, in absolute and relative terms, of the two main extractive SOEs' share of government revenues from the extractive industries in the 1388-1398 period. The source of the figures in Table 41 is the seven AEITI Reports produced to date, which have sourced information on government revenues of SOEs from the Ministry of Finance and the MOMP.

Table 40 Government revenues from extractive SOEs as share of total extractive revenues, 1388-1398

	Afghan Gas Enterprise payments to government (AFN)	North Coal Enterprise payments to government (AFN)	Total government extractive revenues (AFN)	Share of two extractive SOEs' payments to government
2008-2009 (1388)	N/A	426,406,146	4,519,527,990.00	9.43%
2009-2010 (1389)	N/A	307,341,000	355,957,003.00	86.34%
2010-2011 (1390)	N/A	1,000,382,500	1,068,641,007.00	93.61%
2011-2012 (1391)	31,318,098	1,944,961,546	4,847,610,026.00	40.77%
2012-2013 (1392)	119,025,662	2,712,852,324	6,280,067,740.00	45.09%
2013-2014 (1393)	31,249,022	1,162,395,368	2,123,384,431.90	56.21%
2014-2015 (1394)	63,523,729	2,003,747,693	2,677,232,421.68	77.22%
2015-2016 (1395)	40,419,000	1,136,708,768	1,525,864,263.00	77.14%
2016-2017 (1396)	37,106,019	2,086,259,229	2,620,548,766.08	81.03%
2017-2018 (1397)	59,522,037	2,831,996,365	4,804,497,838.81	60.18%
2018-2019 (1398)	62,507,770	2,508,744,444	4,273,937,498.56	60.16%

Source: AEITI Reports and summary data

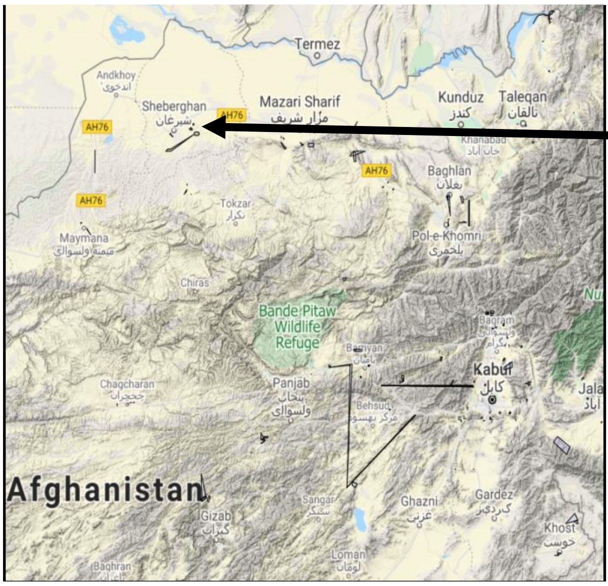
Government revenues from the two main SOEs in the mining and gas sectors have been volatile over the past 12 years, as the government's total extractive revenues have also fluctuated. These fluctuations are due to several factors, including variations in Afghan Gas Enterprise and North Coal Enterprise's revenues and expenditures.

Profile of Afghan Gas and North Coal Enterprises

The two material SOEs – Afghan Gas Enterprise and North Coal Enterprise – do not have powers to regulate their respective sectors, but they play dominant roles in their respective sub-sectors of the extractive industries.

1. Afghan Gas Enterprise

Afghan Gas Enterprise accounts for 100% of Afghanistan's production of natural gas, supplying the Kod-e-Barq fertilizer and power plant and soon the independent power plants in Mazar-e-Sharif.



Established in 1967, Afghan Gas Enterprise (AGE) operates in Sheberghan, in Jowzjan Province.
Afghan Gas Enterprise conducts production, processing, and
transportation activities. AGE only operated in 29 of the 52 years since its establishment due to periods of civil strife. AGE's production and processing facilities in Sheberghan are linked via a 89.1 kilometre pipeline to the Northern Fertilizer and Power Plant near Mazar-e-Sharif. AGE's headquarters is in Sheberghan but it also maintains offices in Mazar-e-Sharif.

In the early 1990s, natural gas was Afghanistan's largest export, although production has significantly declined since then due to conflict and lack of maintenance. With support from development partners, AGE has rehabilitated some of the Soviet-era infrastructure, such as wells and the pipeline from Sheberghan to Kud Berg (near Mazar-e-Sharif), and installed a new amine plant for high-sulfur gas treatment. AGE on the daily basis in 1397 produced 400,000 cubic meter (m^3) and in 1398 fiscal year 500,000 m^3 of natural gas from the Sheberghan fields in the Amu Darya basin.[148] The SOE produces natural gas from 36 wells in the four gas fields of Khawaja Gogerdak, Jarqodoq, Yatim Taq and Shakarak, all located around Sheberghan.[149]

AGE supplies 95% of the natural gas it produces to Kod-e-Barq, with the remaining 5% supplying other customers (domestic customers in Sheberghan, Khoja Dokho, Aqcha and other villages in Jowzjan Province, connected via a small-diameter pipeline). In June 2020, Afghan Gas Enterprise concluded a 20-year gas sales and purchase agreement (GSPA) with the new Mazar-e-Sharif independent power producer (IPP) project backed by the World Bank, International Finance Corp. and Asian development Bank. The project backed by Afghan Power Plant Company, a joint venture of Ghazanfar Group and Hassan Allam Holdings, an Egyptian construction company, will consume

[148] Ministry of Mines and Petroleum (1396), 'Extractive industries national priority program', accessible on http://policyMOF.gov.af/home/wp-content/uploads/2019/01/Extractive-Industries-NPP.pdf
[149] Afghan Economic Society (2017), 'Opportunities and Challenges of Investing in the Oil and Gas Industry of Afghanistan – Case Study of Sheberghan', accessible on https://www.afghaneconomicsociety.org/images/pdf/Sadiq.pdf

350 mcm of natural gas a day during the first phase of a 52 MW power plant at a cost of USD 75m. The second phase of the IPP, which will expand capacity to 200 MW, is expected to increase natural gas consumption to 800 mcm a day.[150] The GSPA between Afghan Power Plant Company and AGE sets a price for natural gas at USD 2.46 per million British thermal units (MBTU) for the 20-year contract. A key component of the project is the development of a new 94.5km pipeline that will be operated and owned by AGE from Sheberghan to the Mazar-e-Sharif IPP, with construction starting in 2016 and around 44km of the pipeline completed as of October 2019.[151]

2. North Coal Enterprise

North Coal Enterprise is the largest seller of coal to the domestic market, with a small production that it operates itself and a larger trading operation buying thermal coal from informal artisanal miners and selling it on, effectively formalizing that part of the coal supply chain.

Established in 1971, North Coal Enterprise (NCE) operates primarily in Baghlan and Samangan Provinces. It operates three active coal mines (Tala O Barfak in Baghlan province, Shabashak and Dan e Tor in Samangan province), and one inactive mine, Abkhorak in Samangan province. NCE also participates actively in trading of coal, with sales of coal purchased from small informal miners accounting for around 95% of NCE's sales in 1397-1398.

The coal mines of Karkar, Hawza and Baghlan have been operated by NCE since 1971, when it was created (as the Directorate of Northern Coal Enterprise) to take over the operations from a unit of the Ministry of Minerals at the time. After a decline in production during the 1979-2001 period when only the Karkar mines operated, the government has invested through NCE to reinstate production capacity since 2001. The NCE webpage on the new National Development Corp.'s website[152] provides NCE's average annual production in the 2015-2020 period as 2bn metric tons of coal.[153] North Coal Enterprise does not have a standalone website and its Facebook page[154] has never been updated.

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[150] World Bank (October 2019), 'Project appraisal document on a proposed grant in the amount of SDR 38.60 million (US$52.50 million equivalent) to the Islamic Republic of Afghanistan for an Afghanistan gas project (AGASP)', accessible on http://documents1.worldbank.org/curated/en/766121575082832250/text/Afghanistan-Gas-Project.txt

[151] World Bank (October 2019), 'Project appraisal document on a proposed grant in the amount of SDR 38.60 million (US$52.50 million equivalent) to the Islamic Republic of Afghanistan for an Afghanistan gas project (AGASP)', accessible on http://documents1.worldbank.org/curated/en/766121575082832250/text/Afghanistan-Gas-Project.txt

[152] National Development Corporation (NDC) website, 'Northern Coal Enterprise' webpage, accessible on https://ndc.gov.af/en/northern-coal-enterprise/

[153] National Development Corporation (NDC) website, 'Northern Coal Enterprise' webpage, accessible on https://ndc.gov.af/en/northern-coal-enterprise/

[154] شرکت زغالسنگ شمال North Coal Enterprise Facebook page, accessible on https://www.facebook.com/pages/%D8%B4%D8%B1%DA%A9%D8%AA-%D8%B2%D8%BA%D8%A7%D9%84%D8%B3%D9%86%DA%AF-%D8%B4%D9%85%D8%A7%D9%84-North-Coal-Enterprise/101255918149171

NCE owns six coal mines, the main ones being Tala wa Barfak coal mines in Baghlan province and Dehana-e-tor, Shabashak, and Abkhorak coal mines in Samangan province.[155] According to the MOMP website, two of NCE's six mines are inactive, leaving only four mines operational.[156] In terms of turnover however, NCE's main operation is as a trader of coal purchased from independent/informal miners.[157]

Mapping state ownership: In how many companies does the state hold indirect interests?

The government holds 100% of both material extractive SOEs (Afghan Gas and North Coal), with equity held by the Ministry of Finance. It also holds 100% equity in the two cement companies, through the MoF. The equity is full-paid equity with the government as the sole shareholder, responsible for covering expenses in line with its equity interests. The terms attached to the government's equity in SOEs (State-Owned Corporations) are defined as full-paid equity in Article 37 of the new SOC Law enacted in September 2018. None of the four SOEs have any subsidiaries, joint ventures or affiliates, nor hold any minority equity participation in extractive companies.

Table 42 presents the terms attached to state equity in each of the four extractive SOEs. It should be noted that Ghori Cement Company was not a SOE in 1397 (2018) given that it was only nationalized in 1398 (*see changes in state participation*).

Table 41 Overview of government equity in SOEs in Afghanistan

Company name	Government equity interest	Terms attached to state equity
Afghan Gas Enterprise	100%	Fully-paid equity
North Coal Enterprise	100%	Fully-paid equity
Jabal Saraj Cement	100%	Fully-paid equity
Ghori Cement Company	100%	Fully-paid equity

Source: Ministry of Finance data

SOEs do not participate in privately funded mining, oil and gas projects on behalf of the state. Production-Sharing Contracts (PSCs) in the oil and gas sector are structured for the Ministry of Mines and Petroleum to represent the state in oil and gas contracts with private companies.[158]

What were the changes in state participation in the extractives in 1397-1398?

There was one significant change in government ownership in the extractive industries in 1397-1398, and a restructuring of existing SOE holdings under a new structure.

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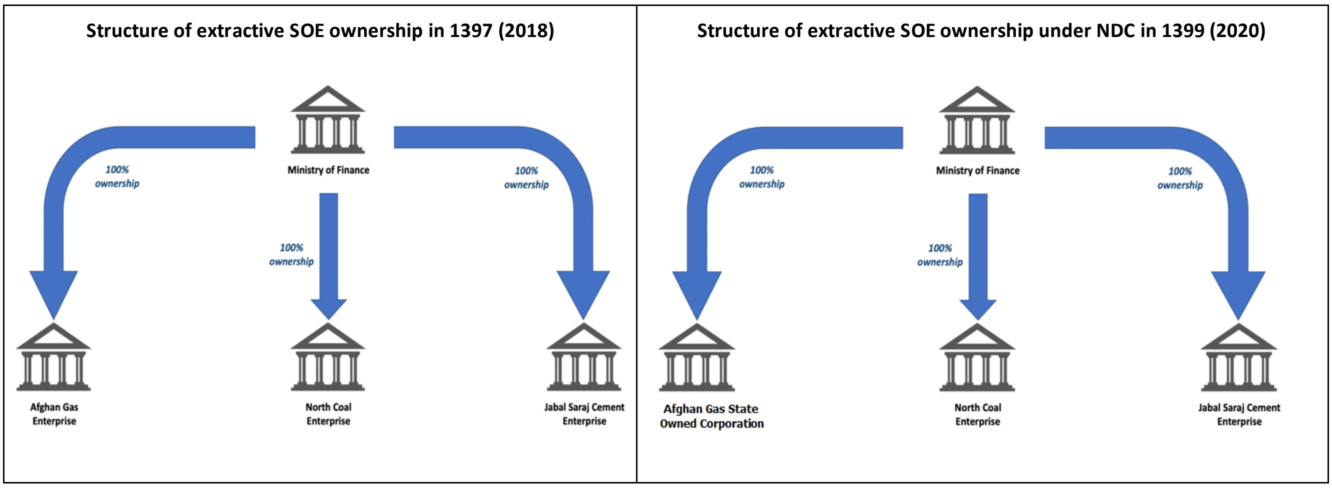
[155] Ministry of Mines and Petroleum (1396), 'Extractive industries national priority program', accessible on http://policyMOF.gov.af/home/wp-content/uploads/2019/01/Extractive-Industries-NPP.pdf
[156] Ministry of Mines and Petroleum (December 2017), 'Islamic Republic of Afghanistan: Mining sector roadmap', accessible on https://miningwatch.af/wp-content/uploads/2018/02/MOMP-Road-Map.pdf
[157] Ministry of Mines and Petroleum (December 2017), 'Islamic Republic of Afghanistan: Mining sector roadmap', accessible on https://miningwatch.af/wp-content/uploads/2018/02/MOMP-Road-Map.pdf
[158] See for example the production-sharing contracts published on the MOMP website, accessible on https://MOMP.gov.af/MOMP-hydrocarbons-contracts, and on the Resource Contracts database, accessible on https://www.resourcecontracts.org/search/group?q=afghanistan

The first major change was the restructuring of SOEs under a new SOE holding structure. Article 14 of the 2018 Minerals Law requires that four SOEs should be restructured as limited liability companies partly or wholly owned by the state within 12 months of implementation of the new law. The National Development Corporation (NDC) was created by Presidential Decree 28 in February 2020. Jabal Saraj Cement Enterprise and North Coal Enterprise were transferred to NDC's ownership in March 2020, and AGE was converted to Afghan Gas State Owned Corporation by legal board of MOF in Dec 2020. There was no financial consideration paid related to the restructuring of the SOEs under the NDC holding group structure, given that the ownership of equity in NDC ultimately remained with the Ministry of Finance. The NDC website provides limited information on its responsibilities and companies in which it holds equity, but no financial data.[159]

The second major change in state participation was the nationalization of Ghouri Cement Company in January 2019 (1398).[160] The state-owned cement company, which operates limestone mining and cement plants in Pol-e-Khomri city of Baghlan Province, had previously been privatized and leased to Afghan Investment Company (AIC) in April 2007.[161] The Ghouri Cement Company's limestone mining and cement production facilities are only described in international news articles (the company has no website).[162] The Afghan businessman Javid Jaihoon reportedly acquired AIC's interest in the Ghouri Cement Company in 2016, triggering a complaint from the government over claims of millions of dollars of unpaid tax arrears since 2016.[163]

There does not appear to have been any consideration or payment made in relation by the government for its acquisition of Ghouri Cement in January 2020. The ownership of Ghouri Cement was transferred to the National Development Corporation in March 2020, although the NDC website provides little information on Ghouri Cement itself.[164]

Figure 24 Restructuring of SOEs under the National Development Corporation



Source: AEITI visualisations

[159] See National Development Corporation website, accessible on https://ndc.gov.af/en/about_ndc/
[160] Cemnet.com (January 2019), 'Ghori Cement is back in government control', accessible on https://www.cemnet.com/News/story/165619/ghori-cement-is-back-in-government-control.html
[161] Pajhwok Afghan News, 'Introduction of Mining Companies working in Afghanistan', accessible on https://mines.pajhwok.com/introduction-mining-companies-working-afghanistan
[162] BBC (December 2012), 'Could mineral wealth transform Afghan economy?', accessible on https://www.bbc.com/news/world-asia-20708548
[163] Reuters (February 2017), 'Major Afghan cement contract cancelled in investment setback', accessible on https://www.reuters.com/article/afghanistan-mining/major-afghan-cement-contract-cancelled-in-investment-setback-idINL5N1FR4FL
[164] National Development Company website, 'Ghouri Cement Factory', accessible on https://ndc.gov.af/en/ghouri-cement-factory/

Financial relations with government: the rules and practices of SOEs' management of their finances

State-owned enterprises in the mining, oil and gas sector have been governed by the Law on State-Owned Enterprises (Law n.459) of 29 May 2005[165], which was revised by the Law on State-Owned Corporations (Law n.1322), published in the official gazette number 1322 of 6 November 2018.[166]

Oversight of the two extractive SOEs has been split. The Ministry of Finance owns, oversees and regulates the two SOEs, but they also reported to the MOMP in 1397-1398. The Office of the President established a dedicated unit to oversee the reform of SOEs in 1398, with the SOC Oversight Board[167] established in accordance with the 2018 SOC Law.

Article 24 of the 2005 SOE Law requires that laws and regulations drafted by MoF, in cooperation with relevant ministries, should govern the establishment and regulation of the SOEs' different funds, to which shares of the SOEs' net profits should be transferred in accordance with Article 23 of the 2005 SOC Law. However, there is no evidence that these laws and implementing regulations governing the creation of the SOEs' funds have been drafted to date. Therefore, in practice, SOEs have not retained 25% of their net profits to transfer to these planned funds.

The financial relations between SOEs and the government according to the 2005 Law on SOEs and the 2018 Law on SOCs can be compared with the practice based on the SOEs' 1397-1398 (unaudited) financial statements. Table 43 presents a comparison of the rules related to SOEs' financial relations with the state, between the 2005 and 2018 SOE Laws.

[165] Law on State-Owned Enterprises (Law n.459) of 29 May 2005, accessible on Ministry of Finance websites on https://MOF.gov.af/en/documents
[166] Law on State-Owned Corporations of October 2018, accessible on: http://old.moj.gov.af/Content/files/OfficialGazette/01301/OG_01322.pdf
167 https://MOMP.gov.af/sites/default/files/2020-10/قانون شرکت های دولتی.pdf

Table 42 Comparison of rules governing SOEs' financial relations with government, 2005 and 2018 legislation on SOEs

	2005 Law on State-Owned Enterprises ***(Dari version here, English version here)***	**2018 Law on State-Owned Corporations** ***(Dari version here, English version here)***
Government transfers to SOEs	Neither the SOE law nor any other legal document provides for the government to provide funding for SOEs.	Article 15(3) lists the duties of the SOC Oversight Board as including approval for any transfer or subsidy from any organ of the state to the SOC, with reference to the complementarity with the Public Financial and Expenditure Management Act and related legislation.
SOE transfers to government	At the end of each financial year, the SOE must transfer the remaining (75%) of the net profit to the Ministry of Finance, according to Article 23 of the SOE law.	Article 38 gives the SOC's Board of Directors the prerogative to decide on the existence and value of dividends to shareholders in accordance with the SOC's Articles of Association, its dividends policy and the prior approval of the SOC Oversight Board.
SOE retained earnings	Article 23 of the SOE law bars SOEs from retaining more than 25% of their annual net profits, after approval of their financial statements. Of this retained 25% of net profits, the SOEs are required to allocate 15% to an incentive fund, 5% to a development fund, 3% to a culture fund and 2% for a precautionary (reserve) fund.	Given that Article 38 confirms the right of the SOC's Board of Director to decide on the dividends for a particular year, it is implied that the SOC's Board of Directors can decide to retain earnings.
SOE reinvestments	Article 16 of the SOE law bars SOEs from investing in any other company. Article 17 allows SOEs to invest in joint-ventures and private companies, upon explicit authorization by the MoF.	The law does not explicitly cover reinvestments by SOCs.
SOE third-party financing	Article 26 of the SOE law allows SOEs to raise third-party debt financing, based on explicit authorization from the Supreme Court of Afghanistan in accordance with Article 27. The Memorandums of Association of AGE and NCE confirm that they are 100% owned by government, implying they do not have the right to raise third-party equity financing.	Article 37 allows the SOC to issue new shares requires approval by a majority of shareholders and the SOC Oversight Board. Article 15(3) lists the duties of the SOC Oversight Board as including approval for any financial transaction including loans, equity finance, bond issuance and guarantees.

Source: 2005 and 2018 Laws on SOEs/SOCs.

The new Law on State-Owned Corporations (SOCs) was published in the official gazette in November 2018, but was only implemented from December 2019 onwards. Therefore, the rules governing AGE and NCE's financial relations with the government were reformed in line with the 2018 Law on SOCs, effective from March 2020 when ownership of NCE was transferred to the NDC and AGE was converted to Afghan Gas State Owned Corporation owned by the Ministry of Finance directly. The key reform in the financial relations under the 2018 Law on SOCs is that NCE's dividends (transfers of net profit) will now be transferred to NDC, who will agree on its own dividends (transfers of net profits) to government. Under the 2018 Law, the SOC's Board of Directors can agree the level of annual dividends, in accordance with the SOC's Articles of Association and approval by the SOC Oversight Board.

The 2018 Law on SOCs designates the Ministry of Finance as the shareholder in SOCs and requires all SOEs and SOCs to change their legal status to SOCs by December 2019. The 2018 Law effectively enables the Ministry of Finance to oversee more of the potential fiscal risks from SOCs. The law encourages SOCs to operate on commercial terms and requires transparency in the activities of SOCs, including in their socio-economic development and job-creation mandates.[168] The law introduces legal requirements for SOCs to prepare their accounts according to IFRS.

An important reform in the 2018 Law on SOCs (Article 15) is the creation of a SOC Oversight Board, a key indicator of the government's National Strategy of Combating Corruption. The Ministry of Finance chairs the SOC Oversight Board with four other members (from the Ministry of Commerce and Industry and three members from the private sector), established in 2019 as the highest authority for decision-making and oversight of SOCs. The SOC Oversight Board began work with a meeting chaired by Acting Minister of Finance Dr. Mohammad Humayon Qayoumi on 3 September 2019. The SOC Oversight Board has started work, including on revising statutes of SOEs and SOCs according to the Office of the President's Special Anti-Corruption Secretariat's 2019 annual report.[169]

Table 44 presents a comparison of revenue and expenditure figures for the two material SOEs in 1397 and 1398, between data from the NSIA and from the SOEs' own financial statements.

Table 43 Revenue and expenditures of Public Enterprises (SOEs) in the extractives (in AFN)

	Afghan Gas Enterprise				North Coal Enterprise			
	Revenue		Expenditure		Revenue		Expenditure	
	NSIA data	SOE data	NSIA data	SOE data	NSIA data	SOE data	NSIA data	SOE data
1397 (2018)	1,762,430,000	505,953,427	364,330,000	414,755,749	2,835,990,000	2,962,752,384.00	1,653,600,000	1,914,091,776.00
1398 (2019)	355,881,000	525,293,129	322,026,000	395,320,878	3,148,200,000	3,106,699,603	1,885,358,000	1,744,367,723

Source: SOE financial statements and NSIA Quarterly Statistical Indicators, 2017-2019 on https://nsia.gov.af/library

There are large variances between the data reported by the NSIA and the data in the SOEs' financial statements (which had not yet been audited at the time of preparation of this 7th AEITI Report). One reason may be that NSIA data is based on a cash accounting basis, while SOEs' financial statements present data on an accrual accounting basis. The MSG has prepared recommendations related to clarifying the reasons for differences between different public figures on SOEs' revenues and expenditures, below.

The two extractive SOEs operate under a special fiscal framework in accordance with the SOE law and the 2009 Income Tax Law. They are not liable for most license-related fees to government, since they do not hold licenses for the areas they operate – they hold property titles that do not carry the same types of payments (e.g. license fee). They are liable to Royalty and Corporate Income Tax, but are exempt from paying BRT of 4% in accordance with Article 80.1 of Afghanistan's Income Tax Law. A key finding of this report is that AGE has continued paying 4% BRT to government in 1397-1398 according to its financial statements (totaling AFN 20,613,357 in 1397 and AFN 18,058,349 in 1398). According to its financial statements, NCE also continued to

[168] Kakar Advocates Law Firm LLC, 'State-Owned Corporations Law', accessible on https://www.kakaradvocates.com/state-owned-corporations-law
[169] Special Anti-Corruption Secretariat, Office of the President (2020), '2019 annual report', accessible on https://www.sacs.gov.af/uploads/reports/annual_report/276.pdf

pay 4% BRT in 1397 (totaling AFN 140,104,666) but did not pay the 4% BRT in 1398 (*see Revenue Collection Chapter*).[170]

State and SOE loans and guarantees to mining, oil and gas companies

In addition to the two SOEs' 1397-1398 financial statements, AGE and NCE reported a breakdown of their outstanding loans to third parties in this period. The recipients of these loans from SOEs include companies operating in the upstream extractive industries, including other SOEs (Afghan Gas Enterprise, Jabal Saraj Cement) and extractive companies (Ghouri Cement, Hashimi Group, Haji Rahyaab Construction Company, etc.). There are also loans from NCE to AGE.

Table 45 presents information on the loans from North Coal Enterprise to companies operating in the extractive industries, that were outstanding in 1397 and 1398.

Table 44 North Coal Enterprise's outstanding loans to extractive companies, 1397-1398

Name of company holding outstanding loan from NCE	Loan date	Interest rate	Tenor	Loan amount outstanding in 1397	Loan amount outstanding in 1398
Jabal Saraj Cement Enterprise	1398/3/22	0%	Unspecified	AFN 118,445,686	AFN 118,445,686
Kod-e-Barq Enterprise	1395/6/17	0%	Unspecified	AFN 22,000,000	AFN 22,000,000
Afghan Gas Enterprise	1393/10/1	0%	Unspecified	AFN 44,643,600	AFN 44,643,600
Afghan Investment Company (AIC)	1385	0%	Unspecified	AFN 15,821,942	AFN 15,821,942
Afghan Coal Electric Engineers	N/A	0%	Unspecified	AFN 84,772	AFN 84,772
Old Cement Ghori	1385 (coal before 1385)	0%	Unspecified	AFN 61,249,358	AFN 61,249,358
Baghlan Province Ghouri Cement	1396	0%	Unspecified	AFN 200,000	AFN 39,346,183
Metallurgical Company	before year 1380	0%	Unspecified	AFN 147,336	AFN 147,336

Source: North Coal Enterprise data

Table 46 presents information on the loans from Afghan Gas Enterprise to companies operating in the extractive industries, that were outstanding in 1397 and 1398.

[170] See SAO audit report on 1397-1398 financial statements of AGE and NCE, accessible on https://MOMP.gov.af/soes

Table 45 Afghan Gas Enterprise's outstanding loans to extractive companies, 1397-1398

Name of company holding outstanding loan from AGE	Loan date	Interest rate	Tenor	Loan amount outstanding in 1397	Loan amount outstanding in 1398
Kod-e-Barq	1380	0	0	387,431,560	242,448,479.00
Sheberghan City and people	1367	0	0	319,064,314	326,145,885.00
Aqcha District	1371	0	0	71,119,177	74,141,283.00
Khawaja Doko District	1374	0	0	0	0
Mazar Sharif City	1422	0	0	38,725,502	38,724,893.00
CNG	1393	0	0	0	0
Other Receivables		0	0	0	0

Source: Afghan Gas Enterprise data

The MSG confirms that the government did not have any loans or guarantees outstanding to any companies operating in the mining, oil and gas industries in Afghanistan in 1397-1398. The MSG's understanding was confirmed in consultations with the Ministry of Finance's Debt Management Unit.

SOEs' audit and assurance practices

The MOMP's 2017 Mining Sector Roadmap plans for the corporatization of AGE and NCE, with the implementation of financial accounting systems subject to external audit as a first step.[171] Afghan Gas Enterprise and North Coal Enterprise prepared financial statements in accordance with International Financial Reporting Standards (IFRS) for 1395 and 1396, which were audited by the Supreme Audit Office (SAO) for the first time and published on the SOE section of the MOMP website in January 1399 (2020).[172] The SAO's audit of the two extractive SOEs' financial statements for 1397-1398 was initiated in the fourth quarter of 1399 (2020), but was not yet completed at the time of publication of this 7th AEITI Report. The MSG expects the SAO to complete the SOE audits for 1397-1398 by mid-1400 (2021), after which they will be published on the SOE section of the MOMP website.

The audit was in accordance with International Standards of Supreme Audit Institutions (ISSAI), with SAO field visits to Jawzjan and Baghlan provinces.[173] The audits resulted in adverse opinions on the 1395-1396 financial statements of both AGE and NCE, with the SAO considering the accounts incomplete as per IFRS-1. The audit found that the SOEs did not have an internal audit function and that they operated a manual accounting system. The SAO raised concerns over the lack of a "*competent accounting team with the skills and knowledge to prepare financial statements as per IFRS*". Since then, the two SOEs have since implemented a new financial system

[171] Ministry of Mines and Petroleum (December 2017), 'Islamic Republic of Afghanistan: Mining sector roadmap', accessible on https://miningwatch.af/wp-content/uploads/2018/02/MOMP-Road-Map.pdf
[172] Ministry of Mines and Petroleum website, SOEs webpage, accessible on https://MOMP.gov.af/soes
[173] Special Anti-Corruption Secretariat, Office of the President (2020), '2019 annual report', accessible on https://www.sacs.gov.af/uploads/reports/annual_report/276.pdf

(QuickBooks), generating weekly, monthly, quarterly and annual reports.[174] Encouraged by the IMF, the Ministry of Finance plans to prepare annual analytical reports on SOCs' financial performance to be annexed to the government budget from 2020 onwards.[175]

The AEITI MSG has conducted regular follow-up with the management of Afghan Gas Enterprise and North Coal Enterprise in 2020. Noting the findings of the SAO's audits of the two SOEs, the MSG required the AEITI Secretariat to submit the audit findings to the presidential office, for direction of the two SOEs to address and resolve the audit findings. The AEITI Secretariat also highlighted to the Presidency the loss of data and institutional memory with the transfer of the SOEs to the new NDC structure.[176]

Chapter 5 of the 2018 Law on SOCs codifies rules for SOC's financial accounting, reporting and audit. It confirms that each SOC is required to prepare annual accounts in accordance with IFRS (Article 33), with a Chart of Accounts established by the SOC Oversight Board (Article 34) and audited on an annual basis by an credible external auditor pre-qualified by the SAO. Article 27 of the 2018 Law on SOCs requires all SOCs to establish an Audit Committee to monitor the integrity of the SOC's financial statements and oversee the SOC's audit. Article 11(3) gives the SOC Oversight Board the right to require a financial audit of any SOC by the SOC's auditors, or by an independent auditor appointed by the SOC Oversight Board, at any time and at the SOC's expense. Article 30 requires all SOCs to prepare annual reports, which include copies of the SOC's financial statements, which are to be made available to the public in accordance with Article 31(4), through the corporate website required to be maintained by each SOC.

What are the rules and practices for procurement by SOEs?

Under Article 22(2) of the 2018 Law on SOCs implemented from December 2019 onwards, each SOC's Board of Directors is responsible for approving each SOC's annual procurement plans and policies. Article 42 confirms that procurement by SOCs is to be undertaken in compliance with the Procurement Law, which was last revised through the 2016 Procurement Law enacted through Presidential Decree 90 of 11 August 2016 and published in the official gazette (number 1223) on 17 September 2016. Article 14 requires SOEs to seek approval from the Ministry of Finance for any purchase or sale of goods and services of a value equivalent to more than 10% of the company's total assets.

The National Procurement Authority (NPA) procurement portal provides a brief description of the 2017 Procurement Law.[177] The Ministry of Finance website has only published the former 2008 Procurement Law[178], it has yet to publish the 2017 revisions to the Procurement Law. The official gazette does not provide access to back issues on the Ministry of Justice website.[179] In practice,

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[174] Special Anti-Corruption Secretariat, Office of the President (2019), '2018 annual report', accessible on https://www.sacs.gov.af/uploads/reports/special/210.pdf

[175] IMF (June 2019), 'Afghanistan: Fifth review under the extended credit facility arrangement', accessible on https://www.imf.org/en/Publications/CR/Issues/2019/06/07/Islamic-Republic-of-Afghanistan-Fifth-Review-Under-the-Extended-Credit-Facility-Arrangement-46973

[176] See AEITI (July 2020), 'AEITI Quarter 2 Activity Report 2020: April – June 2020', accessible on http://aeiti.af/en/documents/category/aeiti-quarterly-reports

[177] AGEOPS website, 'Procurement Law', accessible on https://ageops.net/en/documents/procurement-law-and-rop/procurement-law

[178] Islamic Republic of Afghanistan (2008), 'Procurement Law, 2008', accessible on https://MOF.gov.af/sites/default/files/2019-02/ProcurmentLawincoporatedJan.pdf

[179] Ministry of Justice website, 'Official gazette', accessible on https://moj.gov.af/en/official-gazette

there is no information on Afghan Gas Enterprise and North Coal Enterprise's procurement practices available online.

What are the rules and practices for SOEs' corporate governance?

There is little information in the public domain on corporate governance rules or practices of Afghan Gas Enterprise and North Coal Enterprise. Article 33 of the 2005 Law on SOEs appoints the High Board of Tasadee, which is chaired by the MoMP and includes members from Ministry of Finance, Ministry of Economy and Ministry of Commerce and Industry), as having oversight for decisions related to AGE and NCE's financial plans and strategic decisions. Senior management at the two SOEs report on the financial and operational management of the SOEs to the High Board of Tasadee, while the MoMP monitors the SOEs' operations and financial activities.[180]

The 2018 Law on SOCs includes clauses aimed at improving corporate governance, including the appointment of independent directors to the Board and ensuring a more transparent hiring process. The law defines the SOCs' structures including General Assemblies, Board of Directors, Oversight Board and Executive Committees.[181] The 2018 Law mandates the SOC Oversight Board to monitor all SOCs' corporate governance and to prescribe their governance standards, including a standard code of ethics (Article 11). Chapter 4 of the 2018 Law on SOCs covers corporate governance and codifies the SOCs' governance structure (Article 19), the duties and procedures of the SOC's General Assembly (Articles 20-21), the duties and procedures of the SOC's Board of Directors (Articles 22-23), the duties and procedures of the SOC's Executive Committee (Articles 24-25), the Board Committees (Article 26), the Audit Committee (Article 27), the conduct of fiduciaries (Article 28) and provisions related to conflict of interest (Article 29).

All SOCs are required to report to the NDC as the new holding company for government assets in some SOCs since 2020, with the CEO of NDC authorized to attend cabinet and High Council meetings. In practice however, it does not appear that all SOCs have yet been transferred to the NDC's ownership as of December 2020. It does not appear that all SOCs in the extractive industries, Afghan Gas Enterprise and North Coal Enterprise in particular, have yet complied with the corporate governance provisions of the 2018 Law on SOCs. In particular, the SOCs do not yet maintain their own websites or publish annual reports, inclusive of their financial statements.

Recommendations:

41. Afghan Gas State Owned Corporation and North Coal Enterprise are urged to establish and maintain Internet websites (in accordance with Article 31(4) of the 2018 Law on SOCs), or to consider using the National Development Corporation website to publish key information on the two main extractive SOEs' operations and financial information.
42. The National Development Corporation and Afghan Gas State Owned Corporation are urged to publish more information on its website on the equity it holds in state-owned enterprises and corporations, including the terms attached to its equity in each SOC and a description of any changes in NDC's equity holdings in companies operating in the mining, oil and gas sectors.

[180] See a brief summary of these corporate governance rules on Ministry of Mines and Petroleum website, SOEs webpage, accessible on https://MOMP.gov.af/soes
[181] Kakar Advocates Law Firm LLC, 'State-Owned Corporations Law', accessible on https://www.kakaradvocates.com/state-owned-corporations-law

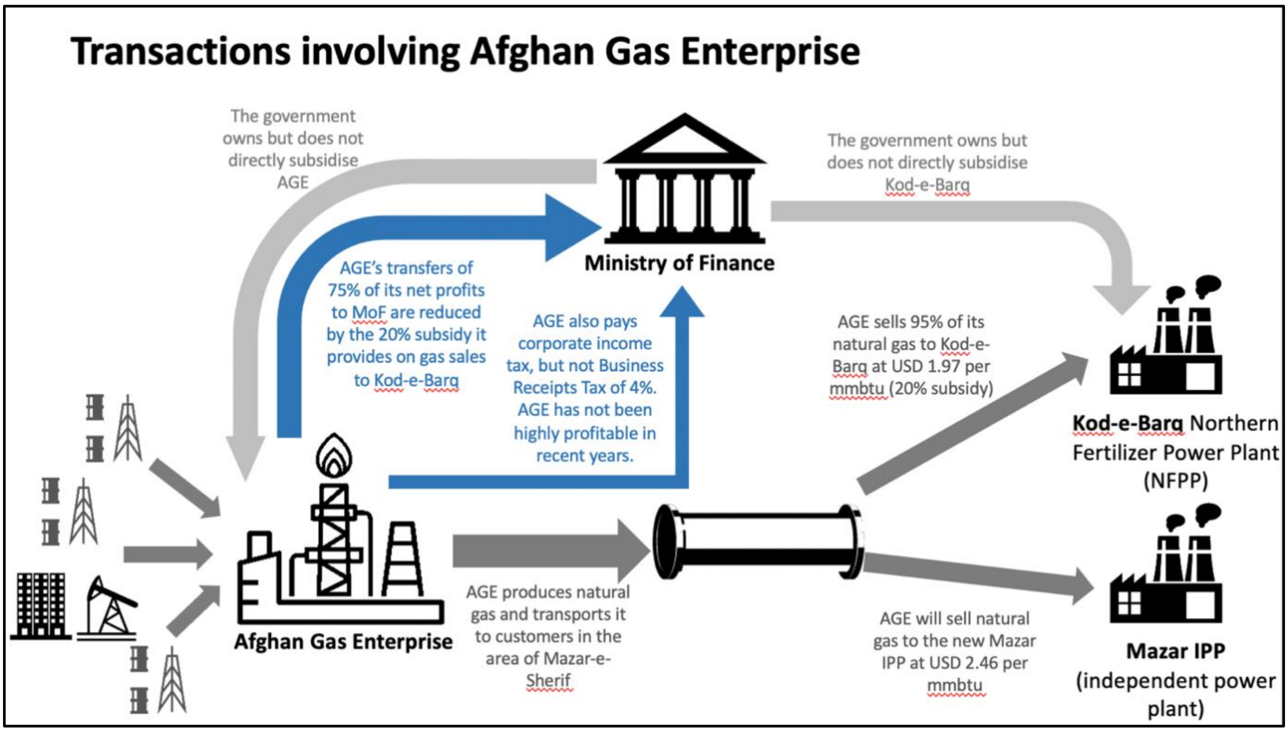
43. It is recommended that the National Development Corporation and MoF ensure that information on the rules and practices of corporate governance of extractive SOEs such as North Coal and Afghan Gas Enterprises are published on its website.
44. It is recommended that the MOMP keep its website updated, in particular the SOE section, with all relevant laws and regulations as they are published in the official gazette.
45. It is recommended that the AEITI MSG consult closely with the NSIA to understand the source of NSIA's data on SOEs and to work with the NSIA, NDC, the MoF's SOE Department and the SOEs/SoCs themselves to coordinate on the annual publication of information on the SOCs/SOEs' financial management.
46. It is recommended that the National Development Corporation and the MOMP ensure that any loans given by Afghan Gas Enterprise and North Coal Enterprise are tracked and published on the NDC and/or MOMP websites, to ensure transparency and accountability in the way in which SOEs cross-subsidize each other and other companies and institutions in the mining, oil and gas sectors.
47. It is recommended that extractive SOEs such as Afghan Gas State Owned Corporation and North Coal Enterprise ensure that their annual financial statements are prepared in a timely manner, within six months of the end of the year covered in line with international standards. The Supreme Audit Office should ensure that the audit of the financial statements is undertaken in a timely manner once received, and that the SOE's management is given an opportunity to respond to audit findings. The MOMP should ensure that the extractive SOEs' audited financial statements are published on its website, once completed.
48. It is recommended that the National Development Corporation ensure that information about SOEs' procurement practices be published on the NDC and/or NPA websites, at least on an annual basis.

Tracing government revenues from state participation: transactions related to state-owned enterprises (EITI Requirement 4.5)

The MSG's understanding is that companies in the mining, oil and gas sectors do not make fiscal payments to government. The transactions involving SOEs in the natural gas and coal sectors are summarized in the diagrams in Figures 26 and 27 below.

In the case of Afghan Gas Enterprise, the material payment flow that it is important to comprehensively and reliably disclose is the transfer of 75% of the SOE's net profits to the Ministry of Finance. The corporate income tax and other payments common to all extractive companies are covered under the government's collection of extractive revenues (*see Revenue Collection Chapter*).

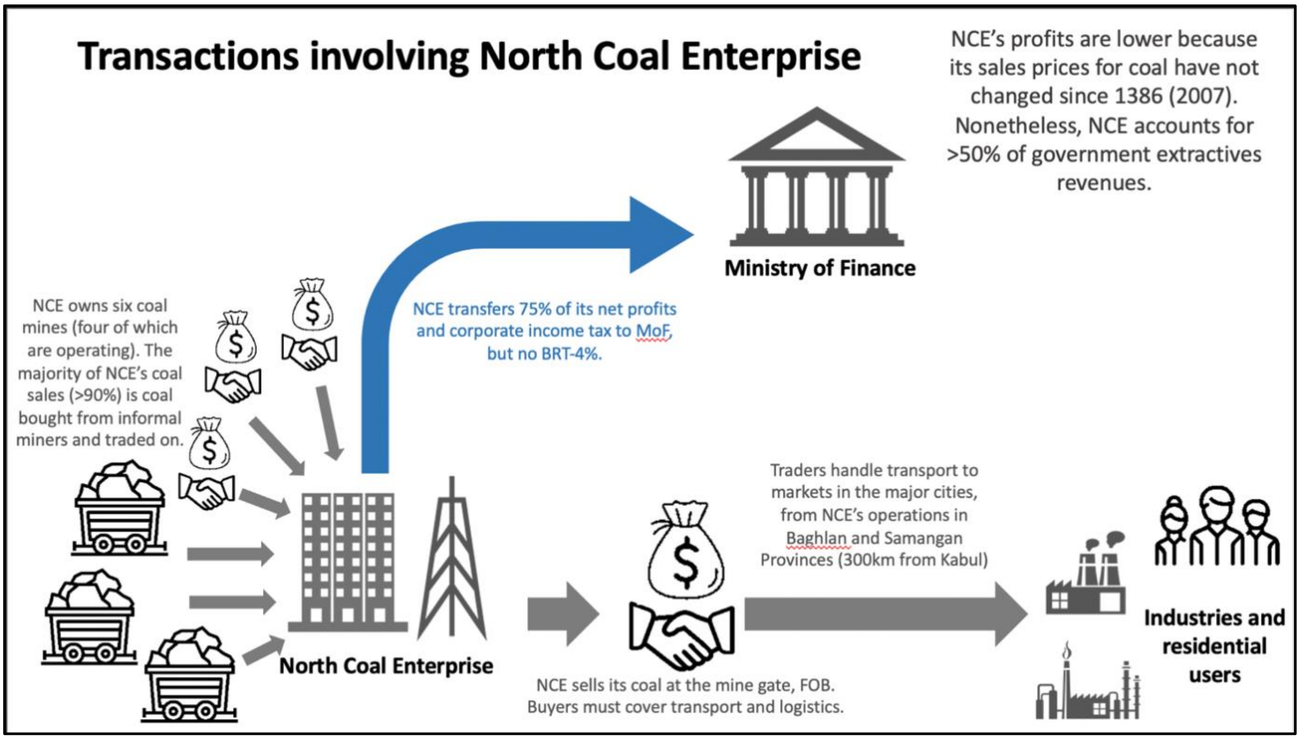
Figure 25 Financial transactions involving Afghan Gas Enterprise in 1397-1398



Source: AEITI diagram

Equally, in the case of North Coal Enterprise, the material payment flow that it is important to comprehensively and reliably disclose is the transfer of 75% of the SOE's net profits to the Ministry of Finance.

Figure 26 Financial transactions involving North Coal Enterprise in 1397-1398



Source: AEITI diagram

5. What transfers do SOEs make to government?

The MSG has collected information on the value of each of the four extractive SOEs' transfers of net profits to the Ministry of Finance in 1397 and 1398 from two sources: from the Ministry of Finance's SOE Department and from the SOEs' financial statements.

Table 47 presents the Ministry of Finance's data on the value of government revenues from SOEs' transfers of net profits in 1397 and 1398.

Table 46 Value of SOEs' transfers of net profits to Ministry of Finance in 1397-1398

Name of state-owned enterprise	Transfers of net profits to Ministry of Finance – 1397		Transfers of net profits to Ministry of Finance - 1398	
	Data from Ministry of Finance	Data from SOE	Data from Ministry of Finance	Data from SOE
North Coal Enterprise	AFN 596,344,082	AFN 1,454,721,431	AFN 826,184,980	0
Afghan Gas Enterprise	0	0	AFN 20,000,000	AFN 30,000,000
Jabal Saraj Cement Enterprise	0	0	0	0
Ghouri Cement Co.	*N/A (not state-owned in 1397)*	*N/A (not state-owned in 1397)*	0	0

Source: Ministry of Finance and individual SOEs

The data in Table 47 reveals that only Afghan Gas and North Coal made any transfers of net profits to the MoF in one of the two years (1397 or 1398). The MSG did not receive explanations for the large differences in data reported by the Ministry of Finance and the SOEs themselves on the value of their transfers of net profit to the Ministry of Finance. The MSG considers that the differences are due to the SOEs reporting their transfers of net profit to the Ministry of Finance on an accrual basis of accounting (dividends related to those years that were not necessarily transferred in those years) while the Ministry of Finance reported on a cash basis of accounting (dividends actually received in those years).

The data from the Ministry of Finance is supported by an attestation from the Ministry's management, confirming that the data submitted is the same as was submitted as part of the government's Qatia accounts, which were audited by the SAO (*see Revenue Collection Chapter*). The data from the SOEs is based on the financial statements of these SOEs (and supplementary information from the SOEs themselves in the absence of financial statements for the two cement companies). The 1397 and 1398 financial statements of the two SOEs had not yet been audited by the SAO at the time of publication of this 7th AEITI Report.

Based on a review of the two SOEs' financial statements, neither AGE nor NCE appears to have made any other (ad hoc) significant transfer to government entities in Fiscal Years 1397-1398.

What transfers does the government make to SOEs?

Based on consultations with the Ministry of Finance's SOE Department and the management of AGE and NCE, the MSG confirms that there were no government transfers to either of the two material SOEs in 1397-1398. The MSG understands that the last government transfer to North Coal Enterprise was in 1385 (2007).

Recommendations:

49. It is recommended that the AEITI MSG convene a meeting of the SOEs' management, NDC, MoF's SOE Department, MOMP and the SAO to discuss the significant differences in data related to the SOEs' payments to government in 1397-1398. The AEITI MSG may consider timing this meeting to coincide with the finalization of the SAO's audit of the AGE and NCE financial statements for this period, so that any insights on the reasons for these discrepancies are clarified in the SOEs' audited financial statements.
50. It is recommended that the National Development Corporation work with the MOMP to ensure that the financial data disclosed for Afghan Gas Enterprise and North Coal Enterprise is consistent across the various government websites, including the NDC website, the SOE section of the MOMP website and the Ministry of Finance's website. In addition to publishing documents such as the audited financial statements of the SOEs, the MOMP, MOF and NDC should consider presenting the two SOEs' payments to government data online, systematically disclosing the SOEs' payments data on the NDC, MOF and/or MOMP websites.

SOEs' production, sales and quasi-fiscal activities (EITI Requirements 4.2 and 6.2)

There were no in-kind payments to government (or to Afghan Gas or North Coal) by extractive companies operating in Afghanistan in 1397-1398. In the mining sector, NCE does not collect payments from other companies in kind. In oil and gas, the production-sharing contracts active in 1397-1398 were not at the production phase. In the PSC with CNPCI-Watan that was terminated in 2020 (1399), the state's in-kind revenue entitlements (Profit Oil) were paid in cash equivalent.

To ensure transparency in the sales of minerals and hydrocarbons more generally in Afghanistan, the MSG has decided to disclose the SOEs' own production and sales of natural gas (by Afghan Gas) and coal (by North Coal). The sales data is important because of the prices at which the commodities are sold. The subsidies on these sales, which is absorbed by each SOE, meets the AEITI MSG's definition of quasi-fiscal expenditures[182], in being subsidies on coal sales to the domestic market and on natural gas sales to the state-owned power plant.

To ensure greater transparency and accountability in extractive-related expenditures by SOEs on behalf of the government, which are not reflected in the national budget, this section presents the MSG's work on valuating the quasi-fiscal component of subsidized fossil fuel sales to the national market in 1397-1398.

Afghan Gas Enterprise' production, sales and quasi-fiscal subsidies in 1397-1398

Table 48 presents AGE's production and sales in volumes along with the value of the proceeds of the sales, sourced from the SOE's reporting to AEITI. This data is broken down by customer.

Table 47 Afghan Gas Enterprise's natural gas production and sales in 1397-1398

<table>
<tr><th rowspan="2"></th><th colspan="3">1397</th><th colspan="3">1398</th></tr>
<tr><th>Production volumes (cubic meters)</th><th>Sales volumes (cubic meters)</th><th>Proceeds of sales, value (AFN)</th><th>Production volumes (cubic meters)</th><th>Sales volumes (cubic meters)</th><th>Proceeds of sales, value (AFN)</th></tr>
<tr><td>Kod-e-Barq</td><td rowspan="3">146,088</td><td>139,518</td><td>487,465</td><td rowspan="3">115,923.2</td><td>109,396</td><td>346,785</td></tr>
<tr><td>Pradafca Wells</td><td>6,570</td><td>34,810</td><td>6,527.2</td><td>33,940</td></tr>
<tr><td>Retained by AGE</td><td>0</td><td>0</td><td>0</td><td>0</td></tr>
</table>

Source: Data submitted by Afghan Gas Enterprise

The data received from Afghan Gas Enterprise in preparation of this 7th AEITI Report is not consistent with the SOE's natural gas production data sourced from the MOMP Transparency Portal. The Transparency Portal quarterly data on Afghan Gas Enterprise's production over the 1395-1398 (2016-2019) period is presented in Table 49 and Figure 27.

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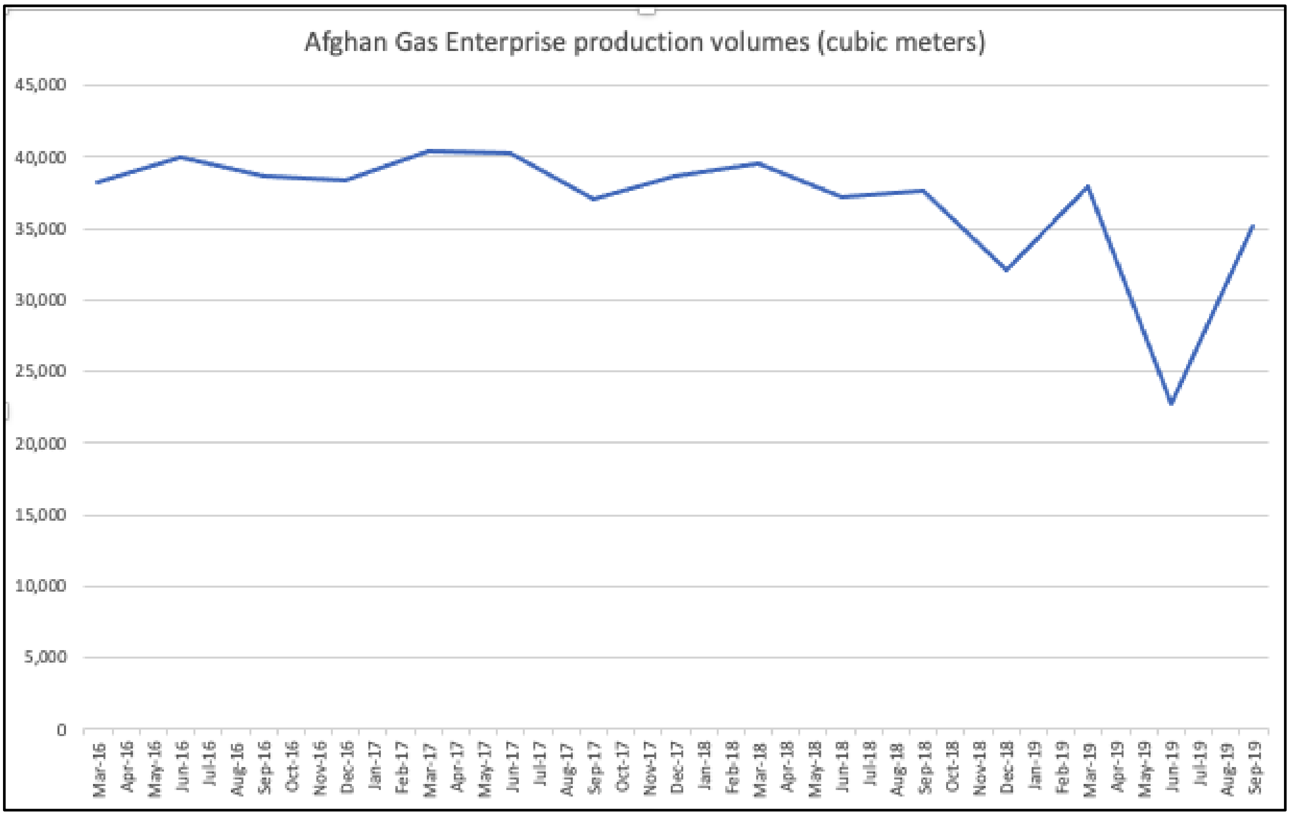
Table 48 Afghan Gas Enterprise's natural gas production volumes and values in 2016-2019, by quarter

Date of report	Production volume (cubic meters)	Production value (AFN)	Effective unit price (AFN/cubic meter)
Mar-16	38,257	112,405	2.938
Jun-16	39,943	105,380	2.638
Sep-16	38,731	103,345	2.668
Dec-16	38,424	119,200	3.102
Mar-17	40,370	126,000	3.121
Jun-17	40,243	125,917	3.129
Sep-17	37,045	115,732	3.124
Dec-17	38,610	130,578	3.382
Mar-18	39,586	13,259	0.335
Jun-18	37,269	125,315	3.362
Sep-18	37,669	126,850	3.367
Dec-18	32,157	108,988	3.389
Mar-19	37,910	127,058	3.352
Jun-19	22,766	79,083	3.474
Sep-19	35,176	136,648	3.885

Source: MOMP Transparency Portal on https://transparency.mom.gov.af/license/96098

Figure 27 Afghan Gas Enterprise's production volumes reported through MOMP Transparency Portal, 2016-2019

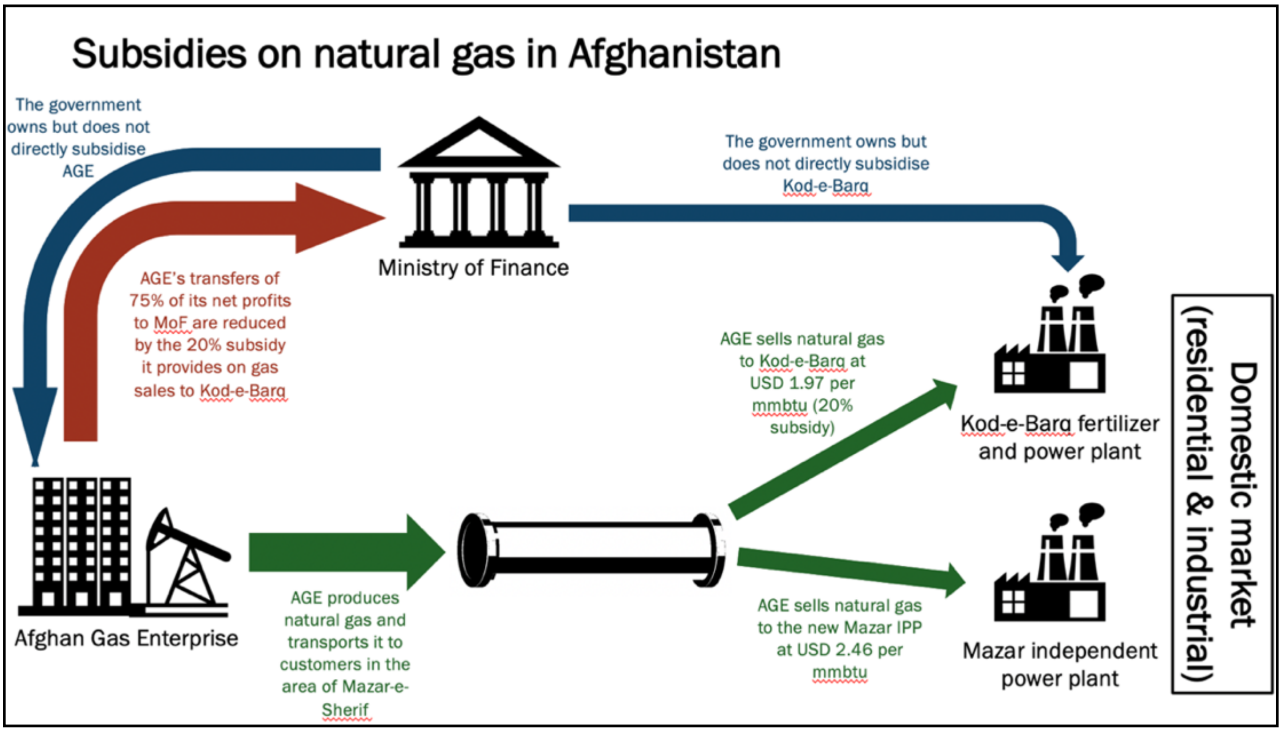


Source: MOMP Transparency Portal on https://transparency.mom.gov.af/license/96098

The unit price of natural gas sold by AGE to the Kod-e-Barq fertilizer and power plant and the Pradafca Wells appears to be below a domestic market price that would reflect commercial (or profit-generating) priorities. This meets the AEITI MSG's definition of quasi-fiscal expenditures, given that this represents a subsidy by Afghan Gas Enterprise of Kod-e-Barq Enterprise, which is not recorded in the national budget. This has been a subsidy on sales that account for some 95% of annual sales, which has reduced Afghan Gas' profitability and the value of its payments to government.

Figure 28 presents the AEITI MSG's understanding of the system of quasi-fiscal natural gas subsidies in Afghanistan.

Figure 28 Quasi-fiscal natural gas subsidies in Afghanistan



Source: AEITI diagram

Although there is no domestic spot market for natural gas in Afghanistan, the unit price for natural gas set in AGE's 20-year gas sales and purchase agreement (GSPA) with the new Mazar-e-Sharif IPP project can be considered a proxy for a commercial price for natural gas in the domestic market. The sales price of natural gas to the Mazhar IPP is $2.46 per MMBTU (or $0.087 per cubic meter). The difference between the market reference price and the price per unit of gas sold to Kod-e-Barq and the Pradafca Wells, multiplied by the total volume of the gas supplied to them, provides the value of total subsidies in the sale of natural gas for the years 1397 and 1398.

Table 50 presents the calculations of the quasi-fiscal subsidies on natural gas that are absorbed by AGE without compensation from the government.

Table 49 Calculations of Afghan Gas Enterprise's quasi-fiscal subsidies on natural gas sales in 1397-1398

Name of Buying Company	Volumes Sold (cubic meters)	Revenues Received (AFN)	Average Price per Unit (AFN)	Reference Market Price Per Unit (AFN)	Revenues to be Received at Reference Market Price (AFN)	Amount of Subsidy (AFN)
FY 1397						
Kod-e-barq	139,518	487,465	3.49	6.27	874,778	387,313
Prodafca Wells	6,570	34,807	3.58	6.27	915,972	393,700
TOTAL	**146,088**	**522,272**	**3.49**	**6.27**	**874,778**	**387,313**
FY 1398						
Kod-e-barq	109,396	346,785	3.17	6.77	740,611	393,826
Prodafca Wells	6572.2	33,940	3.28	6.77	785,105	404,380
TOTAL	**115,968.2**	**380,725**	**3.17**	**6.77**	**740,611**	**393,826**

Source: Data submitted by Afghan Gas Enterprise, calculations by AEITI

The total value of quasi-fiscal subsidies on natural gas sales absorbed by AGE was AFN 387,313 in 1397 and AFN 393,826 in 1398. This data on quasi-fiscal subsidies on natural gas sales is not clearly identified in either Afghan Gas Enterprise's or the Ministry of Finance's regular public disclosures. The AEITI's reporting of these off-budget subsidies on natural gas is the only public source of information on quasi-fiscal subsidies in Afghanistan at present.

North Coal Enterprise's production, sales and quasi-fiscal subsidies in 1397-1398

Table 51 presents North Coal Enterprise's production and sales in volumes along with the value of the proceeds of the sales, sourced from NCE. This data is broken down by sales price, but AEITI was not provided with the names of individual customers by NCE.

Table 50 North Coal Enterprise's production and sales in 1397-1398

	1397			1398		
	Production volumes (tons)	**Sales volumes (tons)**	**Proceeds of sales, value (AFN)**	**Production volumes (tons)**	**Sales volumes (tons)**	**Proceeds of sales, value (AFN)**
Customer 1 (AFN 1500/ton)	2,304,101.34	2,304,176.09	3,456,264,135	2,035,723.17	2,035,921.17	3,053,881,755
Customer 2 (AFN 1900/ton)	736.60	0	0	14,551.20	95.67	181,773
Customer 3 (AFN 2100/ton)	23,735.40	17,541.38	36,836,898	26,421.25	19,015.14	39,931,794
TOTAL	**2,328,573.34**	**2,321,717.47**	**3,493,101,033**	**2,076,695.62**	**2,055,031.98**	**3,093,995,322**

Source: Data submitted by North Coal Enterprise

The production data reported by North Coal Enterprise to AEITI is not consistent with the coal production figures related to NCE available on the Transparency Portal. The MSG understands that

NCE production data recorded in the Transparency Portal includes only NCE's own production, not the coal purchased by NCE from informal miners.

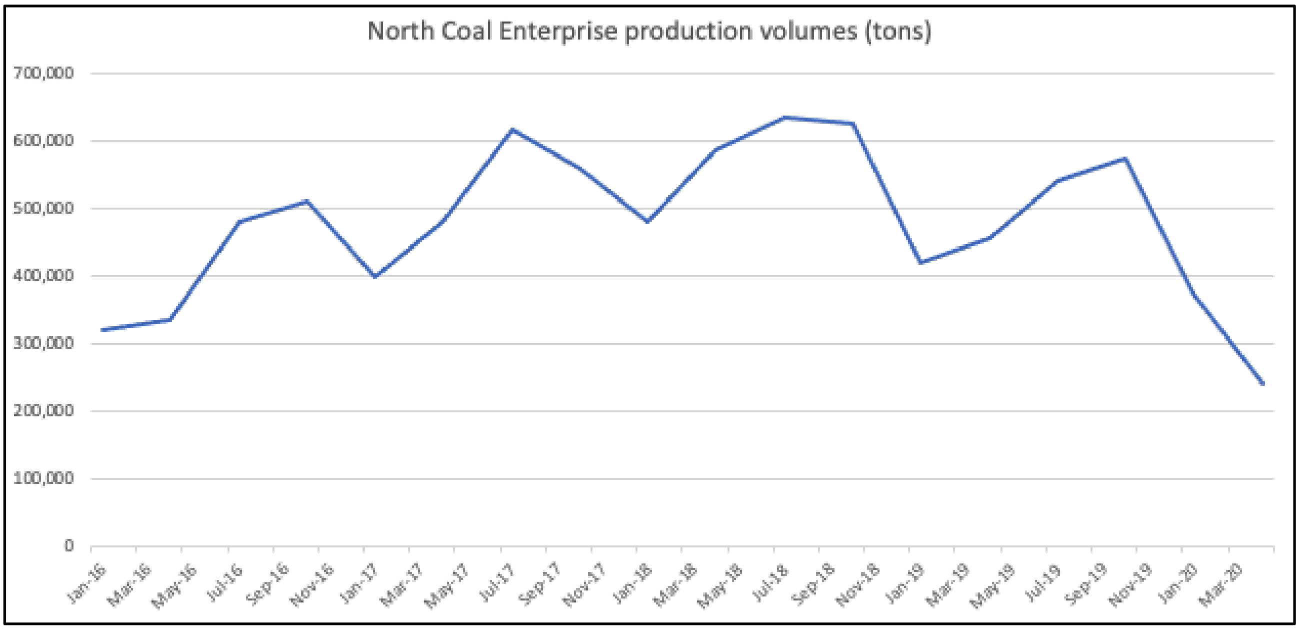
Table 52 and Figure 29 present the quarterly NCE production data published on the Transparency Portal for the 2016-2019 period.

Table 51 North Coal Enterprise's coal production in 2016-2020, by quarter

Date of report	Production volume (tons)	Production value (AFN)
Jan-16	320,776	1,603,880,400
Apr-16	334,092	1,670,459,950
Jul-16	478,790	2,393,951,100
Oct-16	512,032	2,560,159,050
Jan-17	399,775	1,998,875,000
Apr-17	480,525	2,402,625,000
Jul-17	615,410	3,077,050,000
Oct-17	558,959	2,794,795,000
Jan-18	480,891	2,404,455,000
Apr-18	586,990	2,934,950,000
Jul-18	636,148	3,180,740,000
Oct-18	624,573	3,122,865,000
Jan-19	418,204	2,091,020,000
Apr-19	456,660	2,283,300,000
Jul-19	539,916	2,699,580,000
Oct-19	574,098	2,870,490,000
Jan-20	374,831	1,874,156,000
Apr-20	241,536	1,207,679,150

Source: MOMP Transparency Portal on https://transparency.mom.gov.af/license/64022

Figure 29 North Coal Enterprise production volumes reported through MOMP Transparency Portal, 2016-2020



Source: MOMP Transparency Portal on https://transparency.mom.gov.af/license/64022

The unit price of coal sold by NCE to the domestic market is below a domestic market price that would reflect commercial (i.e. profit-generating) priorities. The sales price for NCE coal is set by the government based on assumptions of NCE's fixed costs (e.g. salary, operating budgets, and mine technical costs). Coal bought by NCE from informal and artisanal coal miners is sold at AFN

1500 per ton. Coal produced by NCE from its mines in Shabashak and Dahna-e-Ghor is sold at AFN 2100 per ton. Finally, coal produced from NCE's mines in Abkhorak is sold at AFN 1900 per ton. These sales prices were set by decision of the Council of Ministers on 31 February 1386.

The World Bank found in 2018 that the government's estimates of NCE's fixed costs were under-estimated by a factor of two or more.[183] The under-estimation of costs is partially offset by passing on certain operational costs to customers, including transport costs, customs duties and security costs. In effect, NCE coal is sold as FOB with delivery at the mine-gate, whereas other (private) coal producers in Afghanistan sell for delivery in urban consumption centers. This makes it challenging to compare NCE's effective sales price with average market prices in key consumer markets such as Kabul, since NCE's sales prices are for coal delivery in Baghlan and Samangan Provinces.

The SAO audit of NCE's 1395-1396 financial statements raised concerns over the lack of adjustment of NCE's sales prices since 1386, noting that the 31 February 1386 Council of Ministers decision allowed NCE to adjust sales prices in light of market demand. The SAO recommended that NCE establish a transparent and competitive pricing mechanism that would lead to increased revenues for NCE.

The coal sold by NCE in 1397-1398 continued to be sold according to the pricing structure determined in 1386. The MSG thus considers that the lower sales price for coal sold by NCE represents a quasi-fiscal subsidy on coal sold to the domestic market. However, as no other company sells coal at the mine gate, but rather at the market, it is not possible to make a market-based comparison to calculate the amount of subsidy. Instead, a 'cost plus method' is more appropriate in this case to calculate subsidy.

A government representative on the MSG explained that there was pressure from traders to further lower the price at which NCE coal purchased from artisanal, informal (local) miners, as the traders argued that the price should be lower for this artisanal production. Around 95% of NCE's reported coal sales are from these purchases from artisanal miners.

Table 53 presents the calculations of the quasi-fiscal subsidies on coal sales that are absorbed by NCE without compensation from government budget transfers. Anecdotal evidence reported in the news media[184] estimated the price of coal in major consumption centers like Kabul to have been around AFN 12,000 per ton in 1398 (2019). It can be assumed that costs for transport, checkpoint payments and insurance were around AFN 3000 per ton in 1398 (2019). Therefore, it can be assumed that an average market price for coal sold by North Coal Enterprise at mine-site would be around AFN 9000 per ton.

[183] World Bank (2018), 'Afghanistan Energy Study', accessible on https://esmap.org/sites/default/files/esmap-files/Uncertainty-OKR-R1.pdf
[184] Foreign Policy (October 2020), 'The Taliban's Highway Robbery', accessible on https://foreignpolicy.com/2020/10/23/taliban-coal-tax-highway-toll-afghanistan/

Table 52 Calculations of North Coal Enterprise's quasi-fiscal subsidies on coal sales in 1397-1398

NCE customer	Total NCE coal sales (volumes in ton)	Value of NCE coal sales (AFN)	Unit price of NCE coal sales (AFN/ton)	Discount on market prices for mine-site coal delivery[185] (AFN/ton)	Value of subsidy on NCE coal sales (AFN)
1397 (2018)					
Customer type A	2,304,176.09	3,456,264,135.00	1500	7500	17,281,320,675.00
Customer type B	0	0	1900	7100	
Customer type C	17,541.38	36,836,898.00	2100	6900	121,035,522.00
1398 (2019)					
Customer type A	1,835,921.17	2,753,881,755.00	1500	7500	13,769,408,775.00
Customer type B	95.67	181,773	1900	7100	679,257.00
Customer type C	19,015.14	39,931,794.00	2100	6900	131,204,466.00

Source: Data submitted by North Coal Enterprise, calculations by AEITI

The total value of quasi-fiscal subsidies on coal sales absorbed by NCE was AFN 17,402,356,197 in 1397 and AFN 15,401,292,498 in 1398. This data on quasi-fiscal subsidies on coal sales is based on rough estimates of prevailing market conditions and prices, which by nature are approximate in the context of Afghanistan. The AEITI's reporting of these off-budget subsidies on coal is the only public source of information on quasi-fiscal subsidies in Afghanistan at present.

The subsidies on coal sales to the domestic market help keep the cost of coal-fired electricity production among the lowest of all sources of electricity in Afghanistan. Table 54 presents the costs of electricity production per source of energy supply.

Table 53 Cost of electricity supply according to source in 2019

Type of energy supply	Average unit price (Usc/kWh)
Diesel (all provinces)	29.53
Thermal (NW Kabul)	27.115
Hydro, thermal and diesel	6.473
Hydro and diesel	5.19
Natural gas	**2.8-3.5**
Imported	2.62
Hydro	2.29
Coal (1MW = 4.5 tons)	**1 ton = AFN 2.200**

Source: An overview of the opportunities and challenges in sustaining the energy industry in Afghanistan (https://www.e3s-conferences.org/articles/e3sconf/pdf/2020/33/e3sconf_icacer2020_03006.pdf)

[185] It is assumed that an average market price for coal sold by North Coal Enterprise at mine-site would be around AFN 9000 per ton, as described in the paragraph above Table 54.

SOEs’ subsidized loans to extractive companies in 1397-1398

There is a third type of quasi-fiscal activities undertaken and Afghan Gas Enterprise and North Coal Enterprise. These are loans from the two SOEs to third parties (companies, other SOEs and government entities), at subsidized rates compared to the prevailing rate of lending in Afghanistan in 1397-1398. The difference in interest rate between commercial bank loans and AGE/NCE loans to third parties can be applied for the outstanding loan over one year to estimate the opportunity-cost of the quasi-fiscal activity to the two SOEs. Although the AGE’s General Directorate stated that the company had not been subsidized by any government entity in 1397-1398, there is evidence on NCE’s books of outstanding loans to AGE.

Tables 55 and 56 present the details of North Coal Enterprise’s loans to third parties in 1397-1398, highlighting third-party borrowers (including non-extractive companies and institutions) and the value of quasi-fiscal subsidies on each of the active loans:

Table 54 Calculations of North Coal Enterprise’s quasi-fiscal subsidized loans to third parties in 1397

Name of Entity with outstanding loan from NCE	Loan amount (AFN)	Date of loan	Interest rate (%)	Tenor	Interest rate subsidy (%)	Subsidy value in 1397 (AFN)
Jabal Saraj Cement Enterprise	AFN 118,445,686	1398/3/22	0	Unspecified	14.84%	17,577,339.80
Kod-e-Barq enterprise	AFN 22,000,000	1395/6/17	0	Unspecified	14.84%	3,264,800.00
Afghan Gas enterprise	AFN 44,643,600	1393/10/1	0	Unspecified	14.84%	6,625,110.24
Geological Survey	AFN 30,000	1395/1/24	0	Unspecified	14.84%	4,452.00
Sheberghan Hydrocarbons Department	AFN 30,000	Before year 1388	0	Unspecified	14.84%	4,452.00
MoMP Petroleum department	AFN 200,000	1393/9/8	0	Unspecified	14.84%	29,680.00
MoMP Chief of Staff Directorate	AFN 750,000	1394/2/23	0	Unspecified	14.84%	111,300.00
AIC company	AFN 15,821,942	1385	0	Unspecified	14.84%	2,347,976.19
Afghan Coal electric Engineers	AFN 84,772	0	0	Unspecified	14.84%	12,580.16
Old cement Ghori	AFN 61,249,358	For coal before 1385	0	Unspecified	14.84%	9,089,404.73
Investment Company	AFN 4,449,721	1388	0	Unspecified	14.84%	660,338.60
Afghan textile	AFN 196,069	0	0	Unspecified	14.84%	29,096.64
Balkh water supply	AFN 8,240	In 1391 for water meter of Balkh Bracket	0	Unspecified	14.84%	1,222.82
Balkh telecommunication	AFN 10,339	Before 1390	0	Unspecified	14.84%	1,534.31
Baghlan province	AFN 364,099	1391/10/17	0	Unspecified	14.84%	54,032.29
Baghlan province Ghouri cement	AFN 200,000	1396	0	Unspecified	14.84%	29,680.00
Kaj Jelawgir	AFN 47,400	1380	0	Unspecified	14.84%	7,034.16
Haji Zafar	AFN 8,861	1380	0	Unspecified	14.84%	1,314.97
Eng Shah Mohammad Hard Rock Director	AFN 157,600	1393	0	Unspecified	14.84%	23,387.84
Agha Shereen	AFN 47,850	0	0	Unspecified	14.84%	7,100.94
Metallurgical Company	AFN 147,336	Before 1380	0	Unspecified	14.84%	21,864.66
Total:	**AFN 268,892,873**					**39,903,702.35**

Source: North Coal Enterprise data, IMF on https://www.indexmundi.com/facts/afghanistan/indicator/FR.INR.LEND

Table 55 Calculations of North Coal Enterprise's quasi-fiscal subsidized loans to third parties in 1398

Name of Entity with outstanding loan from NCE	Loan amount (AFN)	Date of loan	Interest rate (%)	Tenor	Interest rate subsidy (%)	Subsidy value in 1398 (AFN)
Jabal Saraj Cement Enterprise	AFN 118,445,686	1398/3/22	0	Unspecified	14.84%	17,577,339.80
Kod-e-Barq enterprise	AFN 22,000,000	1395/6/17	0	Unspecified	14.84%	3,264,800.00
Afghan Gas enterprise	AFN 44,643,600	1393/10/1	0	Unspecified	14.84%	6,625,110.24
Geological Survey	AFN 30,000	1395/1/24	0	Unspecified	14.84%	4,452.00
Sheberghan Hydrocarbons Department	AFN 30,000	Before 1388	0	Unspecified	14.84%	4,452.00
MoMP Petroleum department	AFN 200,000	1393/9/8	0	Unspecified	14.84%	29,680.00
MoMP Chief of Staff Directorate	AFN 750,000	1394/2/23	0	Unspecified	14.84%	111,300.00
AIC company	AFN 15,821,942	1385	0	Unspecified	14.84%	2,347,976.19
Afghan Coal electric Engineers	AFN 84,772	0	0	Unspecified	14.84%	12,580.16
Old cement Ghori	AFN 61,249,358	for Coal before 1385	0	Unspecified	14.84%	9,089,404.73
Investment Company	AFN 4,449,721	1388	0	Unspecified	14.84%	660,338.60
Afghan textile	AFN 196,069	0	0	Unspecified	14.84%	29,096.64
Balkh water supply	AFN 8,240	in 1391 transferred for Balk water station bill	0	Unspecified	14.84%	1,222.82
Balkh tele Communication	AFN 10,339	before 1390	0	Unspecified	14.84%	1,534.31
Baghlan province	AFN 364,099	1391/10/17	0	Unspecified	14.84%	54,032.29
Baghlan province Ghouri Cement	AFN 39,346,183	0	0	Unspecified	14.84%	5,838,973.56
Kaj Jelawgir	AFN 47,400	1380	0	Unspecified	14.84%	7,034.16
Haji Zafar	AFN 8,861	1380	0	Unspecified	14.84%	1,314.97
Eng Shah Mohmmad Hard Rock Director	AFN 157,600	1393	0	Unspecified	14.84%	23,387.84
Agha Shereen	AFN 47,850	1380	0	Unspecified	14.84%	7,100.94
Metallurgical Company	AFN 147,336	1380	0	Unspecified	14.84%	21,864.66
MOMP –finance directorate	AFN 1,500,000	0	0	Unspecified	14.84%	222,600.00
Total:	**AFN 309,539,056**					**45,935,595.91**

Source: North Coal Enterprise data, IMF on https://www.indexmundi.com/facts/afghanistan/indicator/FR.INR.LEND

Tables 57 and 58 present the details of Afghan Gas Enterprise's lending to other entities, including companies, government entities and other SOEs such as Kod-e-Barq, to whom AGE sells most of its natural gas.

Table 56 Calculations of Afghan Gas Enterprise's quasi-fiscal subsidized loans to third parties in 1397

Name of Entity with outstanding loan from AGE	Loan amount (AFN)	Date of loan	Interest rate (%)	Tenor	Interest rate subsidy (%)	Subsidy value in 1397 (AFN)
Kod-e-Barq	727,960,971.00	1380	0	Unspecified	14.84%	108,029,408.10
Sheberghan City and people	344,837,871.00	1367-1371	0	Unspecified	14.84%	51,173,940.06
Aqcha District	75,171,530.00	1371	0	Unspecified	14.84%	11,155,455.05
Khawaja Doko District	4,316,826.00	1374	0	Unspecified	14.84%	640,616.98
Mazar Sharif City	38,733,096.00	1422	0	Unspecified	14.84%	5,747,991.45
CNG	427,323.00	1393	0	Unspecified	14.84%	63,414.73
Other Receivables	147,293,852.00	0	0	Unspecified	14.84%	21,858,407.64
Total:	1,338,741,469.00					**198,669,234.00**

Source: Afghan Gas Enterprise data, IMF on https://www.indexmundi.com/facts/afghanistan/indicator/FR.INR.LEND

Table 57 Calculations of Afghan Gas Enterprise's quasi-fiscal subsidized loans to third-parties in 1398

Name of Entity with outstanding loan from AGE	Loan amount	Date of loan	Interest rate	Tenor	Interest rate subsidy	Subsidy value in 1398
Kod-e-Barq	664,597,385.00	1380	0	Unspecified	14.84%	98,626,251.93
Sheberghan City and people	347,891,247.00	1367-1371	0	Unspecified	14.84%	51,627,061.05
Aqcha District	78,278,807.00	1371	0	Unspecified	14.84%	11,616,574.96
Khawaja Doko District	4,316,826.00	1374	0	Unspecified	14.84%	640,616.98
CNG	416,018.00	1422	0	Unspecified	14.84%	61,737.07
Mazar City	38,732,487.00	1393	0	Unspecified	14.84%	5,747,901.07
Bayat Power Electricity Generator	34,080,937.00	1/8/1398	N/A	Unspecified	14.84%	5,057,611.05
Other Receivables	237,686,994.00	0	N/A	Unspecified	14.84%	0.00
Total:	1,406,000,701.00					**35,272,749.91**

Source: Afghan Gas Enterprise data, IMF on https://www.indexmundi.com/facts/afghanistan/indicator/FR.INR.LEND

The total value of quasi-fiscal subsidized loans was AFN 39.9 million in 1397 and AFN 45.9 million in 1398 on the part of North Coal Enterprise. The value of subsidized loans from Afghan Gas Enterprise was AFN 198 million in 1397 and AFN 35.3 million in 1398. Again, these represent rough estimates of the quasi-fiscal subsidies that should be refined through further study and analysis.

Recommendations:

51. It is recommended that the National Development Corporation (NDC), North Coal Enterprise and Afghan Gas State Owned Corporation consider ways of regularly publishing detailed information on production and sales of natural gas and thermal coal.

52. It is recommended that North Coal Enterprise and Afghan Gas State Owned Corporation work with the MOMP and MOF on regularly publishing information on the quasi-fiscal subsidies on coal, natural gas and intra-SOE lending. Clarity on the significant cross-subsidies across SOEs through interest-free loans is of importance for Afghanistan's public finance management. The AEITI MSG is encouraged to follow up with the management of SOEs to respond to a SAO finding that SOEs extend interest-free loans to other companies.

Chapter 11

Subnational contributions of the extractive industries

WHAT IS CONTAINED IN THIS CHAPTER?

This chapter provides information on the contribution of the extractives industries to subnational entities, including social and environmental expenditures (EITI Requirement 6.1), subnational direct payments by extractive companies (EITI Requirement 4.6) and subnational transfers of government extractive revenues (EITI Requirement 5.2). Together, these datasets provide a comprehensive overview of the subnational contribution of the extractive industries in Afghanistan.

The government's 2019 Mining Sector Roadmap includes five pillars for reforms, with several relating to achieving social, economic and environmental outcomes and impacts.[186] The contribution of mining, oil and gas companies to subnational economic development has mainly consisted of social expenditures benefitting areas hosting the extractive activities. The Ministry of Mines and Petroleum's Directorate of Mines Inspection has the mandate of monitoring mining, oil and gas companies' compliance with their social expenditure obligations.

Provisions of the 2014 Mining Law and 2018 Minerals Law establishing subnational transfers of a share of mining revenues to provinces hosting extractive activities hold the promise of greater subnational devolution of mining revenues, even if they have not yet been implemented as of 2020.

The Independent Directorate of Local Governance (IDLG), established by the Local Administrative Law in 2007, is the key government entity linking the central and subnational governments. Provincial and district governors are formally appointed by the President of the Islamic Republic of Afghanistan, on the recommendation of the IDLG that forms the key link between the Presidency and the subnational governors.[187] The IDLG will play a central role in administering subnational transfers of mining revenues in future.

This section sets out mining, oil and gas companies' various contributions to subnational governments and communities. The value of these subnational contributions is much smaller than extractive revenues collected by the central government. However, these contributions are significant for host communities since they are the extractive industries' main form of direct contribution to subnational economic development. Therefore, the AEITI MSG has not set any materiality threshold for subnational contributions – whether subnational transfers or social expenditures – and has disclosed all of the available expenditures in this EITI Report.

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[186] Ministry of Mines and Petroleum (December 2017), 'Islamic Republic of Afghanistan: Mining Sector Roadmap', accessible on https://MOMP.gov.af/sites/default/files/2020-07/MOMP%20Roadmap-1-merged.pdf

[187] Independent Directorate of Local Governance (July 2018), 'Citizen-Centered Governance: A Roadmap for Subnational Reform', accessible on https://idlg.gov.af/en/wp-content/uploads/2019/06/English-Book.pdf

Mining, oil and gas companies' direct payments to subnational governments (Requirement 4.6)

There are several tiers of subnational governments in Afghanistan: the 34 Provinces on the one hand, and the 364 official districts[188], 28 unofficial districts and 204 municipalities on the other. The Independent Directorate of Local Governance (IDLG) operates a basic portal of the 34 provinces in Afghanistan at the bottom of its website's homepage[189], with a general mapping of districts with natural resources, border ports, and districts located close to highways. The provincial and district governments rely on transfers from the central government for their funding and do not have revenue-generating powers, which means that they do not collect payments directly from any company.

Municipalities do not receive any funding from the central government and rely on their own revenue generation to fund their budgets. The Municipal Law[190] describes the revenue-raising powers of municipalities. While there are no municipal taxes and fees specific to mining, oil and gas companies, municipalities have the right to impose small levies on all companies. The main types of government revenues collected by municipalities consist of the city services tax, municipal land and property tax (Safayi), business licensing fees and city entrance fees.

However, these municipal taxes and fees do not appear to be levied on mining, oil and gas companies. The city services tax and the Safayi tax are not levied on businesses in rural areas[191], where mining, oil and gas companies operate. The business licensing fee is levied on small retail businesses registered at the municipal level, which does not include extractive companies registered at the Ministry of Commerce and Industry (MoCI) in Kabul. The city entrance fee does appear to apply to all vehicles entering a municipality, but the MSG has considered this to be a form of payment to government not related to companies' extractive activities.

Subnational transfers of mining revenues (Requirement 5.2)

Both the 2014 Mining Law and the 2018 Minerals Law include provisions for subnational revenue sharing of mining revenues collected by the central government. However, these have never been implemented in practice as of March 2021. This section sets out the rules related to revenue-sharing in the extractive industries and describes the reasons for delays and progress towards implementation of subnational revenue-sharing.

Efforts to earmark extractives revenues on a provincial basis have been restricted to the mining sector in Afghanistan. There are no provisions for subnational revenue-sharing in the oil and gas sector. They began with the 2014 Mining Law[192], which in its Article 84 mandated that the MOF

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[188] See ArcGIS (2019), 'Afghanistan District Maps', accessible on https://www.arcgis.com/apps/MapSeries/index.html?appid=fe0f16a7b8da4157a7d7f9451a802d74

[189] The Independent Directorate of Local Governance (IDLG) website, accessible on https://idlg.gov.af/en/

[190] Afghanistan's Municipal Law, accessible on https://idlg.gov.af/en/provincial-council-law/

[191] World Bank (December 2015), 'Land Governance Assessment Framework (LGAF) Afghanistan', accessible on http://documents1.worldbank.org/curated/ar/872091504860897296/pdf/119581-WP-P095390-PUBLIC-AFGHANISTAN.pdf

[192] Mining Law of the Islamic Republic of Afghanistan (2014), accessible on https://MOMP.gov.af/sites/default/files/og_01143_qanwn_madn_sal_1393.pdf

allocate, in addition to its national budget allocation, 5% of the overall revenue from a mine to a Provincial Development Fund (PDFs) where the mine is located. However, this provision was never implemented due to the following reasons:

- Concerns of weak capacity to handle potentially large revenues at the provincial level through off-budget fund mechanisms delayed the establishment of the PDFs. Detailed regulations for the functioning of the PDFs would have been required, which were absent under the legacy 2010 mining regulations.
- Even if implemented, it would have been difficult for Afghanistan to determine the "overall revenue" on a per mine basis as only royalties were levied per-mine. As taxes such as corporate income taxes and other direct and indirect taxes were levied on a per-company basis, it would have been difficult to classify them on a per-mine basis. In fact, the implementation of Afghanistan's laws requiring that Corporate Income Taxes be ring-fenced on a per-license basis commenced only in the year 2019, with mining companies being required to file separate tax returns for each license.

While Afghanistan retained the idea of direct earmarked revenue sharing from the extractives sector with the provinces, the provision was reworked in the 2018 Minerals Law. The new law defines Provincial Development Funds as *"a fund established and managed by the Independent Directorate of Local Governance to support development in the province in which the relevant license is situated*".

The 2018 Minerals Law and 2019 Mining Regulations provide for a clearer definition of the revenues to be deposited into the Provincial Development Funds, as well as a clearer definition of the purpose of their use.

Revenue-sharing mechanism

According to Article 50 of the 2018 Minerals Law[193], the revenues to be deposited into the Provincial Development Fund are as follows:

- 5% of revenue paid into the general revenue account of the state in connection with exploration licenses and exploitation licenses were to be appropriated annually into the Provincial Development Fund.
- 8% of revenue paid into the general revenue account of the state in connection with small-scale mining licenses were to be appropriated annually into the Provincial Development Fund.

Article 49 defines 'total mining revenues' as including Royalties, Surface Rents, Fees and Penalties.

The 2018 Minerals Law provides clear directions to the Independent Directorate of Local Governance for use of the revenues thus deposited into the Provincial Development Funds. These funds shall accordingly be (i) invested in initiatives for the benefit of the province in which the relevant licenses are situated in accordance with an economic development plan prepared by the

[193] Minerals Law of the Islamic Republic of Afghanistan (2018), accessible on https://MOMP.gov.af/sites/default/files/minerals_law_2019english.pdf

responsible Ministry, or (ii) transferred to the Municipal Incentive Fund and invested in initiatives for the benefit of Municipalities in the province in which the relevant license is situated.

The 2019 Mining Regulations[194] (Article 92) provides a more detailed description of how these funds must be utilized by the Provincial Development Funds. Accordingly, prior to investing revenue received into the Provincial Development Fund or transferring revenue to the Municipal Incentive Fund, the Independent Directorate of Local Governance is mandated to:

- Consider the Citizens' Charter National Priority Program or any replacement program and consult with the relevant Community Development Councils to determine the initiatives to be invested in; and
- To the extent the revenue is not allocated as above, ensure that all remaining revenue and in any case a minimum of 20% of the revenue appropriated into the Provincial Development Fund is transferred to the Municipal Incentive Fund and invested in initiatives for the benefit of Municipalities in accordance with the Municipal Law.

The 2019 Mining Regulations also mandate that the Independent Directorate of Local Governance shall maintain accurate records of the utilization of funds from the Provincial Development Fund for the purpose of assisting the Ministry in the preparation of its public transparency reports.

Delayed implementation

Despite the issuance of the 2019 Mining Regulations, the implementation of legal subnational transfer provisions has been delayed due to the lack of availability of PDF and actual or estimated data on mining revenues disaggregated by province and district. The Special Anti-Corruption Secretariat's 2019 annual report notes that there has been no progress on the publication of an annual report on total revenues from mining to be transferred to the Provincial Development Fund in 2019.[195]

The MOMP with the technical assistance from AEITI has established a Mining Revenue Allocation Working Group (MRAWG) in March 2020, which includes representatives from the MoF's General Directorate of Budget, the MoF's Treasury Department, MoF's Customs Department, MoF's Tax and Non-Tax Departments, the MoF's Legal Directorate and Legal Board, the IDLG, the MOMP's Revenue Management Department, Legal Directorate, and the AEITI National Secretariat's technical team. The Working Group met 15 times between March and December 2020 and has involved official high-level follow-up between the MOMP and MOF to lobby for the establishment of the PDF.

The IDLG has been designated as the government entity to lead on the establishment of the PDF and to establish standard operating procedures for the subnational transfers. The objective is to pilot subnational transfers related to 1399 revenues in 1400, assuming the PDF will be established by the MOF in time. The AEITI National Secretariate confirms that Provincial

[194] Ministry of Mines and Petroleum, 2019 Mining Regulations, accessible on https://MOMP.gov.af/sites/default/files/mining_regulations_2019_english.pdf
[195] Special Anti-Corruption Secretariat (July 2020), 'Annual Report of Fiscal Year 2019 on the Implementation of National Strategy for Combating Corruption', accessible on https://sacs.gov.af/en/reports/report_details/276

Development Fund was created by MoF with code number 910065 which is published in the 1400-year budget documents[196].

Table 58 Calculations of subnational transfers of mining revenues according to revenue-sharing formula, 1397-1398

	1397	1398
Total value of non-tax mining revenues	AFN 2,286,568,625 (USD 31,722,650)	AFN 1,478,934,311 (USD 19,024,110)
5% of total non-tax mining revenues	AFN 114,328,431	AFN 951,205
8% of total non-tax mining revenues	AFN 182,925,490	AFN 1,521,929

Source: MOMP and MOF data, AEITI calculations.

The calculations in Table 59 are for indicative purposes only and do not represent the value of mining revenues that should have been transferred to provinces through the Provincial Development Fund in 1397 and 1398. Instead, they are calculations of the range of values of revenues that could have been transferred to provinces if the revenue-sharing mechanism had been effective during these two years.

Based on these general calculations, a total of between AFN 114,328,431 and AFN 182,925,490 should have been transferred to the Provincial Development Fund for use for all provinces and municipalities combined in 1397 (2018), if the subnational revenue-sharing mechanism had been in place at the time. This declined to a total of between AFN 951,205 and AFN 1,521,929 in 1398 (2019), in line with the general decline in non-tax revenues that year (*see Revenue Collection chapter*).

Without disaggregated data on non-tax mining revenues from large-scale and small-scale mining by location and province, it is not possible to calculate each province's share of mining revenues that should have been transferred in 1397-1398.

Future oversight and monitoring

According to Article 25 of the 2018 Minerals Law, the MOMP is required to publish a report that includes coverage of funds transferred to the Provincial Development Fund within 90 days of the end of each year. This reporting has not started as of May 2021, given delays in establishing the PDF and implementing the revenue-sharing mechanism.

Civil society organization Integrity Watch Afghanistan (IWA) has been contracted by GiZ-MinGOV Project to expand their community-based monitoring to cover issues related to subnational transfers. The monitoring program's primary aim related to subnational transfers is to raise awareness of the existence of these legal provisions among host communities and local governments and to create greater clarity on the reasons for the lack of disbursement of these transfers in practice.[197] The program also aims to monitor the use of subnational transfers once

[196] See page 143 of the '1400 year budget document', accessible in Dari language at http://www.budgetmof.gov.af/images/stories/DGB/BPRD/National%20Budget/1400_Budget/1400%20National%20Budget%20Decree%20(Enacted)%20Dari.pdf

[197] Integrity Watch Afghanistan (2020), 'Digging deeper with the people', accessible on https://iwaweb.org/wp-content/uploads/2020/07/CBM-E-Report-English.pdf

they become effective to ensure that their allocation is in line with Article 50 of the 2018 Minerals Law.

What social and environmental payments do mining, oil and gas companies make? (Requirement 6.1)

There are legal and contractual requirements for some mining companies to undertake social expenditures and to make environmental payments to government. The Ministry of Mines and Petroleum's 2019 Mining Sector Reform Roadmap highlights the importance of social, economic and environmental contributions by mining companies. Three of the pillars of the Mining Sector Roadmap relate to social, environmental and local content development. These include Pillar 4(6) for the participation of host communities in accordance with the Citizens' Charter, Pillar 5(3) for the development of local content and Pillar 5(6) for the institutionalization and formalization of corporate social responsibility (CSR) to improve living conditions.

Rather than having extractive sector projects develop standalone community development initiatives planned by themselves, the government's strategy is to channel funds through the Citizen's Charter National Priority program. The Citizen's Charter itself is accessible here. The aim of the Citizen's Charter program is to reduce poverty and improve the delivery of core infrastructure and social services to all communities across Afghanistan, through community Development Councils. Donors including USAID and others have been major contributors to the Citizen's Charter, although this funding is expected to end in 2021.

This section reviews the legal and contractual requirements for mining companies to undertake social expenditures and make environmental payments to government. There are no such requirements for oil and gas companies to make social expenditures, either by law or by contract. The section also reviews companies' actual social expenditures and environmental payments to government in practice in 1397-1398, based on a review of extractive companies' quarterly reporting to the MOMP. This should provide a diagnostic of any discrepancies between the rules and practices of extractive companies' social and environmental expenditures in 1397-1398.

Social expenditures

Under Article 66, the 2018 Minerals Law requires mining exploitation license-holders to conclude Community Development Plans (CDPs) to contribute to the socio-economic welfare of the communities hosting the extractive activities. These CDPs are required to contribute to the provision of infrastructure and essential services, of education and training, assisting in the development of local businesses and supporting other community initiatives. These plans are to be development in consultation with the MOMP, which is responsible for monitoring the implementation of these CDPs in practice. The requirements for social expenditure in the 2018 Minerals Law do not set fixed minimum spending levels for each mining company. The 2019 Mining Regulations include provisions for increasing community participation, content, and development. Articles 90 and 91 of the 2019 Mining Regulations in particular cover CDPs. These articles do not set any fixed minimum expenditures but describe the types of activities and expenditures to be provided for under CDPs.

In 1397-1398, there were a total of three new mining licenses awarded, under the 2018 Minerals Law requiring companies to conclude CDPs. However, the contracts related to these three new licenses do not stipulate any additional mandatory social expenditure requirements beyond the legal requirement for a CDP.

Social expenditures by mining companies

The AEITI in coordination with the MOMP Cadaster Department has conducted a review of mandatory social expenditures in the mining sector through an analysis of the terms of the contracts for the years 1395 and 1396. According to the report, seven companies did not have any contractual mandatory social expenditure obligations whereas eight companies had such obligations. A detailed report by the MoMP, published on the MOMP website here, analyzes the mandatory social expenditures required by specific mining contracts and assesses the relevant companies' fulfillment of their contractual social expenditure obligations.

In preparing this EITI Report, the MSG together with the MOMP's Mining Inspection Directorate have reviewed the contractual provisions related to mandatory social expenditures in all mining contracts that were active in 1397-1398. This review of social expenditure clauses in mining contracts and companies' payments on mandatory social expenditure in 1397-1398 is available on the MoMP website.[198] The data is disaggregated by type of expenditure, comparing the expenditures in 1397 and 1398 to the contractual requirements for social expenditures.

The review covered 152 mining contracts in 1397, of which 145 contracts were active that year, and 130 mining contracts in 1398, of which 109 contracts were active that year.[199]

In 1397, 26 of the 145 mining contracts that were active that year included provisions requiring the contractor company to undertake contractually mandated social expenditures. In 1398, 20 of the 109 mining contracts that were active that year included provisions requiring the contractor company to undertake contractually mandated social expenditures.

In 1397, the MOMP Inspection Department reports that in only five of the 26 mining contracts with mandatory social expenditures there is evidence of the company making any kind of social expenditures in the year reviewed (1397). In the case of 19 of the 26 contracts, the security conditions did not allow mine site inspection by the MOMP. In the remaining two contracts where mandatory social expenditure clauses existed, the MOMP Inspection Department found no evidence in the company's reports of any social expenditures in the year reviewed.

In 1398, the MOMP Inspection Department reports that in only eight of the 20 mining contracts with mandatory social expenditures, there is evidence of the company making any kind of social expenditures in the year reviewed (1398). In the case of 10 of the 20 contracts, the security conditions did not allow mine site inspection by the MOMP. In the remaining two contracts where mandatory social expenditure clauses existed, the MOMP Inspection Department found no evidence in the company's reports of any social expenditures in the year reviewed.

While the MOMP Mining Inspection Directorate reports include information on the value of social expenditures made per year, whether they were made in cash or in-kind, and the identity of beneficiaries for some of the social expenditures reported, there are several gaps in the data provided. For several mandatory social expenditures, there is no corresponding explanation of

[198] See 'Social Mandatory Expenditures of Extractive Companies for FY 1397', accessible on https://momp.gov.af/eiti-disclosures
[199] See 'Social Mandatory Expenditures of Extractive Companies for FY 1398', accessible on https://momp.gov.af/eiti-disclosures

whether the spending was in cash or in kind, while in others the identity of beneficiaries is not provided.

Social expenditures by oil and gas companies

In the oil and gas sector, the MOMP's Hydrocarbon Directorate reported that there is no requirement for mandatory social expenditures in either the Hydrocarbon Law of the operating contract. In practice, the MSG found that oil and gas companies did not make any mandatory social expenditures in 1397-1398.

Social expenditures by state-owned enterprises

Under the 2005 SOE Law, SOEs are required to allocate 3% of their net profits to a Social and Cultural Fund, meant to support costs associated with national holidays. However, SOEs have not complied with this provision of the SOE Law given that the Social and Cultural Fund has not been established to date. This is the case for all special funds expected to be established for SOEs (*see State Participation Chapter*).

Environmental expenditures

Mining, oil and gas companies are liable for the following environmental payments to government, as listed in Table 60.

Table 59 Types of environmental payments to government by extractive companies

Revenue stream	Government recipient	Levied by project or corporate entity
Environmental License Fees	NEPA	Levied by license/project
Environmental License Renewal Fees	NEPA	Levied by license/project
Waste Management License	NEPA	Levied by license/project

Consultations with NEPA have confirmed that the cost of Environmental License Fee is set at a flat fee of AFN 10,000 (around USD 130) per license, while the Environmental License Renewal Fees is set at AFN 1,000 (around USD 13) per license.

The data disclosed by NEPA on environmental revenues in 1397 and 1398 indicates that the vast majority of companies holding mining, oil and gas licenses did not make any payment for Environmental License Fees in this period. The data on these environmental revenues collected by government in 1397-1398 is presented in Table 61 below. Based on data submitted by NEPA, it appears that none of the oil and gas companies made any payments to government for Waste Management Licenses in 1397-1398.

Table 60 Environmental revenues collected by government in 1397-1398

Environmental payments in 1397 (2018)		
Company name	**Revenue stream name**	**Revenue value (AFN)**
استخراج 10000مترمکعب ریگ وجغل توسط شرکت ساختمانی احداثEhdas Construction and Gravel Company	Environmental License Fee	1,000
استخراج جغل خاکدار صالح ایجازSaleh Ejaz Gravel Extraction	Environmental License Fee	1,000
استخراج ریگ وجغل توسط شرکت ساختمانی افغان بتنAfghan Batn Gravel Extraction Company	Environmental License Fee	1,000
استخراج ریگ وجغل متین افغانMateen Afghan Gravel Extraction	Environmental License Fee	1,000
پروژه اکتشاف مس شیدای هراتHerat Shaida Copper Exploration Project	Environmental License Fee	15,000
پروژه انتقال پایپ لاین گاز تاپیTAPI Gas transmission pipeline Project	Environmental License Fee	25,000
تولید وپروسس سنگ مرمرالیوسف پوپلAl Yosuf popal Marble Processing Company	Environmental License Fee	1,000
شرکت تولید مواد معدنی کابل کلسیدKabul Classid Mining Production Company	Environmental License Fee	1,000
نصب ومنتاژیک دستگاه ریگریشن محمد سمیعMohammad Sami Regration Installment Plant	Environmental License Fee	1,000

Environmental payments in 1398 (2019)		
Company	**Revenue stream name**	**Revenue value (AFN)**
Natural Sarf Stone Processing Company	Environmental License Fee	11,000
Natural Sarf Stone Processing Company	Environmental License Fee	11,000
Omid Sabawoon Sand and Gravel Production Company	Environmental License Fee	1,000
Shamshir Obaid Talc Processing Company	Environmental License Fee	11,000

Source: National Environmental Protection Agency (NEPA)

These revenues would not traditionally be considered material revenues under Afghanistan's traditional approach to EITI reporting. However, given that the MSG's approach for the 7th AEITI Report has been to disclose all government revenues collected from all mining, oil and gas companies, these revenues are disclosed fully in this report.

In consultations with NEPA and the MOMP, the MSG understands that there are two main reasons for the low number of mining companies having made Environmental License Fee payments in 1397-1398. First, there is no system for the MOMP's mining inspectors to record companies 'compliance with the environmental licensing requirements, and no systematic data collection on companies 'environmental provisioning. Second, there have been weaknesses in enforcing provisions of the Environment Law related to mining companies, in particular enforcement of environmental licensing for all mining companies.

Recommendations

53. It is recommended that the AEITI MSG work with the MOMP and the IDLG to provide an update on the status of creation of the sub-national allocation of revenues. Even at the planning stages, it is encouraged that the AEITI MSG support the MOMP to provide greater transparency on the division of roles and responsibilities in administering the Provincial Development Funds, and in the nature of their investments and activities. Once functional, periodic reports of the Provincial Development Funds and their periodic audit should also be completed, and the results disclosed to the public.
54. It is recommended that the MOMP establish institutional systems to conduct an annual review of mining companies' contractual social expenditure requirements and publish an annual review of companies' compliance with their legal and contractual social expenditure obligations. The AEITI MSG should provide input to this review, to ensure that the social expenditures reported are always clearly marked as either in cash or in kind, that the nature of each expenditure be clearly described, and that the identity of beneficiaries is clear for each expenditure.
55. It is recommended that the AEITI MSG convene a working group of representatives from the MOMP, NEPA, companies and civil society to develop a mechanism for more efficiently tracking mining companies' compliance with environmental licensing provisions. It is recommended that NEPA explore means of systematically disclosing environmental revenues on its website, broken down by type of payment, company and project.

Chapter 12

Regulating environmental impacts of mining, oil and gas

WHAT IS CONTAINED IN THIS CHAPTER?

This chapter presents an overview of environmental regulations and company compliance with these provisions (EITI Requirement 6.4). In essence, what rules has the government established to manage the environmental impacts of mining, oil and gas activities in Afghanistan?

Both mining and oil and gas activities have environmental impacts and consequences. In recognition of the activities' environmental impacts, both the 2017 Hydrocarbons Law and the 2018 Minerals Law include requirements for extractive companies to conclude environmental impact assessments, environmental management plans and environmental bonds to fund rehabilitation over the life of the project.

Table 62 presents an overview of the key environmental laws and regulations applicable to the mining, oil and gas industries.

Table 61 Key environmental laws and regulations applicable to the extractive industries

Environmental laws/regulations	Online source
Environmental laws and regulations on NEPA website	https://www.nepa.gov.af/showEnglishPage/8
2007 Environment Law	https://neis.nepa.gov.af/public/JE6AIivjwC
2009 Water Law	http://www.cawater-info.net/bk/water_law/pdf/afghan_water_law_2009_e.pdf
2004 Law on the Protection of Historical and Cultural Properties	https://sherloc.unodc.org/res/cld/document/afg/2004/law_on_the_protection_of_historical_and_cultural_properties_english_html/Law_on_the_Protection_of_Historical_and_Cultural_Properties_2004_English.pdf

Who are the regulators?

In accordance with the 2007 Environment Law, all extractive companies are required to obtain a Certificate of Compliance from the National Environmental Protection Agency (NEPA), prior to the commencement of their operations. The Certificate of Compliance is valid for the life of the project provided that there are no breaches of terms. The NEPA has the right to amend, suspend or revoke the Certificate of Compliance or apply additional conditions, where necessary.

The MOMP's newly-established Environmental Protection Department works together with the NEPA to oversee the implementation of legal provisions related to offsetting the environmental impact of mining, oil and gas activities, in accordance with Article 63 of the 2017 Hydrocarbons Law.

The NEPA website provides the full text of laws and regulations, a foundation on which to build further systematic disclosures. However, it appears that the NEPA only has a few dozen inspectors to cover all types of environmentally regulated activities, which does not provide resources for effective oversight of the hundreds of (small-scale) mines.

Mining

The 2018 Minerals Law contains several provisions related to the environment.[200] Article 54 requires companies holding exploration and exploitation licenses to provision for Environmental Bonds, and in some cases, those holding small-scale mining licenses, to be provided prior to conducting ground-disturbing work, with the form and quantum of the bond determined by the MOMP. The MOMP is the administrator and custodian of the Environmental Bonds. Article 34 requires companies holding exploration license, exploitation and small-scale mining licenses to apply for Environmental Permits prior to proceeding to ground-disturbing work.

The 2019 Mining Sector Reform Roadmap also highlights the importance of environmental issues.[201] Mining companies in Afghanistan are required to undertake an environmental impact assessment to be approved by the NEPA. For large-scale exploration and exploitation licenses and contracts, the environmental impact assessments and proposed management plans are integral parts of the bidding process under Articles 12, 13 & 14 of the 2018 Minerals Law.

Oil and gas

The 2017 Hydrocarbons Law contains similar provisions related to environmental impacts to the mining legislation.[202] Article 52 confirms the applicability of the Environment Law to oil and gas contractors. Article 59 requires companies to include environmental protection and management plans as part of the Development Program submitted by the company to the MOMP and to ensure that the environmental management plan is agreed with MOMP. A comprehensive rehabilitation plan is required of all oil and gas contractors, including plans for provisioning for the rehabilitation of the site over the life of the contract. Article 59 also requires companies to have an environmental impact assessment approved by the NEPA, including a description of the ecosystem, the local flora, fauna, soil, air quality, surface and underground water, and landscape aesthetics, before commencement of the development and production phase.

Environmental and social impact assessments (ESIA) procedures

Environmental and social impact assessments (ESIA) are required by law for any project expected to have a significant adverse effect on the environment, including the extractive industries under the 2008 Environmental Impact Assessment Regulations.

Figure 30 provides an overview of the ESIA process in Afghanistan.

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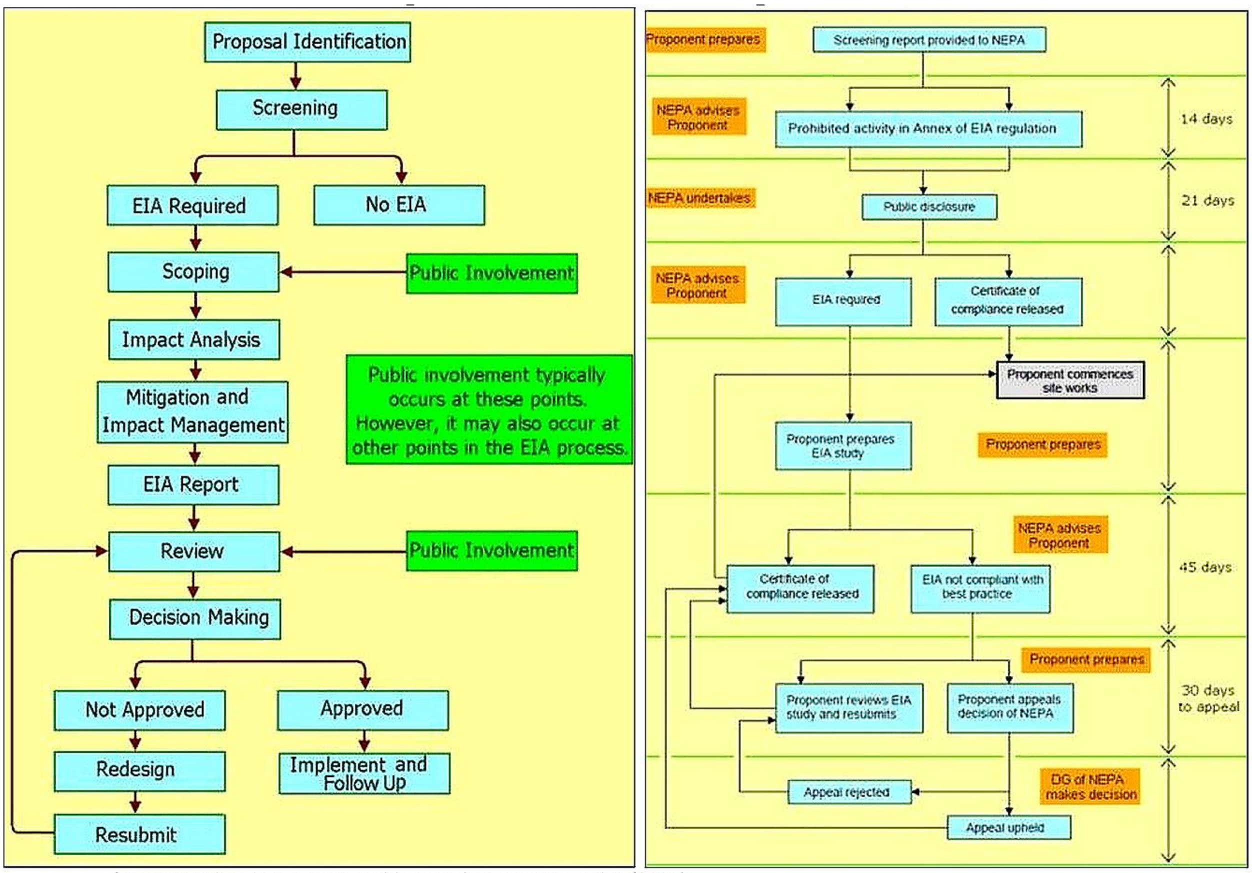
[200] Minerals Law of the Islamic Republic of Afghanistan (2018), accessible on https://MOMP.gov.af/sites/default/files/minerals_law_2019english.pdf
[201] Ministry of Mines and Petroleum (2019), '2019 Mining Sector Reform Roadmap', accessible on https://MOMP.gov.af/sites/default/files/2019-06/02%20-%20MOMP%20Roadmap%20%2B%20Reform%20Strategy_reduce_0.pdf
[202] Hydrocarbons Law of the Islamic Republic of Afghanistan (2017), accessible on https://MOMP.gov.af/sites/default/files/2020-06/2017%20Hydrocarbons%20Law%20vEnglish.pdf

Figure 30 The ESIA process in Afghanistan



Source: National Environmental Impact Assessment Policy (2007)

There are over one hundred companies (and individuals) that hold mining (and oil and gas) licenses in Afghanistan. The process above would apply to a large share of those license-holders, with some exceptions among small-scale mining licenses.

Review of ESIA practices in 1397-1398

The NEPA has been proactive in its engagement with AEITI in preparation of this EITI Report. It has provided data both on environmental payments to government (environmental license fees) and on companies' compliance with legal provisions related to the environment.

The table with NEPA's comprehensive review of all companies' compliance with their ESIA obligations is available here. The following is a short-list of mining companies that have successfully had their ESIAs approved by NEPA and have made payment of their environmental license fees. The total is only 16 companies, out of a total of 239 companies in 1397 (2018) and 268 companies in 1398 (2019) that made payments to government categorized as extractive revenues in 1397-1398.

Table 62 Extractive companies with ESIAs approved by NEPA (1397-1398)

Company name (English)	Company name (Dari)	Commodity, Province	Environmental license issue date	Environmental license expiry date	ESIA completed /approved by NEPA?
Abdullah Safari Company	شرکت عبدالله صفدری	Construction materials, Bamyan	11/10/1398	11/10/1403	Abdullah Safdari Construction Material Extraction Company of Bamyan province has obtained its environmental permit and sent a copy of the permit to this department by e-mail on 06/22/2016. Date of issuance and expiration of the license 10/28/1398 to 10/27/1401.
Aia Jawed Company	شرکت آسیا جاوید	Construction materials, Bamyan	11/10/1398	11/10/1403	Javed Asia Mining and Construction Company located in Bamyan province has obtained its environmental permit (a copy of the above permit has been sent to this department by e-mail by the Department of Mines of Bamyan province). Date of issuance and expiration of the license 1401/11/9 to 1402/11/9.
Akmal Ikramzada Company	شرکت اکمل اکرام زاده	Sand, Balkh	15/11/1398	14/11/1403	Akmal Akramzadeh Mining Company has obtained its environmental permit from the National Department of Environmental Protection and a copy of the above permit has been sent to this department via e-mail on 23/6/1399. Date of issuance and expiration of the license from 1399/6/17 to 1402/6/16.
Ehsanullah Mosazay Company	شرکت احسان الله موسی زی	Sand, Parwan	11/10/1398	11/10/1403	Ehsanullah Musa Zai Company has obtained its environmental permit from the National Department of Environmental Protection and a copy of the above permit has been sent to this directorate on 5/6/1399 through Vetsp. Date of issuance and termination from 12/22/1398 to 12/21/1401.
Ehsanullah Mosazay Company	شرکت احسان الله موسی زی	Sand, Parwan	11/10/1398	11/10/1403	Ehsanullah Musa Zai Company has obtained its environmental permit from the National Department of Environmental Protection and a copy of the above permit has been sent to this directorate on 5/6/1399 through Vetsp. Date of issuance and expiration of the license 12/22/1398 to 12/21/1401.
Mahar Star Company	شرکت مها استار	Construction material, Parwan	11/10/1398	11/10/1403	Maha Sattar Company has obtained its environmental permit from the National Department of Environmental Protection and a copy of the above permit has been sent to this directorate on 5/6/1399 through Vetsp. Date of issuance and expiration of the license 11/27/1398 to 11/27/1401.
Afghan Bamika Company	شرکت افغان بامیکا	Construction material, Daikundi	15/11/1398	14/11/1403	Afghan Bamika Company, a mining company in Daikundi Province, has obtained its environmental permit (a copy of the permit has been sent to the department). Date of issuance and expiration of the license 1399/2/6 to 1402/2/5.
Afghan Bamika Company	شرکت افغان بامیکا	Construction material, Daikundi	15/11/1398	14/11/1403	Afghan Bamika Company, a mining company in Daikundi Province, has obtained its environmental permit (a copy of the permit has been sent to the department). Date of issuance and expiration of the license 1399/2/6 to 1402/2/5.
Zabihullah s/o Mohammad Aman	ذبیح الله فرزند محمد امان	Construction material, Kabul	22/02/1395	21/02/1400	Construction Material Mining Company related to Zabihullah, son of Mohammad Aman, Kabul province, has obtained its environmental permit from the National Environmental Protection Agency and sent a copy to the department on 29/6/1399. Date of issuance and expiration date of the license: 1399/6/25 to 1402/6/24.

Omid Sabawon Company	شرکت امید سباوون	Construction material, Kabul	28/09/1394	28/09/1399	Omid Sabawoon Mining and Coal Company of Kabul Province has obtained its environmental permit from the National Environmental Protection Agency and sent a copy to the department on 31/6/1399. Date of issuance and expiration date of the license: 11/28/1398 to 11/27/1401.
Abdul Rauf s/o Abdul Latif	عبدالرؤف ولد عبدالطیف	Construction material, Kabul	24/12/1394	23/12/1399	در مورد اخذ اجازه نامه این شرکت معدنکاری معلومات موجود نیست.
Astana Baba Company	شرکت آستانه بابا	Chromite, Logar	21/04/1393	21/04/1403	Astana Baba Company located in Logar province has obtained its environmental permit from the National Environmental Protection Agency and sent a copy to the department on 31/3/1399. Date of issue and end: 1399/3 / 15-1402 / 3/14.
Kareem Wardak Company	شرکت کریم وردک	Construction material, Maidan Wardak	11/10/1398	11/10/1403	Karim Wardak Company in charge of Construction Material has obtained its environmental permit from the National Department of Environmental Protection and a copy of it has been sent to the Department of Mines of Maidan Wardak Province by email on 23/6/1399. License issuance and expiration date: 12/17/1398 to 12/16/1401, i.e. it is valid for a period of three years.
Negin Azizi Company	شرکت نگین عزیزی	Sand, Herat	15/11/1398	14/11/1403	Negin Ghazizi Mining Company located in Herat province has obtained its environmental permit and a copy of the above permit was sent to this department by e-mail on 25/6/1399 by the Department of Mines of Herat Province. Date of issuance and expiration of the license 1399/3/18 to 1402/3/17).
Haqyar Mohmand Company	شرکت حقیار مهمند	Sand, Herat	15/11/1398	14/11/1403	Haqyar Mohmand Mining Company of Herat Province has obtained its environmental permit and a copy of the above permit was sent to this department by e-mail on 25/6/1399 by the Department of Mines of Herat Province. Date of issuance and expiration of the license 1399/3/18 to 1402/3/17).
Silkroad Mining	سلک رود ماینگ کمپنی	Copper, Herat	21/6/1397	21/6/1427	Silk Road Mining Company or Copper Sheida of Herat Province has obtained its environmental permit from the National Environmental Protection Agency. A copy of the above license has been sent to this department by email on 6/24/1399. Date of issuance and expiration of the license: 1397/12/4 to 1400/12/3.

Source: National Environmental Protection Agency (NEPA)

None of the companies with active ESIAs approved by NEPA were among the top 20 companies by payment to government in either 1397 or 1398.

Social expenditures related to the environment

Individual companies also have to comply with specific clauses within their mining (or oil and gas) contracts related to environmentally related social expenditures. These consist primarily of vague earmarks of relatively modest amounts of funds (usually USD 10,000 annually, but sometimes USD 20,000 over the life of the contract) “to improve the environment” in neighboring areas. These contractual provisions and related expenditures are covered in the chapter on ‘Subnational Contributions’ as they are considered as forms of mandatory social expenditures.

Chapter 13

Recommendations for reform

WHAT IS CONTAINED IN THIS CHAPTER?

This chapter provides an overview of the AEITI's follow-up on past recommendations from EITI reporting and Validation, together with a set of new recommendations to support reforms in the governance of the extractive industries based on EITI reporting for 1397-1398.

Review of follow-up on past EITI recommendations

One of the most important outputs of EITI reporting is the recommendations for broader reforms in the extractive industries or in public finance management. The EITI should lead to findings that can strengthen governance of the mining, oil and gas sectors in accordance with Afghanistan's objectives for its EITI implementation.

The AEITI MSG has published six EITI Reports covering ten fiscal years to date, i.e. 1388-1396 (2008-2017). This EITI Report is the seventh, covering an additional two years of 1397-1398 (2018-2019). Afghanistan has undergone two Validations under the EITI Standard, with the first Validation under the 2016 EITI Standard completed in January 2019 and the second Validation under the 2019 EITI Standard completed in November 2020.

The six AEITI Reports published to date include a total of 38 recommendations. This includes the following number of recommendations from each of the six AEITI Reports:

- Six recommendations in the 1st AEITI Report covering 1387-1388 (2008-2010)
- Six recommendations in the 2nd AEITI Report covering 1389 (2010-2011)
- Four recommendations in the 3rd AEITI Report covering 1390 (2011-2012)
- Ten recommendations in the 4th AEITI Report covering 1391-1392 (2012-2013)
- Five recommendations in the 5th AEITI Report covering 1393-1394 (2014-2015)
- Seven recommendations in the 6th AEITI Report covering 1395-1396 (2015-2016).

All of the recommendations in Afghanistan's first three EITI Reports (covering 1387-1390) are purely related to strengthening EITI reporting, rather than linked to broader extractive industry reforms. Several recommendations in the 4th, 5th and 6th AEITI Reports relate to broader extractive governance and public finance management reforms.

The MSG has decided to focus its update on follow-up on recommendations on the recommendations in the three most recent AEITI Reports published under the EITI Standard (the 4th, 5th and 6th AEITI Reports covering 1391-1392 (2012-2013), 1393-1394 (2014-2015) and 1395-1396 (2015-2016) respectively).

Table 64 presents an overview of each of the 22 recommendations from the 4th, 5th and 6th AEITI Reports, broken down by year, by focus on EITI reporting or broader sector reforms, and by status of follow-up. The MSG has used this exercise to track follow-up on past EITI recommendations that have either been fully addressed, or where the MSG decided not to implement reforms related to particularly EITI recommendations.

Table 63 Review of follow-up on past EITI recommendations

AEITI Report recommendation	Summary of recommendation	Type of EITI recommendation	Status of follow-up	Outcome of follow-up
6th AEITI Report recommendation 1	Need to generate a Taxpayer Identification Number (TIN) for all extractive companies	Broader sector reforms	Complete	The MOMP has developed an API for its MCAS and NTRS systems, which push information on new license awards to the MoF to ensure that a TIN number is assigned to all companies holding mining, oil and gas licenses.
6th AEITI Report recommendation 2	Lack of Resource Revenue Sharing System for extractive revenues	Broader sector reforms	Ongoing	The MSG's technical working group has followed up on proposals to establish a statutory subnational transfer mechanism for extractive revenues.
6th AEITI Report recommendation 3	Lack of Reporting System for Employment data	Broader sector reforms	Ongoing	NSIA has published the employment list sector wise in its annual publications year wise per gender. Meanwhile MSG-Working Group is working with NISA to include Government direct employment rate including permanent and contractual in the NSIA annual publications
6th AEITI Report recommendation 4	Reporting templates not correctly prepared	EITI implementation	completed	For 7th AEITI Report; AEITI NS has created Reporting Templates and for review and cross checking share with advisor from EITI, reviewed by Working Group and Government entities which is Translated and shared with reporting entities for data collection by NS
6th AEITI Report recommendation 5	Lack of EITI focal points for the Government Agencies	EITI implementation	Complete	Focal points have been established in each relevant government entity.
6th AEITI Report recommendation 6	Quasi-fiscal expenditure assessment	EITI implementation	Ongoing	The MSG has approved a definition of quasi-fiscal expenditures, published on the MOMP website in 2020, and has described AGE natural gas sales to Kod-e-Barq as one form of quasi-fiscal expenditures. However, work on calculating the value of each type of quasi-fiscal expenditures is still ongoing.
6th AEITI Report recommendation 7	Post award licensing process audit	EITI implementation	Complete	A post-award performance audit has been conducted on the basis of 10 license awards in 1395-1396. The conclusions were published on the MOMP website and referenced in the 6th AEITI Report addendum.
5th AEITI Report recommendation 1	SCOPING AND CONTEXTUAL DATA	EITI implementation	completed	During the 7th report data collection, MSG has received the contextual data on exports and contribution to GDP from extractive sector
5th AEITI Report recommendation 2	NON-REPORTING COMPANIES	EITI implementation	Completed	Based on unilateral disclosure by the government for AEITI 7th report, the companies were not included in reconciliation or data collection.
5th AEITI Report recommendation 3	UNRESOLVED DISCREPANCIES	EITI implementation	completed	The discrepancies in the AEITI 3rd, 4th and 5th reconciliation reports has been resolved up to 64% based on the IA final report.
5th AEITI Report recommendation 4	STATE-OWNED ENTERPRISES	Broader sector reforms	Ongoing	The SOEs are merged with the National Development Corporation NDC for better management and support.
5th AEITI Report recommendation 5	PRODUCTION REPORTING	Broader sector reforms	ongoing	The 2021 work plan has covered this task and through a third-party assessment of the Transparency Portal the production data gaps and practice followed will be assessed.
4th AEITI Report recommendation 1	RECORD-KEEPING	Broader sector reforms	Ongoing	For better management of the SOEs the NDC has been established for controlling and reforming.
4th AEITI Report recommendation 2	FINANCIAL SYSTEMS IN MOMP AND MOF	Broader sector reforms	Ongoing	The management of the both ministries are working on it.
4th AEITI Report recommendation 3	MOMP CADASTRE	Broader sector reforms	Completed	All cadaster data are online published and available on MoMP website.
4th AEITI Report	SAO CAPACITY BUILDING	Broader	Ongoing	The SAO has been working on it

recommendation 4	AND AUDIT OF SOEs	sector reforms		
4th AEITI Report recommendation 5	COMPANY ANNUAL ACCOUNTS AND AUDITS	Broader sector reforms	Completed	It is made compulsory on all mining companies to publish their audit reports.
4th AEITI Report recommendation 6	ARTISANAL AND SMALL-SCALE MINING	Broader sector reforms	Ongoing	The issue has been added in the AEITI 2021 work plan to be assessed by an independent administrator.
4th AEITI Report recommendation 7	FLOWS TO SUB-NATIONAL GOVERNMENTS	Broader sector reforms	Completed	The provincial development fund is created by MoF and 910065 is its allocation code number
4th AEITI Report recommendation 8	PRODUCTION DATA	Broader sector reforms	Completed	In the 7th AEITI report only government production data is being disclosed
4th AEITI Report recommendation 9	CHAIRMANSHIP OF THE EITI PROCESS	EITI implementation	Completed	Based on presidential degree the chairmanship of the EITI process is delivered to the Minister of Mines and Petroleum.
4th AEITI Report recommendation 10	COMPANIES OMITTED FROM THE MOMP LIST OF REPORTING COMPANIES	EITI implementation	Ongoing	Many of the companies are contacted by IA for discrepancies resolving and on those which are not contactable MSG/G-3 decision is requested.

Source: AEITI Reports, MSG meeting minutes, AEITI Annual Progress Reports and MSG updates.

Afghanistan received a number of both corrective actions and recommendations to strengthen EITI implementation after each of its two Validations under the EITI Standard in 2019 and 2020. Given that the recommendations of the second Validation build on the findings of the first Validation, the MSG has reviewed progress with the recommendations to strengthen EITI implementation from the second Validation. It should be recognized that the second Validation concluded only in November 2020, leaving only several months before publication of this EITI Report. Nonetheless, this report has sought to make progress in a number of areas, detailed below.

Table 65 provides an overview of the follow-up to date on recommendations and corrective actions from Afghanistan's second Validation under the EITI Standard, concluded in November 2020.

Table 64 Review of follow-up on recommendations from Afghanistan's second EITI Validation

Recommendation/corrective action	Status of follow-up (as of December 2020)	Next steps (2021)
To strengthen implementation under **Requirement 1.1**, Afghanistan is encouraged to consider whether guidelines for the government constituency may further improve government engagement in all aspects of EITI implementation and ensure effective coordination across different relevant government departments.	**Ongoing**: AEITI MSG has approved in the work plan that Government to map out directly data related departments and introduce policy level members to the MSG	For better coordination at Government constituency Government to map out directly data related departments and introduce policy level members to the MSG
In accordance with **Requirement 1.4.a.ii**, Afghanistan should ensure that the renewal of MSG members in practice follows the nominations procedures agreed by each constituency, in line with open, fair and transparent procedures. In accordance with Requirement 1.4.b.iii, MSG members should liaise with their constituency groups.	**Ongoing**. Industry and civil society constituencies have completed their renewal of membership as of December 2020. The new MSG's first meeting is on 16 December. Transfer of institutional memory between old and new MSG members is ongoing.	MSG has planned to publish the MSG membership list and CSO's election Report at AEITI website
To strengthen implementation under **Requirement 1.5**, Afghanistan may wish to consider ways of further institutionalizing consultations with the broader government, industry and civil society constituencies on the development of the annual EITI work plan. Afghanistan may wish to draw on its experience in developing Open	**Complete: MSG has approved the 2021 work plan and constituencies were requested to share and circulate the drafted work plan with wider constituencies. for more information**	

Government partnership action plans based on a principle of co-creation.	**please see the 2021 work plan published (here)**	
In accordance with **Requirement 2.2.a.ii**, Afghanistan should ensure that the statutory technical and financial criteria assessed in the award and transfer of mining licenses is publicly clarified. Afghanistan is encouraged to implement the systematic disclosure of the specific award and transfer process followed in practice through the Transparency Portal, with a view to facilitating the public's assessment of the efficiency of license allocations and transfers and any non-trivial deviations from the statutory process.	**Complete**. This 7th AEITI Report clarifies the different technical and financial criteria – or lack thereof – under the 2014 and 2018 legal frameworks for mining, and their respective implementing regulations.	
To strengthen implementation ahead of the second phase of Validation of **Requirement 2.5** from January 2022 onwards, Afghanistan should undertake a review of the comprehensiveness and reliability of BO disclosures through the Transparency Portal, including of all applicants for mining, oil and gas licenses. Afghanistan may wish to consider revisiting its definition of PEP and ensuring that the legal definition of beneficial ownership is aligned across different legislation and with international best practice.	**Ongoing**: AEITI MSG has planned in its 2021 work plan to conduct the Gaps analysis by a third party in 2021 after their findings the definition of PEPS and BO will be addressed by the MSG. Currently AEITI NS is working on the procurement process of the third party.	AEITI MSG has planned in its 2021 work plan to conduct the Gaps analysis by a third party in 2021 after their findings the definition of PEPS and BO will be addressed by the MSG.
To strengthen implementation under **Requirement 2.6**, Afghanistan is encouraged to clarify the practice of state-owned enterprises such as North Coal Enterprise extending loans to other extractives companies, including any repayment schedules where applicable, with a view to clarifying any quasi-fiscal forms of subsidized lending (see Requirement 6.2). Afghanistan is encouraged to implement plans for follow-up audits of Afghan Gas and North Coal Enterprises including soliciting management responses, with a view to supporting the corporatization of the two SOEs.	**Ongoing**. The MOMP has followed up with the SAO to start the audit of the extractive SOEs' 1397-1398 financial statements, although there have been delays in the SOEs providing their financial statements to the SAO and AEITI. Information on the SOEs' lending in 1397-1398 has been received and included in the 7th AEITI Report. Also, SAO has started the field audit of the NCE and SAO Has promised that NCE and AGE will be audited by the end of April 2021.	The SAO audit report on the SOEs for FY 1397 and 1398 will be published at MOMP and SAO websites upon its finalization
To strengthen implementation under **Requirement 3.2**, Afghanistan may wish to consider additional work on quality assurances underpinning the reliability of official government mineral production statistics in response to widespread skepticism over official mining production data published on the MOMP website.	**Ongoing**. This 7th AEITI Report seeks to provide a basic review of different publicly available sources and identify discrepancies. A more detailed review of data reliability has yet to be discussed. NSIA has recently started to work out to create system for publication of oil, Gas and mineral production data not only at NSIA annual publications section wise but also to provide a permanent platform where automatically the data flow will take place.	
To strengthen implementation under **Requirement 3.3**, Afghanistan may wish to consider additional disclosures on the underlying assurances procedures underpinning official mineral export statistics with a view to addressing widespread concerns over the reliability of official export data.	**Ongoing**. This 7th AEITI Report seeks to provide a basic review of different publicly available sources and identify discrepancies. A more detailed review of data reliability has yet to be discussed between NSIA and ACD.	
To strengthen implementation under **Requirement 4.1**, Afghanistan may wish to consider working with the industry constituency to consider means of systematically disclosing extractive companies and government entities' financial statements, audited where available.	**Ongoing**: Companies are obliged to published their annual audit reports and currently Mining Inspection Directorate of MoMP has planned to inspect	
To strengthen implementation under **Requirement 4.4**, Afghanistan is encouraged to reassess the existence of transport revenues on an annual basis, with a view to ensuring that material transport revenues collected by government is disclosed in future.	**Complete**. The MSG considered this issue as part of its approval of the 7th AEITI inception report at its meeting in September 2020. The G1 Working Group leading preparations of the 7th AEITI Report confirmed that transport revenues were not applicable in 1397-1398.	
In accordance with **Requirement 4.5**, Afghanistan should ensure that all material SOE transfers to government entities, including their transfers of a share of their net profits to the Ministry of Finance, should be comprehensively and reliably disclosed.	**Ongoing**. The 7th AEITI Report includes both Ministry of Finance and SOE disclosures on their payments to government. However, these have not been comprehensively reconciled, with discrepancies explained.	
To strengthen implementation under **Requirement 4.9**, Afghanistan is encouraged to consider reforms designed to strengthen government audit and assurance systems, including the ability to undertake both financial and performance audits of government extractive oversight. Afghanistan may wish to build on its EITI reporting to address weaknesses in record-keeping in government and extractive company systems.	**Ongoing**. This 7th AEITI Report seeks to provide a detailed review of audit and assurance practices underpinning government extractive revenue disclosures. It includes recommendations for strengthening the underlying audit and assurance practices for extractive	

	revenues. However, the MSG has yet to consider ways of strengthening company audit and assurance practices, in a generally weak private-sector assurance environment.	
To strengthen implementation under **Requirement 5.1**, Afghanistan may wish to strengthen financial disclosures by extractive SOEs that generate significant revenues to government. Afghanistan is encouraged to use its EITI reporting as an annual diagnostic of the implementation of revenue classification reforms.	**Ongoing**. As above under #2.6, the SAO has been commissioned to audit the extractive SOEs' 1397-1398 financial statements, but there have been delays from the SOEs in providing documentation.	
In accordance with **Requirement 6.1**, Afghanistan should undertake a comprehensive review of all mandatory social expenditures and environmental payments mandated by law or contract. Afghanistan should ensure that public disclosures of mandatory social expenditures and environmental payments in future EITI Reports be disaggregated between cash and in-kind expenditures, by type of payment and beneficiary, clarifying the name and function of any non-government (third-party) beneficiaries. Afghanistan may wish to ensure that mandatory social expenditure requirements are more clearly codified in mining contracts with set timeframes to ensure more efficient monitoring and oversight.	**Ongoing**. The MOMP and AEITI have undertaken a review of all active mining contracts in preparation of this 7th AEITI Report (see Chapter of this report on 'Subnational Contributions'). However, there are gaps in the data disclosed on mandatory social expenditures. The NPA has disclosed government environmental revenues in this 7th AEITI Report for the first time, although amounts in 1397-1398 are minimal.	Mining Inspection Directorate of MOMP has planned to assess contextually per contract social expenditure for FY 2019 & 2020.
In accordance with **Requirement 6.2**, Afghanistan should undertake a comprehensive review of all expenditures funded by extractives revenues that are not transferred to the Treasury that could be considered quasi-fiscal, particularly related to any subsidies on the sale of coal and natural gas as well as subsidized lending by the SOEs. Afghanistan should develop a reporting process with a view to achieving a level of transparency on quasi-fiscal expenditures that is commensurate with other payments and revenue streams.	**Ongoing**. This 7th AEITI Report provides calculations of three types of quasi-fiscal expenditures undertaken by North Coal and Afghan Gas. However, the MSG has not yet undertaken a comprehensive overview of all SOE expenditures that could be quasi-fiscal. The SAO's audit of the two SOEs' 1397-1398 financial statements should help identify any further expenditures that could be considered quasi-fiscal, as it did in its 1395-1396 audits. These audits are expected to be completed in the first half of 2021.	
To strengthen implementation under **Requirement 6.3**, Afghanistan may wish to consider additional work in mapping illegal mining activities across the country and estimating mining revenues collected by non-state actors, in response to significant stakeholder interest in unrecorded mining activities that appear widespread in Afghanistan.	**Ongoing**. This 7th AEITI Report provides a brief overview of the main estimates of illicit mining, with a view of identifying areas for further potential work by AEITI.	
To strengthen implementation under **Requirement 6.4**, Afghanistan may wish to consider using EITI disclosures as a diagnostic of company adherence to statutory environmental management and provisioning provisions.	**Complete**. This 7th AEITI Report provides an overview of mining companies' adherence to contractual and legal obligations related to the environment. However, in more than half the cases, information was not available (see Chapter of this report on 'Legal framework and fiscal regime'). Further work on companies' ESIAs	
In accordance with **Requirement 7.1**, Afghanistan should ensure that outreach events, whether organized by government, civil society or companies, are undertaken to facilitate dialogue and spur debate about the governance of extractive resources, building on EITI disclosures across the country in a socially inclusive manner.	**Ongoing**. The AEITI National Secretariat, with support from GiZ, continues to drive dissemination and outreach activities. The news section of the AEITI website (here) documents these activities.	
To strengthen implementation under **Requirement 7.2**, Afghanistan is encouraged to expand its engagement with extractive companies and relevant government entities to ensure routine systematic disclosures of data required under the EITI Standard in an open data format.	**Ongoing**: MSG in its 2021 work plan and action plan has planned the long term systematic disclosure by assessing the gaps and NSIA TO provide sections for mineral oil and Gas data publication specifically in the NSIA annual publication.	
To strengthen implementation under **Requirement 7.3**, Afghanistan may wish to consider ways of strengthening the public accountability of its follow-up on EITI recommendations through more regular public disclosures of its progress in following up on recommendations and implementing reforms.	**Ongoing**: this 7th AEITI Report will be published before mid of 2021 and for long term MSG in its 2021 work plan and action plan has planned the long term systematic disclosure by assessing the gaps and further publications to strengthen the accountability.	
To strengthen implementation under **Requirement 7.4**, Afghanistan may wish to consider undertaking a comprehensive impact evaluation study to better document the extent to which Afghanistan EITI has contributed to reforms, changing behavior and improving the management of the extractive sector for the benefit of all citizens after a decade of implementation.	Ongoing: MSG by approving its 2021 work plan has planned to conduct the practice vs process assessment though a third party to assess the revenue collection and allocation, legal process, licensing and contracting, and social expenditures.	Third party assessment in 2021 and MSG conclusion in 2022.

The AEITI MSG also reviews the status of follow-up on recommendations from EITI reporting and Validations as part of its annual review of outcomes and impacts of EITI implementation. These are available on the AEITI website, in the section on Annual Progress Reports.[203]

New recommendation from the 7th AEITI Report

This 7th AEITI Report has focused on data for the 1397-1398 reporting period, based on unilateral disclosures by government entities and state-owned enterprises. This exercise has given rise to a number of findings related to challenges for disclosures of EITI data and broader challenges in the governance of the extractive industries. In preparing this 7th AEITI Report, the MSG has developed and agreed the following recommendations to further strengthen the transparency and accountability of the extractive industries' governance moving forward. These recommendations are presented in this report and summarized here.

1. Disclosures of government tax and non-tax revenues from the extractive industries.

1.1 The AEITI MSG is encouraged to pursue a dialogue with the four revenue-collecting government agencies to explore ways of systematically disclosing the extractive revenues they collect, potentially adding aggregate revenue tables to the MOMP's Transparency Portal.

1.2 The management of Afghan Gas Enterprise and North Coal Enterprise, in collaboration with the National Development Corporation and MoF, should develop a response to past audit findings that addresses the two SOEs' ongoing payments for BRT 4% despite their exemption from this tax under the 2009 Income Tax Law. The Afghanistan Revenue Department is advised to consult the SOEs on these payments and how the past payments will be addressed.

1.3 The AEITI should undertake an annual diagnostic of the comprehensiveness and reliability of production and non-tax revenue data in the MOMP Transparency Portal. The MOMP should draw on the findings of this diagnostic to further improve the coverage, quality and accessibility of data in the Transparency Portal. The AEITI may consider more data visualizations of specific companies' (or groups of companies) payments to government against their reported production.

1.4 The Ministry of Finance is invited to work with the AEITI to explain the reasons for the lack of achievement of past domestic revenue targets for the extractives (e.g. in ANPDF I), with a view to strengthening the government's domestic revenue mobilization efforts.

1.5 The Ministry of Finance and the Ministry of Mines and Petroleum should sanitize their extractive revenue data in accordance with the EITI Summary Data Template to ensure that EITI data is prepared in a timely and inter-operable manner. The AEITI to act as advisor for the Ministries in their curation of government extractive revenue data.

1.6 The EITI to coordinate regular updates of data and statistics published on government and company websites to ensure that publications are institutionalized as systematic disclosures, published in a timely manner (ideally within a year of the end of the fiscal period covered) on relevant websites.

1.7 The Afghanistan Revenue Department and the MOMP should share more updated information on tax and non-tax revenues from the extractive industries with the AEITI MSG

[203] AEITI website, 'Annual Progress Reports', accessible on http://aeiti.af/en/documents/category/annual-progress-reports

and Secretariat on a regular basis to allow for more updated data disclosures on the value of mining, oil and gas revenues.

2. Reliability of government extractive revenue data.

2.1 The Ministry of Finance is urged to ensure timely cooperation with the SAO's requests for access to internal controls, supporting documents and other related data to enable it to complete audits of the Qatia accounts in accordance with International Standards of Supreme Audit Institutions (ISSAIs). The Ministry of Finance is encouraged to formulate a public response to the SAO's disclaimer of opinion on the 1398 Qatia accounts and to announce plans to remedy such shortcomings in future years.

2.2 The SAO is encouraged to consider using annual AEITI reporting as a diagnostic tool of its audit and assurance practices. The AEITI MSG is encouraged to use annual AEITI reporting to identify those companies that have prepared audited financial statements, with guidance on the public accessibility of these documents.

3. Management of the extractive industries' contribution to the economy.

3.1 It is recommended that the AEITI MSG follow up with the Ministry of Finance and SAO on the reasons for non-publication of the detailed Qatia account reports in Dari, Pashto and English.

3.2 The Ministry of Mines and Petroleum, Government of Afghanistan (MoMP) should work with the NSIA to determine the contribution of hydrocarbons to the GDP, such that it can be totaled among with the contribution of the mining and quarrying to identify the total contribution of extractives to the economy.

4. Production and export data.

4.1 It is recommended that the MOMP publish mineral commodity production data in a systematic manner every quarter and year, both on the MOMP website in aggregate and on the Transparency Portal broken down by license.

4.2 The NSIA and Afghan Customs Department should agree upon a common template of reporting exports, with harmonization of the reporting codes based on the internationally-recognized Harmonized System (HS) codes. It is recommended that Afghanistan continue to publish its export data in a periodic and systematic manner. It is recommended that the Afghan Customs Department publish an explanation of the methodology for collecting mining export volumes and values, to support an assessment of the reliability of export data by users of the information.

5. Legal environment and fiscal regime.

5.1 On Hydrocarbon Regulations, it is recommended that the government incrementally construct separate, subject-specific, regulations , essentially "breaking up" the draft Hydrocarbon Regulations into distinct parts.

5.2 While the Government of Afghanistan has published copies of some of the legislations mentioned in this Chapter, a number of these legislations are not available online. Publishing the laws of Afghanistan that regulate the extractives sector online would greatly increase investor awareness and confidence in the sector. It will also greatly enhance citizen awareness of the functioning of the sector. Thus, the MoMP and AEITI MSG should undertake a review of the legislations that are published online with reference to those listed in this chapter and ensure their publication.

5.3 MoMP is required to share the two required forms of model mining concessions with stake holders (Partners and MSG) for consultation and publish the finalized version at MOMP website,

5.4 It is recommended that the National Development Corp. publish the English version of new SOC law (published on the MOMP website here) on its own website and ensure that all relevant regulations are published online. The National Development Corp. jointly with MoMP is encouraged to perform an analysis of the governance of the extractives sector SoEs, the changes ongoing and expected under the new SOCs law, and their implementation status. Benchmarking or comparing these reforms to global good practices with the help of technical assistance from development partners would enable the strengthening of good governance in state-owned enterprises in Afghanistan.

5.5 The AEITI MSG/MoMP should ensure that updated information on the reforms and developments in the legal framework and fiscal regime are displayed on the MoMP website after adequate fact-checks and approvals. The MOMP may wish to establish a single page on its website that consistently tracks all reforms, clearly categorizing them as completed (and including a link to the full text of the legal, regulatory or administrative amendment or reform), ongoing or planned.

5.6 The MoF and MoMP should consider how to treat the excess Business Receipt Tax (BRT) payments by extractives sector and devise mechanisms to refund them if possible to the extractives sector in a manner that is not disruptive to the State budget in an already fragile fiscal situation in Afghanistan.

5.7 It is recommended that the 2018 Minerals Law be revised to eliminate the duplicative, multi-tiered review of all but the most significant projects, and simplifying the current 18-step review process with multiple levels of review and approvals to ensure transparency in the license allocation process.

5.8 It is recommended that a comprehensive review and harmonization of other laws applicable to the mining sector be undertaken, so that legal provisions in laws related to tax, labor and customs work effectively together with the Minerals Law to promote mining investment.

6. License and contract management.

6.1 It is recommended that the MOMP's Large-Scale Mining Department regularly publishes reviews of mining license processes followed in practice for large-scale mining license awards and transfers.

6.2 It is recommended that the MOMP publish the MoU with the Ministry of Public Works, Ministry of Rural Development, Ministry of Urban Development, Ministry of Water and Energy, Ministry of Economy and Kabul Municipality related to construction materials mining for public works in accordance with Requirement 2.4.a.

6.3 It is recommended that the MOMP liaise with its service provider RDF to ensure that the terminology in the Transparency Portal clearly distinguishes application dates from award dates. The MOMP is encouraged to explore ways of retaining historical information on the Transparency Portal to ensure that transfers of licenses are published for all licenses (e.g., ownership history of licenses).

6.4 The AEITI MSG is encouraged to work with the MOMP Cadaster Department to institutionalize the annual post-award licensing procedure audit to review at least a risk-based sample of mining, oil and gas license awards and transfers.

6.5 The MOMP is encouraged to undertake analysis of systematic disclosure and establish a system for systematically publishing all new contracts and licenses in the mining, oil and gas sectors within 30 days of signature at one domain.

7. Beneficial ownership.

7.1 It is recommended that the AEITI conduct a systematic and comprehensive review of beneficial ownership information available from public sources such as the Transparency Portal, in order to produce a complete and public assessment of the comprehensiveness and reliability of legal and beneficial ownership disclosures related to extractive companies.

7.2 It is recommended that the MOMP Cadaster Department work with its service provider RDF, with advice from the AEITI, to amend the Transparency Portal to clearly distinguish legal ownership and beneficial ownership, and publish both on the Transparency Portal for all mining, oil and gas companies.

7.3 It is recommended that the AEITI MSG consult and work closely with the ACBR to explore the systematic publication of shareholder information for all companies on the ACBR corporate register.

7.4 It is strongly recommended that the AEITI MSG work with relevant stakeholders including the MOMP, ACBR, Ministry of Justice and others to ensure that the legal and beneficial owners of all companies holding or applying for mining, oil and gas licenses be publicly disclosed by the deadline of 1 January 2022, in accordance with EITI Requirement 2.5.c.

8. State-owned enterprises.

8.1 Afghan Gas Enterprise and North Coal Enterprise are urged to establish and maintain Internet websites (in accordance with Article 31(4) of the 2018 Law on SOCs), or to consider using the National Development Corporation website to publish key information on the two main extractive SOEs' operations and financial information.

8.2 The National Development Corporation is urged to publish more information on its website on the equity it holds in state-owned enterprises and corporations, including the terms attached to its equity in each SOC and a description of any changes in NDC's equity holdings in companies operating in the mining, oil and gas sectors.

8.3 It is recommended that the National Development Corporation ensure that information on the rules and practices of corporate governance of extractive SOEs such as North Coal Enterprise is published on its website.

8.4 It is recommended that the MOMP keep its website updated, in particular the SOE section, with all relevant laws and regulations as they are published in the official gazette.

8.5 It is recommended that the AEITI MSG consult closely with the NSIA to understand the source of NSIA's data on SOEs and to work with the NSIA, NDC, the MoF's SOE Department and the SOEs themselves to coordinate on the annual publication of information on the SOEs' financial management.

8.6 It is recommended that the National Development Corporation and the MOMP ensure that any loans given by Afghan Gas Enterprise and North Coal Enterprise are tracked and published on the NDC and/or MOMP websites, to ensure transparency and accountability in the way in which SOEs cross-subsidize each other and other companies and institutions in the mining, oil and gas sectors.

8.7 It is recommended that extractive SOEs such as Afghan Gas Enterprise and North Coal Enterprise ensure that their annual financial statements are prepared in a timely manner, within six months of the end of the year covered in line with international standards. The Supreme Audit Office should ensure that the audit of the financial statements is undertaken in a timely manner once received, and that the SOE's management is given an opportunity to respond to audit findings. The MOMP should ensure that the extractive SOEs' audited financial statements are published on its website, once completed.

8.8 It is recommended that the National Development Corporation ensure that information about SOEs' procurement practices be published on the NDC and/or NPA websites, at least on an annual basis.

8.9 It is recommended that the AEITI MSG convene a meeting of the SOEs' management, NDC, MoF's SOE Department, MOMP and the SAO to discuss the significant differences in data related to the SOEs' payments to government in 1397-1398. The AEITI MSG may consider timing this meeting to coincide with the finalization of the SAO's audit of the AGE and NCE financial statements for this period, so that any insights on the reasons for these discrepancies are clarified in the SOEs' audited financial statements.

8.10 It is recommended that the National Development Corporation work with the MOMP to ensure that the financial data disclosed for Afghan Gas Enterprise and North Coal Enterprise is consistent across the various government websites, including the NDC website, the SOE section of the MOMP website and the Ministry of Finance's website. In addition to publishing documents such as the audited financial statements of the SOEs, the MOMP, MOF and NDC should consider presenting the two SOEs' payments to government data online, systematically disclosing the SOEs' payments data on the NDC, MOF and/or MOMP websites.

8.11 It is recommended that the National Development Corporation (NDC), North Coal Enterprise and Afghan Gas Enterprise consider ways of regularly publishing detailed information on production and sales of natural gas and thermal coal.

8.12 It is recommended that North Coal Enterprise and Afghan Gas State Owned Corporation work with the MOMP and MOF on regularly publishing information on the quasi-fiscal subsidies on coal, natural gas and intra-SOE lending. Clarity on the significant cross-subsidies across SOEs through interest-free loans is of importance for Afghanistan's public finance management. The AEITI MSG is encouraged to follow up with the management of SOEs to respond to a SAO finding that SOEs extend interest-free loans to other companies.

9. Subnational contributions.

9.1 It is recommended that the AEITI MSG work with the MOMP and the IDLG to provide an update on the status of sub-national allocation of revenues. Even at the planning stages, it is encouraged that the AEITI MSG support the MOMP to provide greater transparency on the division of roles and responsibilities in administering the Provincial Development Funds, and in the nature of their investments and activities. Once functional, periodic reports of the Provincial Development Funds and their periodic audit should also be completed, and the results disclosed to the public.

9.2 It is recommended that the MOMP establish institutional systems to conduct an annual review of mining companies' contractual social expenditure requirements and publish an annual review of companies' compliance with their legal and contractual social expenditure obligations. The AEITI MSG should provide input to this review, to ensure that the social expenditures reported are always clearly marked as either in cash or in kind, that the nature of each expenditure be clearly described, and that the identity of beneficiaries is clear for each expenditure.

9.3 It is recommended that the AEITI MSG convene a working group of representatives from the MOMP, NEPA, companies and civil society to develop a mechanism for more efficiently tracking mining companies' compliance with environmental licensing provisions. It is recommended that NEPA explore means of systematically disclosing environmental revenues on its website, broken down by type of payment, company and project.

The MSG intends to move follow up on these recommendation through its regular meetings. It plans to prioritize these recommendations, together with the next steps identified with previous recommendations from Validation, and will track implementation through its quarterly activity reports and annual progress reports published on the AEITI website:

- http://aeiti.af/en/documents/category/aeiti-quarterly-reports
- http://aeiti.af/en/documents/category/annual-progress-reports

Background to the 7th AEITI Report

A History of EITI in Afghanistan

Afghanistan announced its intent to implement the EITI in March 2009 and became an EITI Candidate country on February 10, 2010. Afghanistan EITI (AEITI) helps promote the transparent and accountable management of extractive resources in the country. The objectives of EITI implementation in the AEITI's 2020 work plan are to ensure multi-stakeholder oversight of extractive industry governance and empower Afghan citizens to oversee the management of the country's natural resources.

The AEITI has been implementing the EITI Standard through a Multi-Stakeholder Group (AEITI MSG) comprised of representatives from civil society, the private sector and government ministries. The AEITI MSG is chaired by the Minister, Ministry of Mines and Petroleum (MoMP), Minister Haroon Chakhansoori. The AEITI Secretariat, housed within MoMP, is an agency that provides administrative and operational leadership for the implementation of AEITI.

Afghanistan published its first EITI Report, covering the calendar years 2008-2010, in 2012. Following the publication of five AEITI Reports, Afghanistan was temporarily suspended from the EITI in January 2019 as a result of ''inadequate progress'' in implementing the 2016 EITI Standard, following its first EITI Validation. EITI Validation examines the implementing country's compliance under the EITI Standard. Nineteen corrective actions were identified following Afghanistan's first EITI Validation,[204] which the AEITI had to implement in eighteen months in order for its suspension to be lifted. Following the suspension, an improved 6th AEITI Report was published, which addressed several of the gaps previously identified during Afghanistan's first EITI Validation. The Addendum to the 6th AEITI Report[205] describes in detail the activities that were undertaken to address these corrective actions, through systematic disclosures of data on government websites. AEITI's approach towards addressing the corrective actions, facilitated by technical assistance from the World Bank and the EITI International Secretariat, was on three fronts: (i) improvements to the governance of AEITI through increased capacity in the Multi-Stakeholder Group and increased governmental ownership of the process, (ii) improved quality of data disclosures through a more comprehensive 6th AEITI Report, accompanied by timely and comprehensive systematic data disclosures, and (iii) increased impacts of AEITI by mainstreaming data use into extractives sector governance. In all, Afghanistan's six EITI Reports have disclosed data for 10 fiscal years. Table 66 presents an overview of Afghanistan's seven EITI Reports.

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[204] See: https://eiti.org/document/afghanistan-validation-2017

[205] See: http://aeiti.af/Content/Media/Documents/6thAEITIAddendumReport20200515185202014115081553325325.pdf

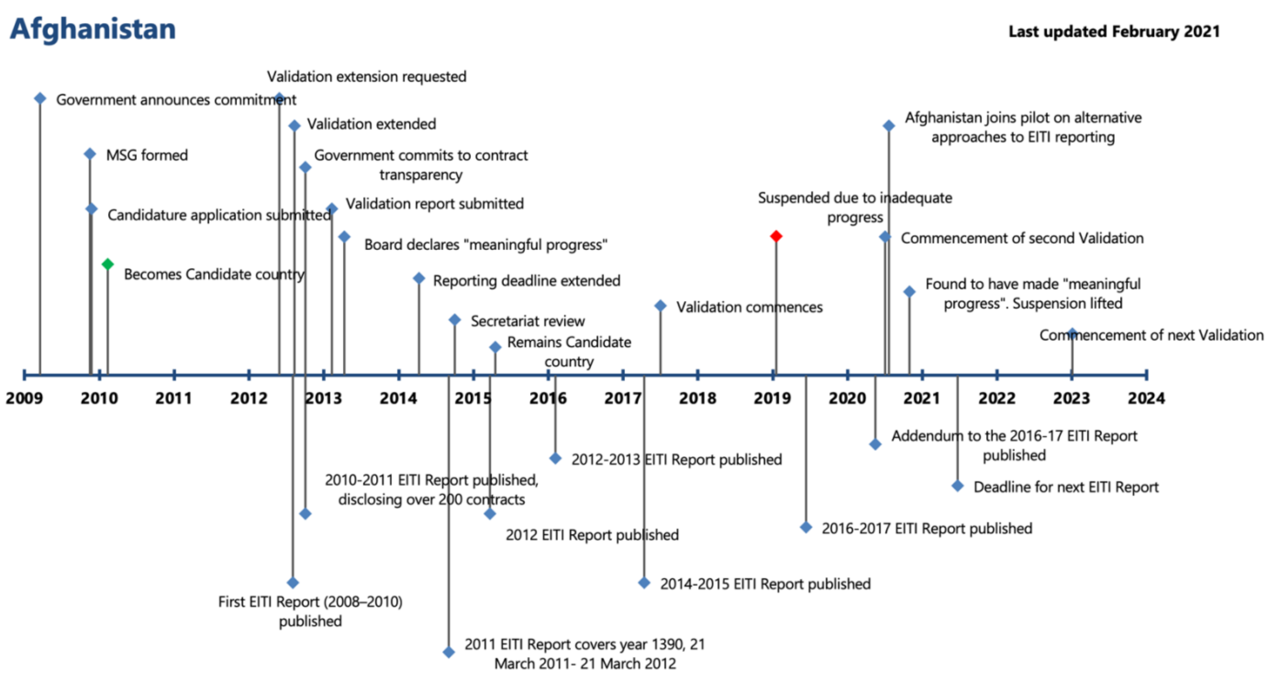
Table 65 Afghanistan's seven EITI Reports published to date cover 12 fiscal years

	Period Covered				Reconciliation coverage					
Report No.	**FY**	**Start Date**	**End Date**	**Publication Date**	**Government Revenues**	**Company Payments**	**Discrepancy in Value (AFN m)**	**Discrepancy in Value (%)**	**Reconciliation Coverage**	**Number of Reporting Companies**
1	1387	21/03/08	20/03/09	July 2012	4527.62	4534.63	-6.81	-0.15	N/C	4
	1388	21/03/09	20/03/10		357.1	638.19	-281.09	-44.04	N/C	4
2	1389	21/03/10	20/03/11	October 2012	1071.31	1139.69	-68.38	-6	N/C	5
3	1390	21/03/11	20/03/12	September 2014	4847.61	4844.55	3.06	0.06	N/C	14
4	1391	21/03/12	20/03/13	January 2016	4251.89	4249.34	2.55	0.06	98.80%	11
	1392	21/03/13	20/03/14		2028.18	2006.06	22.11	1.1	96.90%	11
5	1393	21/03/14	20/03/15	May 2017	2123.38	1893.36	230.02	12.15	95.70%	20
	1394	21/03/15	20/03/16		2677.23	2611.36	65.87	2.15	97.80%	20
6	1395	21/03/16	20/03/17	June 2019	1880	1351.55	0.27	0.02	91.00%	12
	1396	21/03/17	20/03/18		2642.13	2399.1	0.37	0.02	87.00%	14
7	1397	21/03/18	20/03/19	April 2021	4834.90	4804.49	30.41	0.63	NA	NA
	1398	21/03/19	20/03/20		4288.14	4273.93	15.79	0.37	NA	NA

Source: Afghanistan's EITI Reports.

Figure 31 below provides a timeline overview of AEITI implementation in Afghanistan.

Figure 31 Key dates in Afghanistan's EITI implementation (1387-1399)



Source: EITI website, Afghanistan country page: https://eiti.org/afghanistan#implementation-

Governance of AEITI

Maintaining compliance with EITI and leveraging the extractives sector as a vehicle of economic growth is a national priority for Afghanistan. In the *Geneva Conference on Afghanistan*, held on November 27/28, 2018, the country committed to several deliverables on the extractives sector to the Donor community as a part of its commitments under the Geneva Mutual Accountability Framework (GMAF).[206] Of these, two in particular related to AEITI[207]:

- **GMAF 12.4:** As per the terms of the mining law, comprehensive, accurate, and timely publication of extractives contracts, beneficial ownership of contracts, and project-level revenue and production data by the end of 2019; and
- **GMAF 12.5:** Afghanistan works towards achieving EITI 2016 standards and demonstrates "meaningful progress", as defined and confirmed by the EITI Board by the end of 2019.

Afghanistan's first Validation result in January 2019, however, proved to the contrary (See: Figure 1 below). Several gaps remained with regard to the commitments under GMAF 12.4- The publication of mining contracts was not comprehensive, beneficial ownership of contracts was not yet published, revenues had not been reported at a project level and several discrepancies were found in the mineral production data reported. Similarly, GMAF 12.5 remained unfulfilled, as Afghanistan was suspended from EITI and had hitherto not achieved "meaningful progress" under the EITI Standard, 2016.

Reversing Afghanistan's suspension from EITI and using EITI as a tool to fulfil its commitments to its people as well as donors became a national priority for Afghanistan. Afghanistan also re-committed to AEITI related compliances and disclosures under its "*State and Resilience Building Contract for Afghanistan (SRBC 2018-2021)*" with the European Union. The commitments made under GMAF 12.4 and GMAF 12.5 were echoed in the program, where Afghanistan committed to the reversing the suspension from EITI and achieving full reinstatement under the process through the publication of vital extractives sector data.

Afghanistan complemented its donor commitments on EITI implementation with strong political ownership of the process. A Presidential Decree passed in 2019 firmly housed AEITI in the Ministry of Mines and Petroleum, Government of Afghanistan (MoMP). The initiative had hitherto been housed in the Ministry of Finance, and coordination issues between the MoF and MoMP had led to limited government ownership of the process. A full-time AEITI National Coordinator was hired, and the AEITI National Secretariat began effectively supporting the AEITI MSG in its functioning. In order to increase AEITI MSG oversight of AEITI, the decree also made attendance to the MSG Meetings compulsory, either by the elected AEITI MSG representatives or their alternates.

The Presidential Decree gave the impetus for several reforms within the AEITI MSG. As described in detail in the Addendum to the 6th AEITI Report, the AEITI MSG adopted revised procedures for operation that were more flexible and implementable. Leveraging the systems established to support EITI, including the website of AEITI[208] and the MoMP[209], MSG procedures

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[206] The GMAF also aligns with the overarching national policy framework, notably the Afghanistan National Peace and Development Framework (ANPDF) and the ten National Priority Programs (NPPs).
[207] GMAF at p.13; available at: https://unama.unmissions.org/sites/default/files/gmaf_final_26_nov_2018.pdf
[208] See: http://aeiti.af/en/page/eiti-profile/what-is-eiti
[209] See: https://MOMP.gov.af/

have begun to function in a transparent and effective manner, with timely disclosures of the Minutes of AEITI MSG meetings and other related documents.

Replenishments to the AEITI MSG were also commenced in good faith, in a process that has since been stalled by the COVID-19 situation. Nevertheless, the Government of Afghanistan has replenished its members to the AEITI MSG. The industry constituency has finalized its AEITI MSG election procedures and is awaiting a more favorable situation in which elections can be conducted. CSOs, despite severe capacity constraints, are also currently finalizing an open and transparent election procedure, opening up possible membership in the AEITI MSG to all CSOs of Afghanistan. The AEITI National Secretariat and AEITI MSG have conducted workshops to train a larger pool of CSOs for readiness for AEITI MSG membership. However, the in-person consultations and outreach required for the CSO elections to be finalized have been severely hampered by the COVID-19 situation.

On 28 October 2020, Afghanistan was found to have made meaningful progress in implementing the 2019 EITI Standard following its second Validation, and its suspension was lifted. As a result, the country has also complied with its commitments under the GMAF 12.4 and 12.5, and the State and Resilience Building Contract for Afghanistan (SRBC 2018-2021).

Increased Impacts of AEITI

In addition to the above systematized data disclosures, the following governance enhancements have been supported through 'mainstreaming of AEITI':

- ***The new draft mining regulations*** seek to empower the use of data for improved governance and fiscal accountability.[210] In an innovative approach, the data disclosures required under the EITI standard technical were embed and regularized into the draft mining regulations, which are also vital for good sector governance. The improved availability and accessibility of sector data adds credibility to fiscal transparency, and enables fiscal accountability as follows:
    - **Data quality** available to the government is enhanced through the availability of relevant, disaggregated data. Consolidation and cross-verification of data sets are also possible within and between various departments of the government.
    - **Data timeliness** is improved significantly by requiring time-bound reporting of data. This empowers the Government to take more efficient and informed administrative decisions.
    - **Systematized data collection and disclosures** are facilitated through the required maintenance of a publicly accessible digital mining cadaster, a mineral license register, a register of beneficial owners, as well as other such systems.
- ***Non-tax mineral revenue administration*** has been enhanced at the MoMP by providing readily available and accessible information regarding revenues collected and mineral production.
- ***Monitoring of mining operations*** has been enhanced by empowering the MoMP with readily available data on license coordinates and attendant details.

[210] The regulations have been finalized and await formal adoption by the Ministry of Mines and Petroleum (MOMP), Government of Afghanistan.

- ***Investor and civil society organization (CSO)*** confidence in sector governance has increased following transparent data disclosures in formats that enable further end-user verification and analysis. A number of outreach workshops have been held by the CSOs using the information disclosed through AEITI Reports.
- ***Crucial mining tax laws were enabled.*** Addressing data gaps in the MoMP's digitized systems enabled the 'ring-fencing' of Corporate Income Taxes (CIT) on a per-mining license basis, as required by the laws of Afghanistan. The move, implemented from the tax reporting year 1399, is expected to increase tax revenues from the sector.

Current Status of AEITI

Following Afghanistan's second Validation under the EITI Standard, 2016 which commenced on July 1, 2020, the country was declared to have made 'meaningful progress' in implementing EITI on October 28, 2020. Of the nineteen corrective actions recommended from Afghanistan's first EITI Validation, fourteen of them had been completely addressed and five of them partially addressed during the eighteen month time period between the two validations. Afghanistan has five corrective actions to address, together with the full implementation of beneficial ownership transparency, by the next EITI Validation scheduled to commence on January 1, 2023 (see https://eiti.org/validation-decisions-schedule#upcoming-validations).