



**Independent Joint Anti-Corruption
Monitoring & Evaluation Committee**

B A C K G R O U N D E R

MEC calls on Parliament to amend the *Minerals Law* to enhance accountability and issues recommendations for improved oversight of mining revenues

MEC is calling on the National Assembly to make changes to the Minerals Law to protect the mining sector against corruption

- The draft of the *Minerals Law* was approved by the Council of Ministers in February 2013 and is currently before parliament. It is the third version after the initial law of 2005 and amendments made in 2010.
- The regulatory framework for mining is established by the *Constitution of Afghanistan*, two laws on mining and hydrocarbons, several regulations, policies, strategies and other procedures.
- Afghanistan has a wealth of natural resources that could support the country's economic development, if revenues are protected by strong oversight.

The most significant differences between the current and new Minerals Laws pertain to licensing and bidding procedures

- Unlike the existing law, the draft *Minerals Law* does not require National Assembly endorsement of major contracts, and no longer requires the Ministry of Mines and Petroleum to provide the National Assembly with annual reports.
- It is no longer necessary to submit separate bids for exploration and exploitation licenses (the exploration license holder is given the priority right for an exploitation license), unless the holder of an exploration license is unwilling or unable to apply for an exploitation license.

The draft Minerals Law contains important improvements related to oversight, anti-corruption and transparency

- The law provides for the maintenance of an inspectorate charged with ensuring technical compliance and undertaking supervision activities. The Ministry may send an authorized official to observe the mining area included in a license and authorization.
- The draft *Minerals Law* has a small section on anti-corruption, which prohibits the favoring of government staff and requires the Ministry of Finance and other relevant government agencies to comply with AEITI reporting standards.
- The draft law also expands the definition of persons ineligible for mining licenses.
- The draft requires the Ministry to publish the terms and conditions of contracts and related ancillary contracts. Another provision requires the Ministry to facilitate public access to the register of licenses, applications, maps, non-confidential reports, and agreements submitted by the holders of licenses.



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The transparency and accountability mechanisms of the new Minerals Law could be strengthened further by consolidating, clarifying, and expanding them

- The provisions on anti-corruption should require the inclusion of anti-corruption related clauses in contracts and subcontracts.
- The wording of the draft law should be clarified to ensure that actual contracts are published, not just summaries. Beneficial ownership information for license holders should also be disclosed, and it should be made clear that restrictions on transfers and changes in control of licensees or contractors apply to transfers or changes in ownership at any level of an ownership chain.

The draft Minerals Law provides very few details on the royalty regime

- The law does not address how royalty rates are set and does not state the basis of royalty calculations (e.g. on production volumes only or on the basis of value).

The implementation of some of the new Minerals Law's provisions may prove to be problematic without community involvement

- Community engagement would secure the acceptance of mining activities and would be an effective way to increase the monitoring and enforcement of contracts.

MEC is currently monitoring initiatives related to the Ministry of Mines and Petroleum that are at various stages of implementation

- MEC is currently monitoring and evaluating the implementation of six of its recommendations and two articles of Presidential Decree 45. The articles cover a range of issues including the development of policies, building oversight capacity, the incorporation of anti-corruption mechanisms into existing procedures, and increasing the transparency of the ministry.
- The Ministry has shown progress on implementing many of the recommendations. It has introduced important policies and taken steps to improve its contract negotiation capacity, as well made an effort to introduce specific anti-corruption mechanisms.

MEC was established to independently monitor national and international efforts to fight corruption in Afghanistan

- MEC develops anti-corruption recommendations and benchmarks, which are monitored to ensure that they are effectively implemented.
- MEC monitors and evaluates national and international anti-corruption efforts.
- MEC is comprised of three national and three international senior anti-corruption experts.
- MEC reports to the public, Parliament, the President and the international community every six months.

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