

EXECUTIVE SUMMARY

The Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC) hereby issues the findings and recommendations of its Ministry-Wide Vulnerability to Corruption Assessment (MVCA) of the Ministry of Mines and Petroleum (MoMP). The MVCA research began in October 2017; data collection activities took place through and July 2018.

MEC is publishing this MVCA at an opportune time. The Government of Afghanistan has recently joined the Inter-Governmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF); the Mining Industry Roadmap (GoIRA 2017c) was formally released earlier this year; the MoMP Reform Strategy sets out the Ministry's intentions to address long-standing governance problems including for example delegation of recruitment to the IARCSC, a Memorandum of Understanding between MoMP and other GoIRA authorities covering the use of materials for construction and infrastructure projects, and establishment of the MoMP Donor Coordination Unit; and overall reform of the legal system is ongoing. This MVCA can contribute to and shape the Ministry's management of change, such that it addresses corruption vulnerabilities more systematically and effectively.

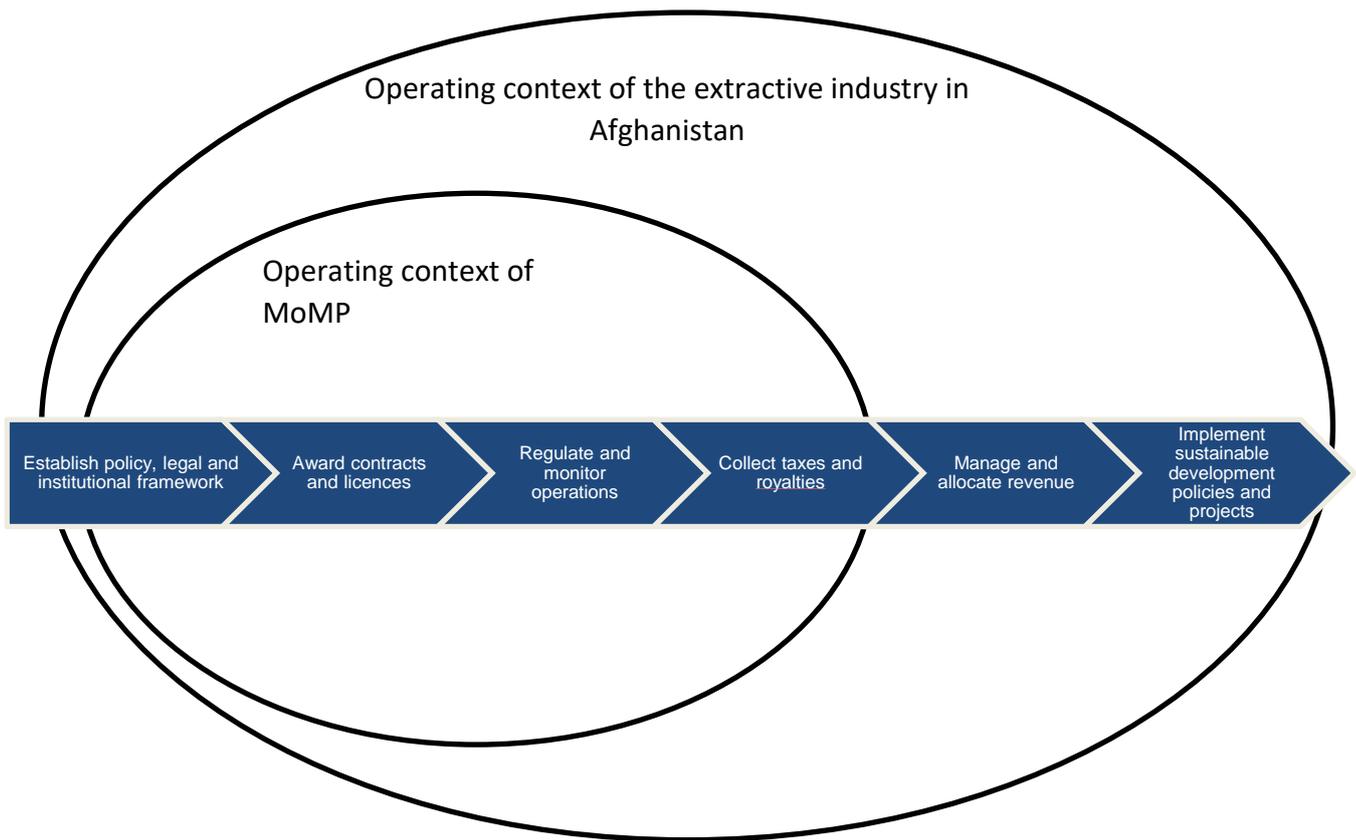
Presently, corruption in Afghanistan's mining sector finances insurgency and other violent criminals and is a key driver of conflict, which produces fragility. Fragility in turn leads to rent-seeking behavior, further driving corruption. Breaking out of this vicious circle requires immediate action by MoMP on a number of fronts, informed by MEC's recommendations.

This MVCA represents the first comprehensive analysis of corruption vulnerabilities across the entire operating context of MoMP. It assesses the vulnerabilities in both MoMP's internal operations and regulation of the extractives industry in Afghanistan. This assessment includes examining corruption vulnerabilities across each step in the mining value chain for which MoMP is responsible and developing practical measures to mitigate such corruption risks, including within entities beyond MoMP and across the whole of the sector.

This research and MVCA report preparation were completed prior to the passage of the 2018 Minerals Law. Within MEC's first monitoring report, MEC will incorporate analyses of the likely changes to the operating environment of the Ministry and the industry arising from the new Minerals Law.

The following diagram represents the scope of this MVCA.

Figure 1: Scope of MoMP MVCA



1.1. Research Method

The following research questions guided MEC's MVCA methodology and shaped both the type of information the assessment team sought and how it was collected:

1.1.1. Research Questions

- What does the policy, legal and institutional framework require the MoMP to do so as to implement the extractive industries value chain?
- What are the critical internal governance systems within the MoMP that are necessary for the Ministry itself to function?
- What corruption vulnerabilities exist in the policy, legal and institutional requirements for the mining sector and for the MoMP itself?
- What actually happens in implementing these internal and external governance processes?
- What gaps exist between the required processes and what actually happens in the sector and the Ministry?
- What corruption vulnerabilities exist as a result of these gaps?
- What corruption vulnerabilities exist as a result of the operating environment of the industry and the Ministry?
- What are the corruption risks (impact and likelihood that corruption will occur) as a result of these vulnerabilities?
- What factors affect the level of risk?
- How can these risks be prevented or mitigated?

As a vulnerability assessment, this MVCA does not seek to establish whether corrupt acts have in fact occurred, but rather whether the governance system is robust enough to prevent corrupt acts. In other words, this MVCA assesses whether internal and other process controls currently in place would be sufficient to prevent corruption from occurring. The assessment team asked: How likely is corruption and what would the impact be if it occurred? When the evidence showed that corruption risk controls were weak, this increased the risk ranking even if there was no evidence that corruption had already occurred. In addition to examining those circumstances where control of corruption risks has failed or is nonexistent, the MEC assessment team looked for positive deviances – situations where corruption vulnerabilities have been controlled more effectively than elsewhere.

A multi-method approach for data collection was used, consisting of:

- Semi-structured interviews with key informants.
- Primary document analysis (legislation, policies, procedures, Ministerial documents and contracts).
- Secondary document analysis (academic and professional literature, national and international reports).
- Case studies of a selected small number of mining operations.

This multi-method approach facilitates MEC's goals for triangulation of data.

1.2. Corruption Vulnerabilities and Risks

The MVCA focuses on high or very high risks of corruption and highlights some moderate risks, but does not analyse low risks in any detail. It identified corruption vulnerabilities and assessed corruption risks in the following key areas:

1.2.1. Extractive Industry Context

- Weaknesses in the industry anti-corruption system
- Weak governance
- Poor relationships between national and sub-national governments
- Politicization of decision-making processes
- Gaps in due diligence
- Illegal mining

1.2.2. Ministry of Mines and Petroleum Context

- Weak Ministry capacity
- Problems with working conditions of the Ministry
- Weaknesses in the Ministry's anti-corruption system
- Internal audit weaknesses
- Poor Human Resource (HR) practices
- Weak information management systems
- Inappropriate use of donor funds

1.2.3. Establish Policy, Institutional and Legal Framework

- Ineffective legal and policy framework
- Unclear land rights
- Unclear legal requirements

1.2.4. Awarding of Contracts and Licenses

- Unclear and weak awards process
- Inadequate bidding process
- Opaque and compromised contract negotiations
- Unaccountable decision-making processes
- Lack of information transparency
- Inappropriate contract content
- Unclear and inappropriate renewal, transfer and termination conditions

1.2.5. Regulation and Monitoring of Operations

- Inadequate monitoring of operations
- Weak requirements for community consultation
- Incorrect production information
- Inappropriate inspector behavior

1.2.6. Collection of Taxes and Royalties

- Inadequate reporting of production information
- Lack of transparency
- Incorrect payments
- Weak revenue collection processes
- Weak legal framework for revenue collection

The MVCA's findings are provided in Section B which details the assessment of the MoMP vulnerabilities and risks. Risk controls that would help MoMP prevent or mitigate these risks are also listed in Section B.

1.3. Key Findings

The vulnerabilities and risks assessed in this MVCA contribute to a vicious circle of fragility and conflict that prevents the extractives industry from contributing to sustainable economic and social development in Afghanistan. The following vulnerabilities represent the greatest corruption risks.

1.3.1. Vulnerabilities Associated with Rent-Seeking Behavior

- There are insufficient resources and information to accurately and reliably assess the country's mineral reserves, driving rent-seeking behavior based on limited information.

- Senior public officials or Politically-Exposed Persons (PEPs) do not have to declare assets or income related to mining interests.
- There is political or other inappropriate interference in MoMP recruitment processes, leading to patronage, cronyism and nepotism influencing recruitment decisions.
- Illegal mining is controlled by illegal armed groups or is conducted under their supervision.
- Local officials of different Government agencies are involved in collecting payments from miners without authority.
- Companies can have obscure beneficial ownership arrangements that make it possible for illegal payments to be channeled either to PEPs or to illegal armed groups.

1.3.2. Weak Ministry Governance and Capacity

- Poor coordination within MoMP and with other relevant agencies creates opportunities for corruption to occur.
- MoMP lacks human, technical and financial capacity in Head Office and Provincial Directorates and so is not fulfilling its legal functions adequately.
- Weak information management systems prevent transparency and effective monitoring of contracting and payment systems.
- Policy, legal and regulatory requirements in key areas are unclear or non-existent, meaning that the regulatory framework is not complete and requires discretionary decision-making on key issues.
- Inadequate monitoring of extractives operations allows contractors to avoid their legal responsibilities.
- There is a weak legal framework for revenue collection that includes, for example, methods for calculating royalties that create incentives for companies to provide incorrect production figures.
- The contract moratorium has meant that many operators have had no choice but to operate illegally, creating a sense that the system is unfair and unworkable.
- Salaries of Ministry staff can be less than a living wage providing an incentive to use MoMP positions as an opportunity to supplement incomes through corruption.
- Mining is undertaken without following the conditions of contracts or legal requirements, e.g., extraction under an Exploration License; not following Occupational Health and Safety (OHS), environmental or community development requirements, thus limiting the benefits for the State or for local communities.
- An unclear, lengthy and weak contract awards process is subject to external interference and has inadequate due diligence.
- The system for collecting production data does not prevent inaccurate reporting or incorrect payments. As a result, neither royalties nor taxes are paid correctly.

1.3.3. Lack of Government Accountability

- Failure to implement effective anti-corruption measures within MoMP, e.g., unreliable enforcement of the Civil Servant Code of Conduct, means that the system for preventing, identifying and addressing corrupt behavior in MoMP is weak.
- Lack of due diligence processes in Government processes, e.g., in assessing bidders for mining contracts, means that there are insufficient protections from rent-seeking behavior or to prevent less competent bidders winning contracts.
- Internal audits are not conducted to a sufficiently high standard.
- Opaque and compromised contract negotiations can lead to inappropriate decision-making with limited transparency and no effective right of appeal.
- Weak requirements for community consultation mean that the opportunity for communities to contribute to effective monitoring of the industry is limited.
- There are insufficient protections from and sanctions for inappropriate inspector behavior.

1.4. Summary of Recommendations

The vulnerabilities and risks that this MVCA identifies will take significant effort and some time to address. Responsibility for developing a stepwise plan to effectively address these problems belongs with the Government of the Islamic Republic of Afghanistan. The reforms should start by focusing on areas where there is the greatest appetite for change and where change will have the biggest impact on the vicious circle of corruption and State fragility. In the course of this assessment, MEC observed that many stakeholders in MoMP and the extractives industry have significant appetite for change. MEC believes that this change is plausible with sufficient commitment, even if it will be challenging.

MEC's detailed recommendations in the report provide numerous risk control options for the different corruption risks that were assessed. Implementing them all immediately is unlikely to be feasible, but action will have to be comprehensive and is urgently required.

1.4.1. Overarching Recommendations

The following sixteen overarching recommendations will support implementation of the detailed recommendations and are directed to the Minister for Mines and Petroleum. The 189 expanded recommendations, articulated in Chapter 10, include elaborations of these overarching recommendations, and describe actions for the Minister and additional stakeholders.

1. Review the MoMP's reform strategies to address the findings of this MVCA and to ensure that current strategies do not exacerbate existing vulnerabilities, but rather contribute to reducing and eliminating corruption.

MoMP should use a participative process for this review, engaging with all stakeholders, both nationally and in the Provinces. This will be key to expand input and commitment to reform.

Specifically, MoMP should revise the Industry Roadmap (GoIRA 2017c), the Ministry Reform Strategy, the new Minerals Law and MoMP's Anti-Corruption (AC) Plan to incorporate the risk controls set out in this MVCA or other more effective controls for corruption risks.

These reforms should then form the basis of all future international donor support to MoMP, with appropriate monitoring and auditing processes, to ensure optimal use of such donor support.

1.4.2. Actions to Address the Causes of Conflict

2. Develop a practical and achievable approach to obtaining accurate and reliable information about the country's mineral reserves. This should include strategies to make use of private sector investment in exploration and to not rely entirely on Afghanistan Geological Survey (AGS).
3. Analyze options for a licensing system, especially for development minerals, with clear rules such as a "fit and proper person" test, due diligence on technical and financial capacity, "use it or lose it" provisions, escalating fees, and minimum work obligations.
4. Develop a nuanced illegal mining strategy to address the different types of illegal mining (e.g., artisanal mining versus mining being done in Taliban-controlled territory). Focus on the illegal mining that the Government can regulate, e.g., where conflict is engendered not by insurgency, but by those seeking to prevent scrutiny. This work is currently underway with European Union (EU) funding.
5. Develop a plan and a strategy to operationalize the requirement to return five percent of mining revenue to affected Provinces, involving the Citizens' Charter National Priority Program, as set out in the Industry Roadmap (GoIRA 2017c). The system for distributing subnational transfers to the Provinces will need appropriate corruption control measures, including proper audits, and should involve Community Development Councils (CDCs) as key partners.
6. Conduct a pilot project to test how best to engage communities in monitoring extractives activities, without placing communities at risk from violence, based on existing networks such as Mining Watch Afghanistan (MWA) and the Environmental and Natural Resources Monitoring Network (ENRMN). Use this pilot as the basis to inform further development of a policy package on community engagement.

1.4.3. Actions to Strengthen Government Legitimacy

7. Develop and implement a recruitment procedure for MoMP that ensures the primacy of relevant knowledge, skills and qualifications, based on a cooperative approach between MoMP and the Independent Administrative Reform and Civil Service Commission (IARCSC). Use this to immediately address the high number of acting positions to provide security of tenure.
8. Ensure that implementation of the system for Beneficial Ownership Transparency, which is currently being prepared by the Afghanistan Extractive Industry Transparency Initiative (AEITI), occurs as soon as possible and incorporates suitable due diligence processes.
9. Require that all approaches by PEPs to officials of MoMP for any reason and using any medium to be formally and publicly registered. Monitor face-to-face meetings at MoMP using the security logs of entry to MoMP (identifying who the meeting was with) and require all MoMP staff to report any other approaches.

10. Implement the electronic information systems Mining Cadaster Administration System (MCAS) and the Non-Tax Revenue System (NTRS) as soon as possible, ensuring integration with Ministry of Finance (MoF) systems as well. Further refinement should be based on developing a revenue process that eliminates unnecessary steps and that has been tested for reliability.
11. Develop effective coordination between MoMP and other relevant agencies, particularly National Environment Protection Authority (NEPA), possibly using Balkh as a site to develop and pilot this strategy.
12. Request MEC to conduct Vulnerability to Corruption Assessments (VCAs) of Northern Coal Enterprises (NCE) and Afghan Gas Enterprises (AGE).
13. Establish a clear law enforcement policy and strategy that includes processes for review of inspectors' decisions based on the provisions of the Law.
14. Work with MoF to incorporate disaggregated reporting against the agreed mining Revenue Codes and by the Tax Identification Number (TIN) in the regular Budget Reports (In-Year Reports, Mid-Year Review and Year-End Reports). Where a single taxpayer has more than one extractives operation, establish a separate TIN for each operation to allow project-by-project reporting as required by the Extractives Industry Transparency Initiative (EITI) standard.
15. Establish a Multi-Stakeholder Group (MSG) to monitor implementation of MoMP's actions in response to this MVCA – the AEITI MSG should form this group, supplemented by representation from the industry's workforce.

By implementing these and other recommendations made throughout this MVCA, MoMP and the Government of the Islamic Republic of Afghanistan will:

- Increase Government revenue generation as a result of reduced corruption.
- Enhance integrity across the entire extractive industry value chain.
- Enable external stakeholders to work with MoMP to more effectively fight corruption.

While this MVCA has found that there is a high risk of corruption in MoMP's current processes for governance of the extractives industry, in the course of conducting this assessment the MEC team met many bright, committed and ethical people across MoMP and the other industry stakeholders who are working to fight corruption. Assessors saw real commitment to a new vision for the mining industry in many people, through interviews, meetings and particularly at the validation workshop conducted as part of the data analysis activities.

MEC believes that MoMP has people with the capacity, integrity and dedication to take on this challenge and shift the vicious circle caused by corruption to a virtuous one, so that the extractives industry contributes to peace and prosperity in Afghanistan.