

# Analysis of Contracts between the Ministry of Mines and Private Companies in Afghanistan

In analyzing the eight contracts that have been awarded, the following observations have been made:

1. All the contracts are legal and binding on both parties in terms of the Laws of Afghanistan
2. The process applicable in the current Law was followed in the awarding of the contracts was followed.
3. No opinion is made as to influences that might have been exerted on the members of the evaluating body

The following parameters have been used in analyzing the contracts:

1. Duration
2. Royalties and taxes
3. Infrastructural commitments
4. Social commitments
5. Environmental commitments
6. Regulatory conditions

1. **Alogag Coal:** This contract has a duration of ten years, total investment of Af 150 million (\$ 3 million), and production of 50,000 tonnes coal per year. It is generic in all its conditions but pays minimal attention to environmental, social and infrastructural conditions. Royalty is set at Af 510 (\$ 10) per tonne of coal. It is estimated that production costs will be Af 750 (\$ 15) per tonne and amortization of capital, Af 300 (\$ 6). Thus royalties are about 30% of pithead costs.
2. **Deh Eman Coal:** This contract is very similar to the previous one. There is an exploration phase after which, if insufficient reserves are identified, the contract can be terminated. Investment will be \$ 3,6 million and production is set at 67,000 tonnes per year. Royalty is set at \$ 13-50 per tonne. More attention is paid to regulatory matters and the MoM will have a permanent presence at the mine. Social obligations are more defined.
3. **Qaronah Coal:** A very standard ten year contract with capitalization set at \$ 1,70 million and production aiming at 40,000 tonnes per year. Royalty is higher at \$ 14 per tonne. This contract states that any new laws and regulations that are enacted during the life of the mine will be implemented. Beneficiation will be allowed. Social commitments are standard.
4. **Sare Asyab Coal:** This is a more detailed contract of ten year duration with \$ 4.0 million capitalization. Specific amounts are allocated annually for training of employees and for social projects. Royalties are set at \$ 14 per tonne on a minimum production of 70,000 T P A.
5. **Sabzak Coal:** This contract is for ten years and an annual production of 40,000 tonnes. It allows for the sale of existing tunnels in the mine to the license holder. Existing equipment can be bought on

open bid. Royalties are \$ 10 per tonne and other clauses are standard in respect to social and environmental issues as well as regulatory matters.

6. **Karkar Coal:** The contract was granted for a period of 49 years which exceeded the maximum period allowed in the Minerals Law (30 years) Royalties are set at \$ 8 per tonne. A rental of \$ 25, 000 per month was set for the use of existing assets. A bond of \$ 50,000 was established for development, re-fundable over the development period. Other clauses are standard with no specifics in environmental or regulatory matters.
7. **Ghori Cement:** The contract is for both the cement factory and the quarries supplying the raw materials and is for a period of 49 years. Capitalization is \$ 140 million and no production targets are set. Royalty for raw material is \$ 1-04 per tonne. An annual rental of non-fixed assets is set at \$ 1 million. Social obligations are not detailed but dust filters are included in the environmental sections.
8. **Nooraba and Samti Gold Mine:** This contract is for a ten year period and employs development capital of \$ 40 million. Standard clauses cover social and environmental issues. No mention is made of ore grades and production but bullion production is set at 1,700 kgs (54,400 ozs) in the first year rising to 3,300 kgs (105,600 ozs) at full production. Royalties are set at 20% which is abnormally high in relation to international norms.

#### **Comments:**

1. **Royalties:** At the time that these contracts were negotiated and finalised, the focus of the MoM was on the transition from operator to regulator and MoM was looking at ways of replacing the income derived from State Owned and Operated mines to income derived from royalties. The tender and bidding system often gave companies that offered a high royalty an advantage over technical and financial capacity.
2. **Exploration:** All contracts have been awarded as combined Exploration / Exploitation contracts. Due to inadequate exploration infrastructure and expertise, it is certain that exploitation will commence before exploration has been completed.
3. **Duration:** Despite the Law stating that contracts have a maximum duration of 30 years, there are two that have a term of 49 years. The others are for 10 year periods and this term is considered too short to get a return on investment capital.
4. **Surface Rights Fees:** In all cases, these are standard and set at \$ 25 per hectare per annum.
5. **Environmental:** Despite there being in existence a comprehensive Environmental Law and Regulations, requiring submission and acceptance of environmental impact and mitigation plans, no mention is made of these other than vague references in the contract to good practice.
6. **Social:** Defined infrastructural developments for social programs are detailed in the contracts and in some cases budgets are allocated for these projects.

These contracts must be seen in the light that they represent the first efforts at privatization of the mining industry. They are a transition from the Ministry operating State Owned Mines to assuming a regulatory and promotional function.

**Proposed Amendments to the Minerals Law.**

The amendments to the Minerals Law, that are now under consideration, will go a long way to rationalizing the process used in awarding mining contracts and make investment in the mining industry more attractive. The Ministry of Mines is moving to become an effective regulatory, supervisory, and monitoring authority, who will have capacity and full access to the mines in order to manage the industry in an efficient and transparent manner. Also publishing all the contracts in a regular timetable along with the status of implementation of these contracts would be a clear attempt to ensure the highest degree of transparency in managing Afghanistan’s mineral resources. This would be done by sharing the relevant information with the civil society, parliament, media and other stakeholder.