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MALAWI'S MINING OPPORTUNITY

Increasing Revenues,
Improving Legislation





ACKNOWLEDGEMENTS

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COVER PHOTO: Kayelekera uranium plant in Karonga.

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SUMMARY

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Greater tax revenues are critical for helping to eradicate poverty in the country. But this is likely to happen only if companies are required to pay more equitable taxes and royalties than hitherto, if mining taxes are standardised in conformity with international best practice and not open to Government discretion and if the sector is managed transparently. Yet none of these factors is currently in place in Malawi.

According to Government figures, Malawi produced minerals worth MK 21.9 billion in 2010 and MK 23.7 billion in 2011; it exported MK 17.8 billion in 2010 and MK 18.6 billion in 2011. Uranium produced by Paladin at its Kayelekera mine accounts for most production and exports¹. According to the Government, mining exports were worth \$114 million in 2010, equivalent to 10 per cent of all exports, and \$123 million in 2011².

The Government has committed itself to developing the mining sector, which is recognised as a priority in both the Growth and Development Strategy II (2012-2015) and the Economic Recovery Plan. In her State of the Nation Address in February 2013, President Joyce Banda stated that her Government is committed to promoting a 'transparent and accountable mining regime' in the country where 'its citizens are primary beneficiaries of the resources'. She emphasised the importance of improving the institutional framework, and noted that the Government is reviewing the Mines and Minerals Act of 1981³.

Mining could help Malawi step up a gear in promoting sustainable development. Greater revenues could provide more resources to invest in health, education and agriculture. However, a take-off in mining could alternatively bring the 'resource curse' that has afflicted other African countries, whereby rising revenues increase corruption and economic mis-management. The mining boom also poses other risks, such as the loss of livelihoods through forced displacement, land tenure conflicts between companies and communities, the pollution of waterways and the loss of forests⁴. Indeed, all of these things have

already occurred at various mines.

Raising more revenues from mining

Transparency problems in Malawi are such that figures on the country's total revenues from mining are not regularly available. Indeed, the only overall revenue figure provided by the Government is 'slightly over MK 2 billion' in 2010⁵. Even this low figure may be grossly exaggerated and it is unclear what taxes were paid to reach it. Even if the MK 2 billion figure is correct, this amounts to only 0.76 per cent of Government revenues in 2010. So whereas mining makes up around 10 per cent of Malawi's exports, it contributes less than 1 per cent of its total revenues (including grants from donors) and just 1.2 per cent of the domestic revenues raised in Malawi.

Malawi provides tax incentives – reductions or exemptions from paying taxes⁶ – to the mining sector, exporters and other companies supposedly to encourage investment. One recent estimate is that tax incentives in the mining sector have cost Malawi a minimum of **MK 86.4 billion** (\$217 million at current exchange rates) in the five years 2008-12, meaning an average of \$43.4 million a year⁷. Yet this calculation has been made on just two companies, meaning that actual losses from mining will be much higher. This revenue loss – which amounts to an average of MK 17.28 billion a year – is over 8 times larger than the revenues received by the Government from mining (according to the 2010 figure of MK 2 billion). Thus Malawians are in effect paying for the privilege of mining companies to operate in their country⁸. The MK 17.28 billion lost annual revenues could pay for over 60 per cent of the costs of the Ministry of Health in 2012/13 (K27.6 billion) or the entire budget (of MK 13.8 billion) for Public Universities⁹.

Paladin's tax payments

The most controversial agreement between the Government and a mining company in Malawi is that with Australian company Paladin, signed in 2007. The agreement has long been subject to widespread criticism in Malawi over the significant tax concessions given to the company and the fear that Malawi is gaining little from the agreement. The government reduced Paladin's corporate income tax rate, abolished its obligation to pay Resource Rent Tax, reduced its royalty rate to an initial 1.5 per cent (compared to national rate of 5 per cent), gave it other tax concessions and set these in stone for 'at least' 10 years¹⁰. In return for these concessions, the

Government acquired a 15 per cent stake in the project.

The agreement means that Paladin is paying very little in tax. Internal figures from Paladin obtained by the authors indicate that Paladin itself paid taxes of just **MK 444 million (\$1.6 million)** in FY 2012, based on exports worth \$127 million. This excludes payroll taxes paid by employees of the company not the company itself, which if added bring the tax total to MK 1.55 billion (\$5.75 million) in FY 2012. Yet in Paladin's 2012 Annual Report, the company claims that it paid \$9.6 million to the Government in 'a variety of Government taxes'¹¹. It is unclear how the company arrived at this higher figure in its public report.

Our analysis is also that Paladin paid even less than the 1.5 per cent royalty rate for its first three years of operation, as specified in the 2007 agreement. Figures show royalty payments of only \$2.58 million based on export sales of \$295.5 million – **a rate of just 0.87 per cent.**

There are also some uncertainties about how much uranium Paladin is actually exporting and whether reported uranium imports into Canada and Namibia match the reported exports from Malawi. Both the Government and the UN trade database give significantly higher export sales figures than reported by Paladin; these would have required Paladin to have made higher royalty payments. In 2010, UN figures show that Malawi exported \$114.3 million worth of uranium to Canada but that Canada recorded imports of only \$68.7 million – a difference of \$45.6 million.

Many transnational corporations have complex corporate structures involving subsidiaries and/or holding companies in secrecy jurisdictions and tax havens. Paladin has a complex group structure with 32 entities including several in Switzerland, the British Virgin Islands and Mauritius¹². Secrecy helps to undermine the regulations of other jurisdictions while providing an effective shield against investigations into tax avoidance and evasion. The use of tax havens by companies increases the possibility both of legal (but still often ethically questionable) tax avoidance and also of illicit capital flight.

Lost revenues from the Kayelekera mine

This study estimates that revenue losses to Malawi from the tax regime given to Paladin for its Kayelekera mine are around **\$205 million**, and could be as high as **\$281 million**, over the 13 years of the project. This amounts to a mean average of **\$15.8 million** a year (MK 6.5 billion)

but which could be up to **\$21.65 million** a year (MK 8.9 billion). The lost revenue from Paladin's mine could pay for critical services in Malawi. The MK 6.5 billion a year could pay for District Councils to more than double their procurement of drugs or more than double the allocation in the 2012/13 budget for recruitment of 16,000 Teachers for Primary, Secondary and Special Needs education¹⁴.

Improving Malawi's mining legislation

Malawi's current mining legislation has several deficiencies. First, the process for granting mining licences vests huge power in the Minister of Mines and his discretion, and does not require consultations with other stakeholders such as Parliament or civil society¹⁵. Second, many of the key terms under which companies operate in Malawi are determined by bilateral negotiations rather than consistent application of the law. The Mines and Minerals Act states, for example, that royalty rates are fixed by 'the mining licence concerned', ie in individual agreements¹⁶. This is a recipe for special treatment being accorded to some companies, and indeed for corruption.

Third, Malawi lacks key provisions in its mining legislation that could maximise the benefits to the country: the Mines and Minerals Act says nothing about companies being required to source a proportion of their supplies from Malawi ('local content') and neither are there provisions to ensure that communities in mining areas financially benefit from mining revenues. Fourth, Malawi lacks regulation, or adequate regulation, in certain other areas: although uranium mining is proceeding apace, there is no law or regulations governing this while protection for people displaced by mining is also inadequate.

It is encouraging that the Government is committed to revising this legislation, but progress is slow. Even worse is that the proposed revision of the Mines and Minerals Act represents a massive missed opportunity for more beneficial change. A draft of the proposed revision seen by the authors, dated January 2013:

- provides for the Government to 'have a right' to only 10 per cent of the equity in any mining operation - a substantial change from a previous (2010) draft of the Act which would have allowed the Government to acquire 'at least 30 per cent'¹⁷.
- would retain the ability of the Government and company to negotiate an individual royalty rate.
- says nothing about actual royalty or other tax rates payable by mining companies, and therefore misses an opportunity to revise these

upwards.

- would not require the Government to make public individual mining agreements.

Malawi's mining sector is notoriously opaque. Annual budget speeches by the Finance Minister do not specify revenues from mining and the Government does not systematically publish figures of its mining revenue. Neither are mining companies required to provide details of their tax payments in Malawi. Yet civil society calls for greater transparency are sometimes seen by Ministers and officials as a threat. Clearly, a major shift in culture is needed towards greater transparency.

Recommendations

The Government should:

- Make public and publish (online and in easily accessible media) its revenues from mining, including all taxes paid by mining companies in the country
- Require all mining companies working in Malawi to make public details of their tax payments to Government and other key financial data
- Calculate and annually publish figures on how much its 'tax expenditure' is (ie, revenue losses from tax incentives)
- Review all tax rates and tax incentives in the mining sector, in a wide public consultation that involves the participation of civil society groups, communities affected by mining, and independent analysts.
- Make public the current development agreement with Paladin as soon as possible and commit to making public all mining agreements signed with companies
- Negotiate a new mining agreement with Paladin by involving the participation of communities affected, civil society groups and others, to ensure that the fiscal and other terms are fair, and seen to be fair
- Ensure that non-political technical negotiation teams are established when negotiating

contracts with mining companies

- Develop mechanisms for ensuring that communities to be affected by mines are involved in the design of mining projects and agreements. Build this commitment into the revised Mines and Minerals Act.
- Ensure that mechanisms are put in place to implement transfer pricing legislation. Conduct an investigation of transfer pricing issues related to uranium sales,
- Ensure that an adequately revised Mines and Minerals Act is completed by December 2013.
- Ensure that the revised Mines and Minerals Act and the Minerals Policy: abolishes the ability of the Government and companies to establish a royalty rate in individual agreements; allows the Government to own at least 30 per cent equity in mining operations; places obligations on companies to procure a certain percentage of their supplies locally and to recruit or train more Malawians; ensures that communities in mining areas financially benefit from mining by reviewing options for this happen.
- Enact and implement legislation in areas where gaps exist, especially on uranium mining and resettlement

Paladin should:

- Provide explanations for the discrepancies on financial figures noted in this report.
- Make its current mining development agreement public.
- Commit to negotiating a new mining agreement with the Government.
- Publish detailed figures online on its tax and other payments to the Government.

Donors, including those providing mining technical assistance and the Government of Australia, should:

- Press companies operating in Malawi based in their countries to make the transparency and other commitments outlined in these recommendations.

INTRODUCTION

This report analyses Malawi's tax revenues from mining, focusing on how legislation can be improved to ensure that Malawians benefit more from the country's natural resources. The issue is critical in that mining has hitherto contributed relatively little to the country's revenues but is a growing sector. This report focuses on the largest mining project in the country: the Kayelekera uranium mine in northern Malawi, managed by Australian company, Paladin.

Greater tax revenues are critical for helping to eradicate poverty in the country. But this is likely to happen only if a number of measures are in place:

- if companies are required to pay more equitable taxes and royalties than hitherto
- if mining taxes are standardised in conformity with international best practice and not open to Government discretion
- if the sector is managed transparently
- if communities affected by mining are involved in decisions on mining using the Free Prior and Informed Consent approach and directly benefit from mining projects.
- If environmental and social safeguards are mainstreamed into agreements and enforced

None of these factors is currently in place in Malawi and this report makes recommendations on how to address these challenges.



Kayelekera uranium plant in Karonga. PHOTO CREDIT: Project Update: Kayelekera Mine, February 2013

1. MINING IN MALAWI

Until recently the mining sector in Malawi contributed relatively little to the economy and Malawi was not recognised as a significantly mining country, unlike its neighbours Tanzania, with large reserves of gold, and Zambia, a major copper producer. However, in the past five years, mining has somewhat taken off in the country. Uranium oxide (U₃O₈) was mined for the first time at the Kayelekera mine, becoming Malawi's first mine of significant scale by international standards¹⁸. Several Malawian and foreign companies, mainly from the UK, Australia, Portugal and China are now actively exploring amidst burgeoning global demand for natural resources to feed developed and emerging economies¹⁹. A

recent report by the Catholic Commission for Justice and Peace found that by July 2012 there were 166 companies operating in the mining sector, of which 59 were mining and 107 prospecting. Of these, 26 companies had been given prospecting licences for uranium²⁰. In 2012, the Minister of Energy and Mining also issued six prospecting licenses for oil exploration in Lake Malawi.

As well as uranium and oil, Malawi has significant quantities of coal, limestone, niobium, rare earths, bauxite, nickel, gemstones such as rubies, sapphires and diamonds and heavy mineral sands²¹. (see Table 1)

Table 1: Mining reserves in Malawi

Deposit	Location	Reserves (Million tonnes)
Bauxite	Mulanje	28.8
Uranium	Kayelekera	12.5
Monazite/Strontianite	Kangankhunde Karonga/Chitipa	na
Corundum	Chimwadzulu-Ntcheu	11.0
Graphite	Katengeza-Dowa	8.0
Limestone	Malowa Hill-Bwanje Chenkumbi-Balaka	15 10
Titanium Heavy Mineral Sands	Nkhotakota - Salima - Chipoka Mangochi	Halala (Lake Chilwa) 700 (at grade 5.6% HMS); 680 (at grade 6.0% HMS) 15 (at grade 6.0% HMS)
Vermiculite	Feremu - Mwanza	2.5
Coal	Mwabvi-Nsanje Ngana -Karonga	4.7 (at grade 30% ash) 15 (at grade 21.2% ash)
Phosphate	Tundulu -Phalombe	2.017
Pyrite	Chisepo-Dowa Malingunde-Lilongwe	34 (at grade 8%S) 10 (at grade 12%S)
Glass sands	Mchinji Dambos	1.6
Dimension Stone	Chitipa, Mzimba, Mangochi, Mchinji	Black, blue,pink, green granite
Gemstones	Mzimba, Nsanje, Chitipa, Chikwawa, Rumphu, Ntcheu	Numerous pegmatites and volcanics

Sources:

Ministry of Development Planning and Cooperation, Annual Economic Report 2011, 2011, p.46;
Malawi Investment Promotion Agency, http://www.malawi-invest.net/inves_opp_min.html

1.1 Mining production, exports, GDP and employment

According to Government figures, Malawi produced minerals worth MK 21.9 billion in 2010

and MK 23.7 billion in 2011; it exported MK 17.8 billion in 2010 and MK 18.6 billion in 2011 (see Table 2). Uranium produced by Paladin at its Kayelekera mine accounts for most production and exports²².

Table 2: Mining production and exports, 2010 and 2011

	2010 Exports (MK million)	2010 Exports (MK million)	2011 Production (MK million)	2011 Exports (MK million)
Uranium	18,394	17,246	20,046	18,460
Rock aggregate	2,050	25	2,152	12
Coal	627	123	658	71
Gemstones	606	373	636	na
Others (limestone, clay, agricultural lime, dimension stones)	200	20	214	11
Total mining sector	21,878	17,786	23,706	18,554

Sources:

Ministry of Development Planning and Cooperation, Annual Economic Report 2011, pp.39, 42; Sansless Mugudugudu, 'Malawi Mining Sector's Economic Report', Presentation, November 2012

Nb. Figures have been rounded

According to the Government, mining exports were worth \$114 million in 2010, equivalent to 10 per cent of all exports, and \$123 million in 2011²³. Figures from UN's Comtrade database are that uranium exports were worth:

- \$122.3 million in 2011
- \$114.3 million in 2010
- \$8.5 million in 2009²⁴

Export figures are of course different than Government revenues (see section 2). Indeed, Malawi's National Export Strategy 2013-18, produced in December 2012, makes a crucial point in stating:

'From a development perspective such exports [ie, mining exports] offer little human development and few economic spillovers and such spillovers can only be generated if a strong manufacturing base can be developed'²⁵.

In similar vein, mining's contribution to GDP can also by itself be misleading since GDP figures

measure only the size of economic activity not revenues to Government or other benefits. An additional problem is that there are wildly different estimates available in Malawi as to the mining sector's contribution to GDP. The Government's Growth and Development Strategy claims that the contribution of mining to GDP rose from 3 per cent to 10 per cent due to the opening of Paladin's mine in 2009²⁶. The Deputy Director of Mines claimed in November 2012 that mining currently accounts for 20 per cent of GDP²⁷. However, these figures are likely to be exaggerations. IMF data show that mining accounted for only 2.9 per cent of GDP in 2010 and 2.8 per cent in 2011. Other Government figures are similar to these lower estimates: for example, figures from the Reserve Bank of Malawi estimate that mining/quarrying's contribution to GDP is 1.8 per cent in 2010, 1.5 per cent in 2011 and 1.3 per cent in 2012 (measured by GDP at current prices)²⁹.

The mining sector is a relatively small contributor to employment in Malawi, and is estimated to employ around 21,000 people. The overwhelming majority are artisanal, small-scale miners, around 12,000 of who work in quarry production. Uranium and coal mining each employs less than 1,000 people³⁰.

1.2 The Government's support to mining

The Government has committed itself to developing the mining sector, which is recognised as a

priority in both the Growth and Development Strategy II (2012-2015) and the Economic Recovery Plan (See Box 1). In her State of the Nation Address in February 2013, President Joyce Banda stated that her Government 'is committed to promotion of a conducive, transparent and accountable mining regime in this country' and called for Malawi to develop a 'mining industry where its citizens are primary beneficiaries of the resources'. She emphasised the importance of improving the legal and institutional framework, and noted that the Government is reviewing the Mines and Minerals Act of 1981³¹.

Box 1:
Focus on mining in Malawi's Growth and Development Strategy II (2012-2015)

*'The sector faces numerous challenges including inadequate institutional capacity, outdated policies, low investment and non existence of a corporate entity to look at Government and local Malawian shareholding in mining ventures. It is for this reason that Government, through the MGDS II will continue to create an enabling environment to attract more investments into the subsector. Mining is a key priority area'*³²

'Government recognises that the development of the mining industry can significantly improve the country's foreign exchange earnings and contribute to economic growth and development. To derive maximum potential of the mining industry, Government will pursue the following goal, expected outcomes and key strategies.

Goal

The goal is to increase production and value addition of mineral resources.

Medium-Term Expected Outcomes

The medium-term expected outcomes include the following:

- Updated geological information system
- Increased exploration and mining
- Increased participation by small and medium miners
- Improved legal and institutional framework.

Key Strategies

The following are the key strategies for realizing the sector's objectives:

- Producing detailed geological map of Malawi
- Strengthening institutional capacity of the sector
- Developing an integrated data management system
- Strengthening seismic monitoring
- Promoting both local and foreign investment
- Enforcing environmental, occupational health and safety in the mining sector
- Enforcing legislations on sustainable use and management of mineral resources.³³

1.3 The potential and risks of Malawi's mining boom

Mining could help Malawi step up a gear in promoting sustainable development, as noted further in following sections. Greater revenues could provide more resources to invest in health,

education and agriculture. Mining could also promote economic development away from Malawi's main urban and commercial centres since mines or potential mines are located in areas such as Karonga, Rumphi, Kasungu, Mchinji, Salima and Mulanje which have limited alternative sources of economic activity.

Box 2: Mining's potential revenue benefits

Mining can benefit a country financially mainly by:

- The taxes paid by the mining companies, such as a royalty paid as a percentage of sales, corporate income tax paid as a proportion of profits, other taxes on mining equipment such as import taxes and excise duties and on expenditure by mining companies such as VAT
- Spending by mining companies in procuring goods and services in country
- Employing workers, who themselves will both spend money in the economy and also contribute to Government revenues by paying payroll (PAYE) taxes
- The 'spillover' effects of mining activities such as by promoting local ancillary services (eg, catering) or broader economic activities (such as processing or manufacturing)

However, mining companies in Africa have over the past two decades been given overly favourable treatment by Governments which have set taxes at often low rates to supposedly attract foreign investment; in addition, they have given mining companies tax incentives to reduce their tax liabilities still further. In recent years, several African Governments have revised their tax rates upwards and have committed to reviewing the widespread tax incentives they offer foreign companies, including in the mining sector³⁵. Other uranium-producing countries in Africa, such as Namibia, Niger and South Africa, have made changes to the fiscal regime in the Government's favour in the past few years: Niger, for example, has negotiated selling rights for uranium, enabling it to secure better prices and the Namibian Government has raised royalty rates for Rio Tinto's Rossing mine (from 2 to 3 per cent and then to 6 per cent).³⁶

These changes have come as a result of the recognition that African countries have largely had a raw deal from mining contracts – despite often large exports of minerals, Government revenues have often remained low and mining has in reality often contributed little to economies or development in many countries.³⁷

However, there are also major risks to the development of mining in Malawi. A take-off in mining could bring the 'resource curse' that has afflicted other countries in Africa, whereby rising

revenues increase corruption and economic mismanagement that can even deepen poverty (see Box 3).

Box 3: The 'resource curse'?

The World Bank's 2009 review of Malawi's mining sector noted:

'With the amount of revenue that could potentially be generated from the mineral sector, it is necessary that the Government employs robust tax collection measures and adequately equips the revenue agencies to implement them. Without appropriate safeguards there is a risk of substantial tax leakage, thereby reducing the value of mineral resources to the country, undermining the integrity of the fiscal regime, and breeding public mistrust and opposition to mining. The Malawi Revenue Authority, in particular, has limited experience in assessing mining company tax returns and in conducting the requisite audits. Both the magnitude and volatility of mineral-based revenues flows must be factored into Government policies for managing public finances in order to avoid dislocation of the economy through the "resource curse".³⁸

The mining boom also poses several social and environmental and risks, such as the loss of livelihoods through forced displacement to make way for mining, land tenure conflicts between companies and communities, the pollution of waterways such as the Shire River and Lake Malawi and the loss or degradation of forests and protected areas and other sites of high conservation value.³⁹ Indeed, all of these things have already occurred at various mines (see box 10).

Addressing these risks, and avoiding the resource curse, requires actors in Malawi, and especially the Government, to put in place several important measures. These include promoting:

- An optimal tax regime that balances the need to attract investment with the need to maximise revenues, and a clear, non-discretionary tax regime that provides a level playing field for all companies
- Adequate legislation so that environmental, social, health, and safety standards are established, and protected in practice, so that mining companies are aware of their obligations

and communities are aware of their rights

- Transparency in all areas of the mining sector, so that the public is able to scrutinise company and Government policy and tax payments and receipts, and ensure that revenues are well-spent
- Participation of non state actors and communities in monitoring mining projects, from inception to decommissioning

Yet Malawi lacks all four of the above. A major problem is that the mining boom in the country is taking place before the essential measures outlined above have been put in place. As the World Bank warned four years ago:

'Key to the management of potential downstream impacts will be appropriate sequencing of project activities, such that the identification of risks and establishment of mitigation systems (as described below) do not lag behind the promotion of additional investments in the sector.'⁴⁰

It is therefore imperative that Malawian authorities act urgently to put in place the currently missing measures.

2. RAISING MORE REVENUES FROM MINING

Malawi could and should be earning much more from mining than is currently the case.

2.1 The current mining tax regime

The taxes payable by mining companies are set out mainly in the Mines and Minerals Act of

1981, the accompanying Mines and Minerals (Royalty) Regulations, and the Taxation Act of 2006. Table 3 outlines the key fiscal terms, which include a 5 per cent royalty rate for uranium, a 30 per cent corporate income tax and standard rates of VAT and import duty, with some exemptions for mining equipment.

Table 3: Tax rates in the mining sector

Royalty	Royalty rates are fixed by 'the mining licence concerned', ie in individual agreements (Mines & Minerals Act 1981). ⁴¹ Regulations pertaining to royalties specify a rate of 5 per cent for uranium and precious metals, 10 per cent for precious and semi-precious stones if exported as uncut stones, and 5 per cent if exported in any other state. ⁴² The royalty is paid on the 'gross value' of sales ⁴³
Income tax	All companies: 30 per cent of profits for Malawi-registered companies and 35 per cent for foreign companies (Taxation Act of 2006) ⁴⁴
Resource Rent Tax	Mining sector only: An additional 10 per cent of profits if the company's rate of return exceeds 20 per cent (Taxation Act of 2006) ⁴⁵
Import/customs/excise duty	All companies: rate varies by item. Mining sector: exemption for mining machinery, plant and equipment
VAT	All companies: standard rate of 16.5 per cent but exemptions on several items. Mining sector: Exemption for mining machinery, plant and equipment

Malawi's mining taxes are largely standard for Africa. For example, the 30 per cent corporate income tax rate in Malawi is higher than in Botswana (25 per cent), Tanzania (25 per cent) and South Africa (28 per cent) but lower than in Zambia (33 per cent) and Namibia (34 per cent).⁴⁶ The 5 per cent uranium royalty rate is higher than in Namibia (mainly, 3 per cent) and South Africa (1.75 per cent of gross sales when profits are 10 per cent of gross sales), the same as in Tanzania and Australia (5 per cent) and lower than in Niger (5.5 per cent). The Ministry of Development Planning and Cooperation has stated: 'It has to be noted that the royalties charged for exports of minerals and licencing fees are still far on the lower side compared to other countries within the SADC region.'⁴⁷

But there are two distinct features of Malawi's mining tax regime:

- the royalty rate is open to individual negotiation with companies, according to the Mines & Minerals Act, but the rate (of 5 per cent) is specified in the Regulations; this is a contradiction.
- The Resource Rent Tax – essentially a windfall tax imposed when a company makes high profits - is intended to enable the country to capture some of the additional profit that might be generated by an exceptionally rich mineral deposit and/or when mineral prices are high. According to the World Bank, 'such windfall taxation was a sensible complement to the imposition of a modest flat-rate royalty and an income tax with quite generous allowances'.⁴⁸

2.2 How much is Malawi earning from mining?

Transparency problems in Malawi are such that figures on the country's total revenues from mining are not regularly available. Indeed, the only overall revenue figure provided by the Government is **'slightly over MK 2 billion' in 2010**.⁴⁹ Of this figure, the source noted that MK 172.6 million went to the Department of Mines in royalties, licence processing and ground fees but no further breakdown was provided and it may be grossly exaggerated. It is unclear which other taxes would enable the Government to reach MK 2 billion. In dollar terms, MK 2 billion translates

to around \$13.2 million (using the \$1: MK 152 exchange rate cited by the source). In 2011, the Government stated that its total revenues from royalties (only) amounted to just MK 304 million.⁵⁰ The authors have been told by the Ministry of Mines that Government revenues from royalties amounted to MK 700 million in 2012.⁵¹

Even if the MK 2 billion figure is correct, this amounts to only 0.76 per cent of Government revenues in 2010. So whereas mining makes up around 10 per cent of Malawi's exports, it contributes less than 1 per cent of its total revenues (including grants from donors) and just 1.2 per cent of the domestic revenues raised in Malawi.

Table 4: Mining production, exports and revenues, 2010

Mining Production (MK billion)	Mining Exports (MK billion)	Government revenues from mining (MK billion)	Government revenues as % of production / exports	Mining revenues as % of all Government revenues / of domestic revenues minus grants
21.9	17.8	2	9.1 / 11.2	0.76 / 1.2 ⁵²

Sources:

Ministry of Development Planning and Cooperation, Annual Economic Report 2011, pp.39, 42; Ministry of Development Planning and Cooperation, Annual Economic Report 2011, p.42

Box 4: The importance of taxes

Taxes are critical to Malawi. In 2010/11 (the latest available figures) the Government raised MK 176 billion in taxes out of total revenues of MK 272 billion: this is nearly three times more than the value of aid from donors.⁵³ The Government's July 2012 Letter of Intent to the IMF stated its commitment 'to strengthening its revenue mobilisation efforts in order to reverse the recent marked decline in domestic revenue in relation to GDP'.⁵⁴

2.3 How much is Malawi losing in potential revenues from mining?

Malawi provides tax incentives – reductions or exemptions from paying taxes⁵⁵ – to the mining sector, exporters and other companies supposedly to encourage investment. It should be noted, however, that there is a large literature suggesting that tax incentives are not needed to

encourage investment.⁵⁶ Tax incentives in Malawi are enshrined in the main tax legislation such as the Customs and Excise Act, the Income Act and the Export Processing Zones (EPZ) Act. In the mining sector, companies receive three sets of incentives (see Box 5) which together can amount to significant revenue savings by companies, and lost income for Governments.

Box 5:
Tax incentives in Malawi

Tax incentives for mining companies

- No customs duty, excise duty or and VAT for mining machinery, plant and equipment.⁵⁷
- Mining expenditure in any year of assessment is entitled to an allowance (ie, can be deducted against tax) equal to 100% of such expenditure in the first year of assessment.⁵⁸
- Trading losses can be carried forward without restriction for mining, manufacturing and agriculture companies, whereas the limit is six years for other sectors.⁵⁹

Tax incentives for all companies

- 100 per cent investment allowance on qualifying expenditure for new building and machinery
- Allowance up to 40 per cent for used buildings and machinery
- 50 per cent allowance for qualifying training costs
- Allowance for manufacturing companies to deduct all operating expenses incurred up to 25 months prior to the start of operations
- Loss carry forward of up to seven years (according to Malawi Investment Promotion Agency; six years according to other sources⁶⁰), enabling companies to take advantage of allowances
- Additional 15 per cent allowance for investment in designated areas of the country such as Kanengo, Chirimba and Luwanga Industrial sites;
- Free repatriation of dividends, profits, and royalties.

Tax incentives for exporters

- Transport allowance. An additional 25 per cent of international costs incurred by the taxpayer for his exports.
- Training allowance. An additional 50 per cent of the costs incurred by the taxpayer during the year of assessment in the training of an employee who is a Malawian, intended to enable him/her to attain a qualification at the degree, diploma or certificate level.
- Losses allowance. From the amount of assessable income there shall be deducted any assessed loss arising solely out of trading operations in Malawi.
- Investment allowance. For manufacturing companies, an allowance is given equal to 40 per cent of the cost of new and unused industrial building and plant and machinery and equal to 20 per cent of the cost of used industrial buildings and plant and machinery.
- Annual allowance given in respect of capital expenditure incurred by the taxpayer.
- Initial allowance given in respect of expenditure incurred by the taxpayer during the year of assessment at 40 per cent.
- Surtax, which is leveled at 17.5 per cent, is reclaimable on all eligible inputs and operates on the same principles as VAT.⁶¹

Unlike some other African Governments, Malawi's annual budget speech and figures do not provide details on the country's 'tax expenditure', ie, lost revenues from providing incentives.

An additional critical point is that individual companies have been given tax incentives in addition to those offered to all mining companies – such as Paladin, analysed in the next section. One recent estimate is that tax incentives in the mining sector have cost Malawi **a minimum of MK 86.4 billion (\$217 million at current exchange rates) in the five years 2008-12, meaning an average of \$43.4 million a year.**⁶² Yet this calculation has been made on just two companies (it is not disclosed which two), meaning that actual losses from mining will be much higher. The MK 86.4 billion sum is

the total estimate of revenue losses from the various tax incentives provided to these two companies based on analysis of the companies' financial statements.

The estimated loss of MK 86.4 billion amounts to an average of MK 17.28 billion a year; this is more than 8 times larger than the revenues received by the Government from mining (according to the 2010 figure of MK 2 billion). Thus Malawians are in effect paying for the privilege of mining companies to operate in their country. The tax incentives given to mining companies are far larger than those given to any other sector, according to the analysis cited above: the Manufacturing sector benefitted by only MK 8.2 billion and Retail by only MK 3.4 billion over the same period.⁶³

Box 6:
What could the lost revenues from tax incentives pay for?

The MK 17.28 billion estimated lost annual revenues from tax incentives in the mining sector could pay for⁶⁴:

- Over 60 per cent of the costs of four key safety net programmes in Malawi which together cost K27.5 billion in the 2012/13 budget: the Intensive Public Works Programme, the School Feeding Programme (targeted towards 980,000 pupils in primary schools), the Schools Bursaries Programme (targeting 16,480 needy students), and the Social Cash Transfer Programme (which intends to reach over 30,000 households across the country).
- Over 60 per cent of the costs of the Ministry of Health in 2012/13 (K27.6 billion).
- The entire 2012/13 budget (of MK 13.8 billion) for Public Universities (including the University of Malawi, Lilongwe University of Agriculture and Natural Resources and the yet to be opened Malawi University of Science and Technology).
- Nearly half the costs (of MK 40.9 billion) of the Farm Input Subsidy Programme, that provides subsidised inputs to small farmers, in 2012/13

2.4 How much could Malawi earn from mining in the future?

There are different forecasts available on how much Malawi might earn from mining in future. In its 2009 Mining Sector Review of Malawi, the

World Bank estimated that the mining sector could be worth \$500 million - \$1 billion by 2020, producing Government revenues of \$50-\$100 million a year. It stated that mining could account for as much as 10 per cent of GDP and 20-25 per cent of exports (see Table 5).⁶⁵

Table 5: Potential direct economic benefit of the mineral sector, estimated by the World Bank, 2009

	2008	2009 - 2012	2013-2019	>2020
Value of Output	\$ 7 million	\$250, 000 million (5-6 % of GDP)	\$400 million	\$500 - 1000 million
Exported (%)	10%	95% (20-25% of exports)	90%	85%
Government Revenue	<\$250, 000	\$5 million	\$20 - \$30 million	\$50 - \$100 million

Source:

World Bank, Malawi Mineral Sector Review: Source of Economic Growth and Development, July 2009, p.5

Malawi's National Export Strategy 2013-18, produced in December 2012, forecasts that mining exports will increase from \$114 million in 2010

to \$246 million in 2017 and to \$493 million by 2027.

Table 6: Government mining export forecasts (\$ million)

Year	2010 (Actual)	2011 (Actual)	2017	2022	2027
Value	114	123	246	369	493

Source: Ministry of Industry and Trade, Malawi National Export Strategy 2013-18, December 2012, p.22

Malawian officials have given other estimates. In 2009, for example, the Director of the Geological Surveys Department, Leonard Kalindekafe, was quoted as saying that Malawi expects to earn over \$500 million a year from four recently launched or planned mining projects: the Kanyika mine managed by Globe Metals & Mining (which was said to contribute \$50 million in year in taxes and other revenues, but which has not yet started); Paladin's Kayelekera uranium mine (\$50 million), the Kangankunde rare earth project in Balaka (\$50 million) and the Mulanje bauxite project (\$350 million, but which has now

been subsumed in favour of a rare earths project at Songwe Hills).⁶⁷

Malawi is currently a long way off these figures. And it is also important to note that three of the above-mentioned projects (Kanyika, Kankangunde and Songwe Hills) are still at inception phase and are likely to run into resistance from local communities and civil society organisations due to the non-inclusive, opaque processes so far adopted in the negotiations on these mining agreements.

3. PALADIN'S TAX PAYMENTS

The most controversial agreement between the Government and a mining company in Malawi is that with Australian company Paladin, signed in 2007. The agreement has long been subject to widespread criticism in Malawi over the significant tax concessions given to the company and the fear that Malawi is gaining little from the agreement. In early 2013, it was reported that

the Government and Paladin had begun to renegotiate the agreement.⁶⁸ Below, new estimates are made of the revenue losses from Paladin's mine. The issue is critical because unless the Malawian Government learns the lessons of the agreement with Paladin, the country will be set to continue to benefit little from mining.

Box 7: Paladin and the Kayelekera mine

Paladin is a uranium production company based in Australia with projects in Australia and two mines in Africa (Namibia and Malawi). The Kayelekera mine is located near Karonga at the northern end of Lake Malawi, 575 kms north of Lilongwe. The mine is owned 100 per cent by Paladin (Africa) Limited, a subsidiary of Paladin. A Mining Development Agreement was signed between the company and the Government in February 2007. A Mining Licence, covering 5,550 hectares, was granted in April 2007 for a period of fifteen years. Construction of Kayelekera began in June 2007 at a budgeted cost of \$200 million, open pit mining commenced in June 2008, and the mine was officially opened in April 2009 by then President Mutharika.⁶⁹ In July 2009, Paladin issued 15 per cent of equity in the mine to the Government under the terms of the Development Agreement.⁷⁰

According to Paladin's website, 'project life is expected to run for at least an additional 8 years with exploration underway to identify feedstocks to extend the current project life'.⁷¹ The company estimates the mine to have uranium octoxide (a form of uranium oxide) reserves of 20 million pounds⁷² while the mine is designed to produce 3.3 million pounds annually.⁷³ In Financial Year (FY) 2012, the mine produced 2.48 million pounds of uranium oxide.⁷⁴ Paladin states that it sells the uranium to 'major utilities and other entities located mainly in USA, Australia, China, Taiwan and UK'.⁷⁵ But all its uranium exports are recorded by the UN's Comtrade database as going to Canada or Namibia, where Paladin operates subsidiary companies.⁷⁶

3.1 The 2007 mining agreement

The 2007 Development Agreement between Paladin and the Government has never been made public in full and is reportedly bound by a non-disclosure agreement.⁷⁷ In April 2013, however, the media reported that Paladin would make the agreement public, in the face of calls over several years from various quarters to do so.⁷⁸

In February 2007, Paladin lodged a letter to the Australian Stock Exchange highlighting some of the fiscal terms in the agreement, which show the large range of tax concessions given by the Government.⁷⁹ These were:

- Corporate income tax rate reduced from 30 per cent to 'an effective 27.5 per cent'. (Nb. It is unclear what 'effective' means)
- Resource Rent Tax of 10 per cent reduced to zero
- Reduced royalty rate from 5 to 1.5 per cent (in years 1-3) and to 3 per cent (after year 3)
- No import VAT (17.5 per cent) or import duty during the 'stability period' (Nb. It is unclear what 'stability period' means)
- An immediate 100 per cent capital write-off for tax purposes
- Thin capitalisation⁸⁰, with a debt/equity ratio of 80/20
- Tax stability period of 'at least' 10 years with no changes to the fiscal regime.⁸¹

In return for the concessions on the royalty rate and the Resource Rent Tax, the Government was given 15 per cent equity ('carried interest') in the project. According to the World Bank, this trade-off employed powers available under the Malawi Revenue Authority Act for the Minister of Finance, on the advice of the Board of the Malawi Revenue Authority, to forgo tax revenue in exchange for equity of equivalent or superior economic value.⁸²

The February 2007 mining agreement was contested by the Civil Society Mining Network of Malawi - a group of civil society organisations - which launched a legal action against the Government to seek a court ruling on the project's compliance with legal, social, economic and environmental requirements. An out of court settlement was reached with Paladin in November 2007 which included a commitment by the company to:

- Spend up to \$8.2 million on a water treatment plant to serve the 30,000 residents of Karonga
- Deposit \$1.8 million into a fund for community development projects
- Upgrade Karonga airport, refurbish a dirt road from the airport to the mining site and introduce jatropha to farmers and processing plants that would produce bio-diesel.⁸³

Problems with the agreement

There are several major problems with the terms of the agreement:

First, some concessions given to Paladin are either contrary to, or go beyond, Malawi's mining and taxation legislation and regulations, such as the reduction in corporate income tax, the exemption from Resource Rent Tax and the exemption from all import VAT (although all mining companies are already exempt from VAT on mining machinery, plant and equipment). Neither is there legislation in Malawi concerning thin capitalisation.⁸⁴

Moreover, there is no specific provision in the Mines & Minerals Act 1981 for fiscal stabilisation. Recent calls to change the fiscal terms given to Paladin have been met by the company citing precisely the 10 year stability agreement to argue against making such changes.⁸⁵ In addition, the ability to write off all capital expendi-

ture for tax purposes is very generous, meaning that Paladin will be able to recoup hundreds of millions of dollars worth of expenditure before it is liable to pay corporate income tax.

Second, the royalty rate agreed by the Government is extremely low; indeed, it appears to be the lowest in Africa and the world for uranium. A study of five uranium mines in Africa by the Netherlands-based NGO, SOMO, found that Paladin secured the lowest royalty rate for its Kayelekera mine. Its initial 1.5 per cent compares to 3 per cent payable by Rio Tinto in Namibia and by Paladin itself in Namibia, 5.5 per cent by SOMAIR in Niger and COMINAK in Niger and 1.75 per cent by AngloGold Ashanti in South Africa.⁸⁶

A third concern is the absence in the agreement (from what has been made public) of any mention of the price at which Paladin will export its uranium. This is a key issue given that multinational companies are often able to inflate or deflate prices of commodities sold between their subsidiaries to pay less taxes in lower tax jurisdictions (transfer pricing).

Finally, Paladin was apparently also given a further, little-noticed concession related to its required spending on community development. According to Paladin's Annual Report 2012, the required \$10 million spend 'has been recognised as an intangible asset and is being amortised over the life of the mine estimated to be 9 years on a straight-line basis.'⁸⁷ This means that the company's obligatory community development spending can be offset against tax, reducing company tax liability to the Government still further.

3.2 How much is Paladin paying in tax?

The table below, using figures in an internal document from Paladin, shows the company's export sales, tax payments and community development spending. The table shows, among other things, that Paladin has exported \$329.8 million of uranium since 2009, on which it has paid royalties of \$3.64 million. Paladin also states in the same source that it will pay \$10-40 million a year in taxes once its tax losses are utilised and that the dividend payment to the Government from its 15 per cent stake will be \$3-10 million a year.⁸⁸

Table 7: Figures from Paladin on its tax payments

	1. July – October 2012 (4 months)	2. Year 2012 (July 2011 – June 2012)	3. Year 2011 (July 2010 – June 2011)	4. Year 2010 (July 2009 – June 2010)	5. Year 2009 (July 2008 – June 2009)	6. TOTAL
1. Exports of uranium (million lbs)	0.74	2.31	2.32	0.64	..	6.0
2. Export sales (\$ million)	34.4	126.7	100.3	68.5	..	329.8
Taxes paid						
3. Royalties MK million (\$)	331.5 (1.06) (a)	182.8 (0.68) (a)	215.0 (1.42) (a)	71.5 (0.48) (a)		800.9 (3.64) (a)
4. Payroll taxes (MK million)	573	1,110	907 5	99	191	3,379
5. With-holding taxes (MK)	235	239	188	222	20	904
6. Non-residence taxes (MK million)	4.5	22	29	158	49	262
Community spending						
7. Water project (\$ million)	..	..	10	..	..	10
8. Other social development projects (\$ million)	0.23	1.1	1.3	1.6	1.8	6.1
9. Purchases from Malawian businesses (MK million)	3,796	6,848	6,377	6,496	16,761 (b)	39, 917
<i>Exchange rate (MK/\$)</i>	<i>313</i>	<i>270</i>	<i>151</i>	<i>149</i>	<i>145</i>	<i>..</i>

Source: Paladin, 'Summary of Economic Benefits to Malawi', October 2012

All figures provided by Paladin except:

(a) Exchange rate calculations into \$ done by authors

(b) according to Paladin, also includes expenditure before FY 2009

The \$10 million cited by Paladin for the 'water project' under community spending appears to include \$8.2 million on the water project and \$1.8 million on other community development, as in the 2007 agreement

The figures in the table above raise a number of concerns and questions. In particular there are several discrepancies between these figures and some of Paladin's public reporting:

Overall tax payments

The figures in Table 7 indicate that Paladin paid a total in taxes of MK 1.55 billion (\$5.75 million) in FY 2012 (ie, the sums of rows 3-6 in column 2). Yet in Paladin's 2012 Annual Report, the company claims that it paid \$9.6 million to the Government in 'a variety of Government taxes' in FY 2012 (but does not provide a breakdown).⁸⁹ It is unclear how the company arrived at this higher figure in its public report.

The Malawi Government has never publicised how much it has received from Paladin in all taxes (although it has provided figures for how much it has received in royalties). Occasional media reports have carried Paladin's claims as to its tax payments but otherwise the only figure publicly available is that in company's 2012 Annual Report noted above. Paladin has not provided figures in previous Annual Reports.

It should also be noted that the figure of MK 1.55 billion in taxes includes payroll taxes, which are paid by employees of the company not the company itself, although these tax payments are a benefit to Malawi. The taxes actually paid by Paladin in FY 2012 amounted to just MK 444 million (\$1.6 million).

Paladin's actual tax payments are a far cry from the grandiose claims made by the company and Government in the past. In 2009, for example, Paladin chair John Borshoff was reported as saying that Malawi can expect \$45 million in taxes from the mine each year.⁹⁰ Three years on, Malawi is receiving around one-eighth of this figure (based on the \$5.75 million figure noted above). Even further away from reality was the claim in January 2008 by then Finance Minister Goodall Gondwe; he stated that the Government could earn \$1.6 billion in revenues over 10 years from its 15 per cent stake in the Kayelekera mine.⁹¹

Royalty payments

The table above shows that Paladin paid royalties of \$3.64 million from 2009 – October 2012, based on export sales of \$329.8 million. In the first three years of its production (2010-2012) Paladin should have been paying 1.5 per cent of its sales in royalties, but these figures show royalty payments of only \$2.58 million for those

first three years, based on export sales of \$295.5 million – this is a rate of just 0.87 per cent. It is unclear why Paladin has not paid 1.5 per cent. By contrast, the royalty payment for the four months July-October 2012 matches the 3 per cent that the company is required to pay.

Corporate income tax

The table above shows that Paladin has made no corporate income tax payments. Paladin's annual reports state that the company made losses of \$184.9 million in FY 2012 and of \$23.9 million in FY 2011.⁹² However, the company reported a profit before income tax of \$7.9 million in FY 2010, and an income tax 'expense' of \$2.6 million.⁹³ This 'expense' was not paid because, as noted above, Paladin is able to offset its losses and operating costs against its tax liability; only when these losses are recouped will tax become payable. Losses in 2011 and 2012 were put down by the company mainly to a fall in uranium prices as a result of the Fukushima disaster in 2011.

It is unclear when corporate income taxes will become payable. However, a 2009 US embassy cable reports Paladin's Managing Director Neville Huxham telling the US Ambassador that 'Paladin expects to break even on its... investment in three years. The Government of Malawi stands to generate nearly \$4 million per year in royalties alone, plus corporate taxes and revenue from its 15 per cent stake in Paladin.'⁹⁴

Local purchases

The table above shows that Paladin spent MK 6.8 billion (\$25.4 million) on purchases from Malawian businesses in FY 2012. Yet in Paladin's Annual Report 2012, the company claims to have spent \$48 million on local suppliers in FY 2012 (which, it says, amounted to 31 per cent of its total spend.)⁹⁵ Paladin reportedly stated in December 2012 that:

'In every single week we operate, we inject more than US\$1 million into Malawi's economy because we are paying taxes, we are employing people, we are feeding people and we are buying things from Malawi businesses...So even though there is no profit, there is US\$60 or more million dollars a year going into the Malawi economy. This is on top of the forex that we earn from uranium sales.'⁹⁶

Again, it is unclear how the company arrived at this \$60 million figure. The figures in the table above suggest that total company spending on taxes and local purchases amounted to \$32.1 million in FY 2012 (the sum of figures in column 2).

Table 8: Summary of discrepancies

Issue	Figures from Paladin obtained by the authors	Paladin's public reporting
Amount of tax paid	\$5.75 million in FY 2012	\$9.6 million in FY 2012
Royalty payments	\$2.58 million during 2009-2012 - a rate of 0.87 per cent	1.5 per cent royalty rate
Purchases from Malawian businesses	MK 6.8 billion (\$25.4 million) in FY 2012	\$48 million in FY 2012
Total company spending on taxes and purchases	\$32.1 million in FY 2012	US\$60 million a year

Paladin states that it is making a big investment in Malawi, and that the country is benefitting from a variety of revenue streams, and this comes while the company has not yet earned 'a single Kwacha' in return on its investment.⁹⁷ In August 2012, Paladin said that it has invested more than \$500 million in the mine.⁹⁸ This is a large amount of money, but it should be noted that this investment by itself only benefits the country (as opposed to the mining operation) in terms of the revenue streams, infrastructure or other benefits, that it produces.

Paladin also noted in August 2012 that the mine had benefited over 2,500 people through employment, including 887 Malawi nationals still working there.⁹⁹ The company's Annual Report 2012 states that 741 people were employed at the Kayelekera mine, of whom 84 per cent were Malawians.¹⁰⁰ Such employment clearly benefits Malawians although it should be noted that this employment is small-scale, similar to all multinational mining operations. In January 2013, Paladin announced the retrenchment of 110 workers at the mine, due to falling uranium prices.¹⁰¹ It then announced that it was reducing its Malawi national workforce by 18 per cent and its expatriate positions from 118 to 90.¹⁰²

3.3 Discrepancies in export and import figures

There are also some uncertainties concerning:

- how much uranium Malawi is actually exporting
- whether reported uranium imports into Canada and Namibia match the reported exports from Malawi.

The amount of Paladin's exports

On the first concern, both the Government and the UN trade database give significantly higher export sales figures than reported by Paladin.

Paladin's sales figures given in Table 7 correspond to the figures it has reported in its Annual Reports: these record sales of uranium of \$126.6 million in FY 2012 (year ending 30 June 2012), \$100.3 million in FY 2011 and \$68.5 million in FY 2010.¹⁰³ However, these figures are different than those given by some Government sources and by the UN's Comtrade database.

To turn first to the discrepancy with Government figures, the Ministry of Development Planning and Cooperation's Annual Economic Report 2011 states:

'As at the end of 2010, the Kayelekera Uranium Mine produced slightly over 885,344.49 kgs of uranium concentrates valued almost at \$128,767,308.61 (MK19.57 billion)... Out of the total production in 2010, the company exported 726,088.89 kg of uranium concentrates (yellow cake) worth \$113,460,876.09 (MK 17.246 billion). This consignment had been exported between January and December 2010 in 15 different consignments to Canada for energy generation. The export of this consignment earned the Malawi Government up to MK 272,306,102 (\$1 to MK 152 exchange rate) in terms of royalties (calculated at 1.5 per cent of the total gross value of exported consignment).'¹⁰⁴

Neither the export figure nor the royalty figure given in this Ministry report tallies with what the company reports:

- Against the Ministry's figure of \$113 million worth of exports in 2010, for example, Paladin reported sales of just \$68.5 million. One possible explanation is that the Government is using January-December figures whereas Paladin reports from July-June. However, this is unlikely to fully explain the discrepancy since in 2011, Paladin's reported exports of just \$100 million were still below the figure given by the Ministry.
- Neither is the royalty payment figure consistent. The Government source above says that Paladin paid MK 272 million (\$1.79 million), yet the company reports paying only \$0.48 million in FY 2010 and \$1.42 million in the whole of FY 2011.

The figures given by Paladin are also different than those provided by Comtrade. According to the latter, Malawi (meaning Paladin, since it is the only uranium exporter) exported \$114.3 million worth of uranium in 2010 and \$122.3 million in 2011.¹⁰⁵

The following table summarises the different figures given for Paladin's uranium exports from Malawi. It needs to be reiterated that Government and Comtrade figures are from January-December, whereas Paladin's are from July-June but that these differences are unlikely to fully explain these discrepancies.

Table 9: Paladin's exports: Different figures (\$ million)

Source of figures	2012	2011	2010
Government	na	na	113.5 (MK 17.2 billion)
Comtrade	na	122.3	114.3
Paladin	126.6	100.3	68.5

Sources: Ministry of Development Planning and Cooperation, Annual Economic Report 2011, p.42; Paladin, Annual Reports 2012 and 2011; UN Comtrade database (<http://comtrade.un.org>)

The Comtrade figures would have required Paladin to have paid more in royalties. The following table contrasts what Paladin has paid in royalties in 2010 and 2011 with what it would have paid based on Comtrade figures. Both fig-

ures are based on the 1.5 per cent royalty rate that Paladin is (meant to be) paying. The table shows that Paladin paid \$1.64 million less in royalties in those two years.

Table 10: Difference in royalty payments (\$ million)

	Royalties actually paid by Paladin in the FY July-June	Royalties to be paid by Paladin based on Comtrade figures for January-December	Difference
2010	0.48	1.71	1.23
2011	1.42	1.83	0.41
TOTAL	1.9	3.54	1.64

Sources: Paladin, 'Summary of Economic Benefits to Malawi', October 2012; UN Comtrade database (<http://comtrade.un.org>)

Discrepancy between export and import figures

There is another discrepancy - that between reported exports from Malawi and imports into Canada and Namibia of Paladin's uranium. The

table below compares the value and volume of uranium exports with the value and volume of uranium imports, using figures from the UN's Comtrade database. All of Malawi's uranium exports have been those exported by Paladin to Canada and Namibia.

Table 11: Uranium exports and imports to Canada and Namibia, 2009-11

	Exports			Imports	
	1. All uranium exports from Malawi (\$ million/kgs)	2. Exports from Malawi to Canada	3. Exports from Malawi to Namibia	4. Imports into Canada from Malawi	5. Imports into Namibia from Malawi
2011	120.3 1.34m kgs	120.3 1.34m	0	123.1 900, 182	74.5 1.08m
2010	114.3 940, 364	114.3 940k	0	68.7 518, 625	44.9 543, 984
2009	8.5 69,639	8.5 69,639	0	4.3 39,843	8.4 109,964

Sources: UN Comtrade database (<http://comtrade.un.org>)
 NB. Import figures provided by the Canadian International Merchandise Trade Database (CIMTD) (<http://www.statcan.gc.ca/start-debut-eng.html>) are identical to those provided by Comtrade

The table shows a marked difference in some of these figures.

- First, the UN Comtrade figures record no exports whatsoever to Namibia, although the import figures do.
- Second, there is a big difference between the volume exported and imported. In 2011, for example, the export figures record 1.34 kgs of uranium exported, but the import figures record over 1.9 million as imported (sum of columns 4 and 5)
- Third, there is a discrepancy between the value of some export and import figures. In 2010, for example, the Comtrade figures show that Malawi exported \$114.3 million worth of uranium to Canada but that Canada recorded imports of only \$68.7 million – a difference of \$45.6 million. If anything, the import value into Canada should be higher than the export value from Malawi due to transportation costs. It is also unclear why there is a discrepancy between the volume exported and imported. There is a suggestion that a degree of under-reporting has taken place, and that \$49.7 million worth of uranium (the sum of the

discrepancies for 2010 and 2009) has somewhere been 'lost'.¹⁰⁶

Together, all these discrepancies and uncertainties highlight the need to ensure transparency in Malawi's mining sector.

3.4 Lost revenues from the Kayelekera mine

It is impossible to do a full calculation of the revenues lost due to the concessions given to Paladin, given lack of access to all the financial data needed, especially concerning the company's financial projections. But it is possible to provide some calculations.

Royalties

The table below calculates losses from the reduced royalty rate for 13 years from the year the Kayelekera mine began payments in 2010. In the first three years, Paladin is meant to have paid 1.5 per cent (although has in effect been paying less than this, as noted above) while in subsequent years it is due to pay 3 per cent. This is compared to the 5 per cent royalty rate specified in the mining Regulations. If Paladin were to pay the 5 per cent royalty, Malawi would

**Box 8:
Transfer pricing and the
use of tax havens**

Many transnational corporations have complex corporate structures involving numerous subsidiaries and/or holding companies in tax havens. A survey of 95 of the largest quoted companies in the UK, Netherlands and France found that all but one had subsidiaries in tax havens, the most popular being the Cayman Islands.¹⁰⁷ Research by ActionAid shows that of the 100 biggest corporations listed on the London Stock Exchange, 98 use tax havens, where 38 per cent of all of their subsidiaries are located.¹⁰⁸

Paladin has a complex group structure with 32 entities in it, which are mainly subsidiaries of Paladin Energy. This structure includes several companies in tax havens. Most notably, Kayelekera Holdings SA is incorporated in Switzerland. Another company, called Indo Energy, which is 100 per cent owned by Paladin, is incorporated in the British Virgin Islands. Another - Langer Heinrich Mauritius Holdings Limited - is incorporated in Mauritius. Meanwhile, Paladin Netherlands Holdings Co-Operative UA is used to control several subsidiaries related to Canada (where the company is also exploring) - Paladin Canada Holdings (NL) Ltd, Paladin Canada Investments (NL) Ltd and Paladin Energy Canada Ltd.¹⁰⁹

Tax havens mainly attract businesses for reasons of low tax and secrecy. Low, or even zero, tax rates provide an obvious incentive for companies to shift profits out of the jurisdictions in which they do business into tax havens. One way companies do this is by establishing subsidiaries in tax havens that own intangible assets, such as trademarks, or that provide 'management services'. By charging a fee to the companies in higher-tax countries, profits are transferred away from where the economic activity is undertaken into tax havens. Secrecy helps to undermine the regulations of other jurisdictions while providing an effective shield against investigations related to tax avoidance and evasion.¹¹⁰

Since some 60 per cent of world trade takes place between companies that are part of the same multinational group¹¹¹, 'transfer pricing' transactions - which are perfectly legal - play an important role not just in distributing goods and services between group companies, but also in distributing profits and tax liabilities.¹¹² The use of tax havens increases the possibility both of legal (but still often ethically questionable) tax avoidance and also of illicit capital flight, which means money leaving countries either from corruption, from other criminal activities such as the drugs trade or from illegal pricing mechanisms used by transnational companies.

The Malawian authorities need to guard against possible transfer pricing in the mining sector. The 2009/2010 budget includes measures that introduce the country's first transfer pricing rules by inserting a new section (127A) into the Taxation Act. The transfer pricing law provides a mechanism to address the shifting of business profits from one tax jurisdiction to another. It requires companies to engage in 'arm's length' transactions so that the amount charged by one company for a given product must be the same as if the parties are not related. It gives the Commissioner General of the Malawi Revenue Authority the ability to examine and make adjustments to transactions not carried out under these terms.¹¹³

earn \$46.63 million more over the 13 years.

The 15 per cent Government share

It can also be estimated how much Malawi is losing as a result of the Government's 15 per cent share in the Kayelekera mine, compared to a larger stake it could have negotiated. As noted in section 3.2, Paladin states that the Government's 15 per cent share will earn it dividends of \$3-10 million a year once the mine becomes profitable. Yet the mine may not become profitable for several years, if at all, given Paladin's ability to write off hundreds of millions of dollars

in capital expenditure against tax. It is calculated here how much the Government could earn if this capital write-off concession had not been so generous and if the Government's stake in the mine were larger than 15 per cent. The year 2015 is taken as a theoretical first year of profitability – which is consistent with the table above on royalties which assumes that there will be 8 further years of such dividends, running to 2022. A 30 per cent share in the mine for the Government is also posited. This would mean that its shares of the dividends would double to \$6-20 million, based on the Paladin figures. Over the 8 years, this means it could earn at least

Table 12: Lost revenues from royalties (\$ million)

Year	1. Paladin's uranium exports	2. Royalties paid	3. Royalties to be paid under the mining agreement (1.5% for 2010-12; 3% for 2013-21)	4. Royalties at 5%	5. Difference Between 3 and 5
2009	..	..	..	..	..
2010	68.5	0.48	1.03	3.42	2.39
2011	100.3	1.42	1.50	5.01	3.51
2012	126.7	0.68	1.90	6.33	4.43
2013	181.5	..	5.44	9.07	3.63
2014	181.5	..	5.44	9.07	3.63
2015	181.5	..	5.44	9.07	3.63
2016	181.5	..	5.44	9.07	3.63
2017	181.5	..	5.44	9.07	3.63
2017	181.5	..	5.44	9.07	3.63
2018	181.5	..	5.44	9.07	3.63
2019	181.5	..	5.44	9.07	3.63
2020	181.5	..	5.44	9.07	3.63
2021	181.5	..	5.44	9.07	3.63
2022	181.5	..	5.44	9.07	3.63
TOTAL	2,110.5	..	58.83	105.46	46.63

NB. The above table assumes an average sales price of \$55/lb for all years, which is the average realised sales price reported by Paladin for FY 2011 and FY 2012. The table assumes that the Kayelekera mine will reach its full production capacity of 3.3 million lb in FY 2013

\$24 million and up to \$80 million, with an average figure of \$52 million.

Corporate income tax

Paladin figures state that once the mine is profitable, the dividend payment to the Government from its 15 per cent stake will be \$3-10 million a year, as noted above. Based on these figures, the dividends accruing to the company (ie, the

remaining 85 per cent) would be \$17–56.6 million a year. If it is assumed that these dividend figures are synonymous with taxable profit (as a rough estimate), then these should be subject to the 27.5 per cent corporate income tax rate agreed in the mining agreement; however, as noted above, it is possible that profits will not be declared and that the company will not pay corporate income tax. However, if Paladin were to pay the 30 per cent standard rate of income tax

Table 13: Government dividends from Kayelekera

	Government stake at 15 per cent	Government stake at 30 per cent	Difference
8 years 2015-22	\$3-10 million a year Meaning \$24 - \$80 million in total Mean figure of \$52 million	\$6-20 million a year Meaning \$48 - \$160 million in total Mean figure of \$104 million	\$3-10 million a year Meaning \$24 - \$80 million in total Mean figure of \$52 million

from 2015 for 8 eight years on dividends of \$17–56.6 million, this would amount to extra Government revenues of \$5.1–17 million a year.

Import duties

The Government is also losing revenues from Paladin’s exemption from paying import VAT and duties.¹¹⁴ Full figures are not available on how much Paladin imports that would ordinarily be subject to import duty, but some calculated estimates can be made. For example, a Malawian media report of April 2011 noted that Paladin had imported MK 2.22 billion worth of diesel in the 18 months between September 2009 and February 2011. Ordinarily this would be subject to an import duty of 10 per cent and excise duty of 20 per cent (ie, 30 per cent), meaning that Paladin is likely not to have paid MK 660 million. Extrapolated over a 12 month period, these figures suggest that the Government is foregoing import and excise duties on fuel (alone) of MK 440 million (\$1.1 million) a year.

The actual figure is likely to be much higher. Paladin states in its Annual Report 2012 that it spent \$48 million on local suppliers in FY 2012 and that this amounted to 31 per cent of the mine’s total spend.¹¹⁵ This \$48 million sum can be disputed, as noted in section 3.2; the calculation here uses instead the sum of MK 6.8 billion (\$25.4 million) provided by Paladin for its spend

in FY 2012. It is also assumed that if Paladin is spending 31 per cent of its expenditure on local purchases then 69 per cent is spent on imports, meaning \$17.6 million a year (ie, 69 per cent of \$25.4 million). Many of these imports will be subject to the import VAT that Paladin is exempt from (which current rate is 16.5 per cent), although it is not possible to know how much. It should also be noted that all mining companies (not just Paladin) are already exempt from paying VAT on mining machinery, plant and equipment, but they are not exempt from paying import duties on items such as fuel. If a conservative estimate is taken to the effect that one half of Paladin’s imports should ordinarily be subject to VAT, from which Paladin is exempt, then the Government is foregoing revenues from this source of \$1.45 million a year (16.5 per cent of half of \$17.6 million) and \$18.85 million over 13 years.

Estimate of total revenue losses

It is estimated that total known revenue losses could amount to around \$205 million and could be up to \$281 million over the 13 years of the Kayelekera mine. This amounts to a mean average of \$15.8 million a year (MK 6.5 billion) but which could be up to \$21.65 million (MK 8.9 billion) a year.

What could these lost revenues pay for?

The lost revenue from Paladin’s mine could pay for critical services in Malawi. The MK 6.5 billion a year could:

- Pay for District Councils to more than double their procurement of drugs for various District Hospitals and Health Centres (the budget allocation for this in 2012/13 is MK 3.4 billion)

- Increase by over half the spending by the National Aids Commission on procurement of drugs and undertaking HIV/AIDS awareness programs (the 2012/13 budget allocation is MK12.9 billion.
- More than double the allocation in the 2012/13 budget (of MK 2.8 billion) for recruitment of 16,000 Teachers for Primary, Secondary and Special Needs education.¹¹⁶

Table 14: Summary of estimated revenues losses

Deposit	Estimate of total revenue losses	Average annual estimated revenue loss over 13 years
Royalty reduction	\$46.63 million over 13 years	\$3.59 million
15 / 30 per cent Government share	\$24 - \$80 million over 8 years Mean figure of \$52 million a year	\$1.8 – 6.1 million Mean of \$3.95 million a year
Corporate income tax non-payment from capital write-off	\$40.8 – \$136 million over 8 years Mean figure of \$88.4 million a year	\$3.1 - \$10.5 Mean of \$6.8 million a year
Import VAT exemption	\$18.85 over 13 years	\$1.45 million
Resource Rent Tax exemption	unknown	unknown
TOTAL	Mean figure of \$205.88 million Could be up to \$281.48 million	Mean figure of \$15.8 million Could be up to \$21.65 million

4. IMPROVING MALAWI'S MINING LEGISLATION

There are several major problems with Malawi's current mining legislation that are preventing the country from maximising the revenue benefits from mining and adversely affecting communities in mining areas. It is encouraging that the Government is committed to revising this legislation. However, progress is slow and it is not clear how extensively the legislation will be improved.

4.1 Problems with the current mining legislation

The main legislation governing mining is the Mines and Minerals Act of 1981 and subsidiary legislation in the form of regulations (this includes regulations on Royalties, Mineral Rights, Prescribed Minerals and Safety)¹¹⁷, the Environmental Management Act of 1996 and the Petroleum (Exploration and Production) Act of 1983. There was also a Mines and Minerals Policy of 2007 which has now been replaced by a new policy unveiled in April 2013. Most of the key legislation is outdated – notably, the Mines and Minerals Act is over 30 years old and was enacted under Malawi's former one-party state.

There are four main problems with the mining legislation:

Excessive Ministerial power

The process for granting mining licences, as outlined in the Mines and Minerals Act of 1981, vests huge power in the Minister of Mines and

his discretion, and does not require consultations with other stakeholders such as Parliament or civil society.¹¹⁸ As the 2009 World Bank review noted, the Act is unusual compared with most modern mining legislation, which limits the scope for discretionary powers and, where some discretion is required, makes the exercise of such discretion subject to clear criteria and, often, subject to advice from a statutory body – typically a mining advisory council. The exercise of discretion is in some other countries is also open to review by an aggrieved party via an independent review procedure.¹¹⁹

Inconsistent, arbitrary deals

Many of the key terms under which a company operates in Malawi are determined by bilateral negotiations rather than consistent application of the law. The Mines and Minerals Act states, for example, that royalty rates are fixed by 'the mining licence concerned', ie in individual agreements.¹²⁰ The terms of mining agreements with Paladin and Globe were negotiated one by one. This is a recipe for special treatment being accorded to some companies, and indeed for corruption, and risks creating a 'race to the bottom' in terms of tax rates payable by companies. It also leads to different tax rates co-existing with each other, posing a potentially higher administrative burden. The individual negotiation of terms is increasingly at odds with international trends to ensure that all companies operate on a standardised basis.

'At a minimum there should be a review of the circumstances under which mineral agreements will be used in the future, the scope of such agreements and any particular undertakings in favour of the investor which the Government would be permitted to make by means of such agreements'

'The royalty scheme set out in current Malawian minerals legislation is broadly consistent with those in the region and among peer countries, except that its provisions may be over-ridden by negotiation. This is a feature that is found in few other countries and should be removed. The objective should be to present a standardized royalty scheme, with rates that are unlikely to deter mineral investment yet sufficient to generate a reasonable revenue flow to the country.'

World Bank¹²¹

'Malawi's mining legislation has not kept pace with the rapid modernization of mining codes that has occurred throughout Africa over the past decade.... Experience from other countries suggests that, without deep reform, the existing legislative arrangements will come under increasing pressure as more companies seek to explore for and develop minerals in Malawi. This will result in delays and may risk introducing manipulation and at worst corruption to the management of mineral rights'. World Bank¹²²

Few provisions to maximise benefits

Malawi lacks key provisions in its mining legislation that could maximise the benefits to the country. For example:

- The Mines and Minerals Act says nothing about companies being required to source a proportion of their supplies from Malawi ('local content').
- There is a general requirement in the Act for mining companies to recruit and train Malawian citizens – which could also benefit the country – but the terms of this are left to the individual mining agreements.¹²³
- Neither are there any provisions in the Act or accompanying regulations to ensure that communities in mining areas financially benefit from mining revenues.

Lack of regulation

Malawi lacks regulation, or adequate regulation, in certain other areas. For example, although uranium mining is proceeding apace, Malawi has no law or regulations governing this. The Mines and Minerals Act makes only one brief mention of uranium and otherwise contains no provisions. Concerns have long been raised by civil society organisations that Paladin should not have been granted a licence to mine before uranium legislation was in place.¹²⁴ In October 2008, the Commonwealth Secretariat in London produced draft uranium mining regulations for the Government, but this has not yet been passed.

Protection for people displaced by mining is also inadequate. The regulatory framework for resettlement in Malawi requires only compensation to be given for land, livelihoods and infrastructure. There is no obligation to compensate resettled people for the land lost with land of similar quality and productivity as well as for welfare losses. Moreover, those holding land informally or illegally are not entitled to any type of compensation. In Malawi, mining activities are conferred the status of activities of national interest; therefore, ultimately miners have the right to expropriate landowners.¹²⁵

Inadequate application of the legislation

Although Malawi's mining legislation is considerably inadequate, even where regulations are in place, these have sometimes been overridden. Most notably, Paladin's site occupation and population relocation at the Kayelekera mine occurred before the company submitted its Environmental Impact Assessment, and construction work is purported to have started before the company possessed a mining licence.¹²⁶ It appears that

Eland Coal in Karonga received a licence following a rudimentary Environmental Impact assessment and began operations without the consent of the local community and prior knowledge of the District Commissioner.

4.2 Slow and inadequate progress in revising the legislation

The Government has said it is committed to reviewing and revising the mining legislation. Its intention is to review not only the Mines and Minerals Act but also the Petroleum Act, the Explosives Act and to strengthen the Mine Safety Enforcement Regulations. A working committee has been established to review the taxation regime and to review and develop 'fiscal incentives' in the mining sector.¹²⁷ The authors have been told that the revision of the Mines and Minerals Act is in the final stage¹²⁸, and the media has reported that the Ministry of Mines wants the mining policy to take effect in the first quarter of 2014¹²⁹. Mines Minister John Bande is also quoted as saying: 'Once we have this policy we will revisit all the mining ventures across the country to ensure they are implementing it'.¹³⁰

But progress is slow:

- The World Bank recommended in July 2009 that new mining legislation be finalised by December 2009.¹³¹ This is nearly four years ago.
- The National Mines and Minerals Policy, which the World Bank also recommended be completed in 2009, was reviewed and launched only in April 2013.
- The Commonwealth Secretariat's draft of uranium regulations has yet to be agreed and passed by the Malawian Government despite having been drafted in October 2008, nearly five years ago.¹³²

John Bande was quoted in several media reports in early 2013 as saying that the Government will make public 'very soon' the mining agreement with Paladin. This is also yet to happen.

But in addition to slow progress in revising the legislation, there are also problems with the details of it.

The authors have seen a draft copy of the proposed revision of the Mines and Minerals Act, dated January 2013. The draft contains a small number of positive changes, but also omits some major needed revisions.

On the positive side, the draft revised Act:

- Removes the excessive power of the Minister in the 1981 Act by proposing to establish a

Mineral Resources Board which would recommend to the Minister the granting of mining licences.

- Significantly improves transparency. The draft states: 'The Commissioner shall maintain good and accurate records of the ownership of Mineral Rights, all payments related to Mineral Rights, whether of annual, production royalty or of any other nature, and such information shall be a matter of public record and available for legislative and public review.' This would appear to require the Government to make public details of individual companies' tax payments.

However, there are also major problems with the revised draft:

- It provides for the Government to 'have a right' to only 10 per cent of the equity in any mining operation. This is a substantial change from a previous (2010) draft of the Act which would have allowed the Government the right to acquire an 'at least 30 per cent' interest in a mining project.¹³⁴ This 10 per cent limit would clearly restrict the Government from increasing its stake in the Kayelekera mine.
- It would retain the ability of the Government and company to establish a royalty rate in individual agreements. The draft states that the royalty is payable 'a) At the rate fixed in, or computed in accordance with the provisions of the Mining Licence concerned; or (b) If no rate is fixed or provided in the Mining Licence concerned, at the rate prescribed in the Regulations.' This is almost identical wording to the 1981 Act, and is therefore not progress towards having a standardised royalty rate.
- The draft says nothing about actual royalty or other tax rates payable by mining companies, but leaves this to the Regulations. This is a missed opportunity to review tax rates and possibly increase them.
- Despite the proposed improvements in transparency noted above, the revised Act would not require the Government to make public individual development agreements.
- The draft repeats the 1981 Act in placing no obligations on companies to procure a certain percentage of their supplies locally and, although it requires companies to develop a programme to employ and train Malawians, it does not spell out specific obligations on companies in doing this.
- The draft Act does not include any further mechanisms to ensure that communities in mining areas financially benefit from mining. Companies would have to 'describe plans and initiatives for planned, sustained economic and social development in the region and local communities affected by the mining operation.'

But the draft does not specify any further obligations on them. There is no obligation for consultations with local communities, for example. However, the authors have been told by officials in the Ministry of Mines that it is envisaged that a proportion of the royalty payments may be slated to go to District Councils for local development projects.¹³⁵

Thus the Government appears to have reneged on some of its earlier commitments. For example, the Mines and Minerals Policy of 2007 committed the Government to 'remove all discretionary clauses in legislation' and 'review the current mineral royalty rates'.¹³⁶

4.3 The need for transparency

Malawi's mining sector is notoriously opaque. Annual budget speeches by the Finance Minister do not specify revenues from mining, nor the amount of revenues lost ('tax expenditure') from the provision of tax incentives, as many other African countries do. Neither does the Government systematically publish online figures of its mining revenue. As noted above, the mining agreement with Paladin is bound by a non-disclosure agreement, was not subject to parliamentary scrutiny and has never been made public. There is nothing in the Mines and Mineral Act 1981 binding the Government to keep mining development agreement secret – the Act simply forbids the disclosure of the financial reports that companies are required to provide to the Government.¹³⁷ The Government chose to make the agreement with Paladin a confidential one.

Neither are mining companies required to provide details of their tax payments or other spending in Malawi, and therefore most do not. A further problem is that communities affected by mining do not as a rule even know what obligations mining companies have to promote local development in their area since they have never seen the agreements. This leads to overly-high expectations and disappointment as the 'failure' of companies to deliver on 'promises' which they say they never made.

Overall, it is no exaggeration to say that the sector is largely shrouded in secrecy, which is a recipe for corruption and, in the mining areas, tensions between communities and companies. Civil society calls for greater transparency are sometimes seen by Ministers and officials as a threat. Clearly, a major shift in culture is needed – greater transparency will in reality benefit everyone except those with something to hide.

As regards transparency, the current revision of

the Mining Act, as seen by the authors, is a step forward, but does not go far enough. An obvious first step should be for Malawi to join and become compliant with the Extractive Industries Transparency Initiative (EITI), a voluntary initiative established in 2003 to provide more transparency on Government revenues mining and mining companies' tax payments to Government. The Government set up a taskforce in 2010 to pave the way for Malawi to sign up to the EITI and the first national workshop on the EITI took place that year, with a taskforce com-

prising Government departments, civil society organisations and private companies established to drive the exploratory process.¹³⁸ This taskforce has since recommended that Malawi begin the process of becoming EITI compliant.¹³⁹ All of Malawi's neighbours—Mozambique, Tanzania and Zambia—are compliant countries with the EITI, meaning they meet its standards.¹⁴⁰ There are also indications that President Banda is serious about transparency.¹⁴¹ But these signs clearly need to be followed by implementing commitments.

Box 9: World Bank technical assistance project

The World Bank, along with the EU and France, is supporting the Government with a mining technical assistance project, approved in March 2011, intended to help address several of the challenges facing the sector. The project aims to help finalise the new mining law and regulations and to 'develop transparent arrangements for optimal generation and use of mineral revenues' so that 'revenues can be subjected to scrutiny and assurances'. This involves establishing a 'coherent, standardised and globally competitive fiscal regime', including a standardised royalty rate. It also involves establishing a multi-stakeholder forum on the mining sector with civil society participation.¹⁴²

4.4 The need for clarity on Corporate Social Responsibility

There is no overall policy framework concerning Corporate Social Responsibility (CSR) in Malawi, meaning that it is left to individual companies to decide what they do voluntarily to promote local community development. There are several problems associated with CSR in Malawi, which are often related to the problem of lack of transparency.

In most mining countries, company spending on local community development is voluntary, not a legal requirement on the part of companies. But in Malawi this distinction has been blurred by the agreement with Paladin requiring some spending on local infrastructure. Yet the community affected by the Kayelekera mine has never seen the full mining development agreement with the company and was barely involved in shaping it; thus there is a lack of clarity on precisely what the company is required to spend money on, and what it chooses to do and on what its spending will actually support. This is a recipe for tension in that the local community has much higher expectations of what the company may deliver than the company itself.

Paladin says it promotes several community development projects, involving water, health, agriculture, education and local business

development.¹⁴³ But some of these were a formal part of the mining agreement signed with the Government. According to Paladin's Annual Report 2012, the company has 'spent \$10 million on agreed community infrastructure projects'. This is the figure the company says has been spent on the Garnet Halliday Karonga Water Supply Plant in Karonga, which 'was constructed by Paladin in 2010 for a cost of approximately \$10 million as part of its undertaking under the Development Agreement'.¹⁴⁵ Figures from Paladin available to the authors show the company has spent a further \$6.1 million on community development projects from July 2008 until October 2012, in addition to the \$10 million water project.¹⁴⁶ This additional spend amounts to 1.8 per cent of Paladin's sales for the same period (of \$329.8 million), a relatively low amount.

There is little accountability for, or independent evaluation, of companies' community development spending. While Paladin's website claims to have promoted various projects, some people in the community in Karonga regard as a 'farce' the company's claims as to the amount it has invested in social development projects, saying that the company is unable to account for it.¹⁴⁷ According to several sources, the \$10 million water project was poorly constructed and only works intermittently¹⁴⁸; when it works it serves the people within the town assembly and not those displaced at Kayelekera mining site.¹⁴⁹

**Box 10:
The need to
address the
local
impacts of
mining**

'Unless robust environmental and social safeguards can be assured and benefit sharing and mining induced development at the district and village levels promoted by mineral sector reform and implementation of decentralization policies, it is unlikely that a major expansion of mining activities would set Malawi on a sustainable development path. Moreover, the risk is that social and political conflicts around mining would increase'. (World Bank)¹⁵⁰

This report is focused on tax and revenues from mining, and only briefly considers the impact of mining on local communities, which have been documented by some civil society organisations, notably Citizens for Justice.

As regards Paladin's Kayelekera mine, a consultation workshop was held by Norwegian Church Aid and the Catholic Commission for Justice and Peace with a number of people in affected communities in April 2013. Villagers noted a number of mixed impacts. On the one hand, the mine has resulted in an increase in trade in the area, some increase in employment and some improvements to local infrastructure: for example, the company has built teachers houses in Kalowe school and in Kayuni and a classroom and borehole in Kamanye. However, the mine has created only a few local jobs – villagers say that several dozen local workers were fired and that the company then recruited workers from other parts of Malawi. The influx of migrant workers has led to an increase in diseases in Kayelekera and Karonga but no additional treatment programmes have been provided to deal with diseases such as HIV. Villagers also complain that there is no clarity on the compensation process for workers injured in the mine – one person said that he had his leg amputated after an accident at the mine but was still waiting for compensation.

One person among the five families displaced by the mine said that they were moved to very poor houses (small shacks, not constructed using bricks,) and given just MK80,000 per household to renovate the houses (at the Government's compensation rates). Their new houses were poorly located away from arable land, and thus they lost their previous livelihood from growing mangos and bananas. The villagers said that no consultations were held with them and they were not told why they had to move - Paladin simply told them they must move and promised them access to water in their new homes, but their new location has no access to water and is further away from schools and clinics. One thing the company did do was transfer the graveyards to the new location.

Villagers also have concerns about the local water. Some believe that the Sere river is polluted and collect their own water from distant rivers, avoiding the Sere even though it is close by. Some have doubts about the quality of water in the Rukuru river. In addition, the water from boreholes in the communities is viewed as non-potable. In Juma village, villagers said that an environmentalist working with Paladin once warned the people not to use the water and that she took water samples but never gave the results to the communities. They say Paladin tests both water and air quality but never reveals the results to the communities. The Karonga Business Community has petitioned and written to Paladin in recent years expressing fears about the water the local community is consuming.¹⁵¹

Paladin states that it prepares quarterly and annual environmental reports for the Malawi Government and that water sampling is regularly conducted for this purpose. It says it has 'a comprehensive surface and groundwater monitoring programme' and to 'ensure that there is efficient, safe and sustainable use of water and that water resources and ecosystems around its sites are protected'. Paladin's operations 'have water management strate-

gies, detailed flow diagrams, working water balances, and have implemented water management measures to ensure that water management objectives are achieved'.¹⁵²

The local community has similar concerns with regard to Globe Metals & Mining proposed project at Kanyika. Over 700 people are expected to be relocated and will lose 500 hectares of cropland. Yet the Catholic Commission for Justice and Peace notes that compensation and relocation procedures are not stipulated in Globe's Environmental Impact Assessment, increasing the likelihood that displaced people will get a raw deal. There are also concerns about the company's rehabilitation plan. At mine closure, around 52 million tonnes of solids will be remain in the tailings dam with a waste rock dump of close to 53 hectares reaching 30 metres in height and leaving behind an open pit of 2.2 kms length, 300 metres width and 130 metres depth. Communities surrounding the Kanyika mine have said they will try to block full-scale mining until Globe address their demands for adequate compensation for those affected, and until the company has put in place adequate plans to ensure environmental protection and water safety.¹⁵⁶

There are various concerns at other mines. At the Mchenga coal mine in the Chiweta Mountains, owned by Malawian company Coal Products, studies by the Institute for Policy Interaction indicate that water acidity has increased in nearby rivers due to the waste that comes from washing coal at the mine and leakages from weak and dilapidated drainage systems.¹⁵⁷

At the Njuli Quarry in Chiradzulu district, which is owned by another Malawian company, Terrastone, mine activities are reported to have caused sand to block streams along which people grow food crops and houses have been damaged by blasting, for which little notice is often given to local people, which can also disrupt people from pursuing their farming.¹⁵⁸ A 2010 report by the Malawi Human Rights Commission concluded that 'the activities at the quarry were having an impact on the environment both in the short and long term, and were a disruption of the peoples' livelihoods and a threat to their safety and health'. The quarry was found to be violating the rights to safety and security, food, health, a clean and safe environment, housing, property and freedom and liberty as enshrined in the Constitution.¹⁵⁹; Terrastone was fined MK37 million for environmental degradation and failing to adhere to quarry regulations.¹⁶⁰

5. RECOMMENDATIONS

The Government should:

Tax and transparency

- Make public and publish (online and in easily accessible media) its revenues from mining, including all taxes paid by mining companies in the country
- Require all mining companies working in Malawi to make public details of their tax payments to Government and other key financial data
- Calculate and annually publish figures on how much its 'tax expenditure' is (ie, revenue losses from tax incentives)
- Review all tax rates and tax incentives in the mining sector, in a wide public consultation that involves the participation of civil society groups, communities affected by mining, and independent analysts. Tax rates should be reviewed with a mind to revising them upwards. Firm rates for royalties and other taxes must be set so that they cannot be altered by discretionary powers. Any remaining tax incentives in the mining sector should have an explicit rationale, otherwise they should be removed.
- Make public the current development agreement with Paladin as soon as possible and commit to making public all mining agreements signed with companies
- Negotiate a new mining agreement with Paladin by involving the participation of communities affected, civil society groups and others, to ensure that the fiscal and other terms are fair, and seen to be fair
- Ensure that non-political technical negotiation teams are established when negotiating contracts with mining companies
- Develop mechanisms for ensuring that communities to be affected by mines are involved in the design of mining projects and agreements. Build this commitment into the revised Mines and Minerals Act.
- Ensure that mechanisms are put in place to

implement transfer pricing legislation. Conduct an investigation of transfer pricing issues related to uranium sales,

Legislation

- Ensure that an adequately revised Mines and Minerals Act is completed by December 2013.
- Ensure that the revised Mines and Minerals Act and the Minerals Policy: abolishes the ability of the Government and companies to establish a royalty rate in individual agreements; allows the Government to own at least 30 per cent equity in mining operations; places obligations on companies to procure a certain percentage of their supplies locally and to recruit or train more Malawians; ensures that communities in mining areas financially benefit from mining by reviewing options for this happen.
- Enact and implement legislation in areas where gaps exist, especially on uranium mining and resettlement

Paladin should:

- Provide explanations for the discrepancies on financial figures noted in this report.
- Make its current mining development agreement public.
- Commit to negotiating a new mining agreement with the Government.
- Publish detailed figures online on its tax and other payments to the Government of Malawi.

Donors, including those providing mining technical assistance and the Government of Australia, should:

- Press companies operating in Malawi based in their countries to make the transparency and other commitments outlined in these recommendations.

ANNEX: Exclusive Prospecting Licenses Issued on Uranium per Diocese

	Name of Company	Date of Issue	Date of Expiry	Address	Place	District	Diocese
1.	GLOBE METALS & MINING EXPLORATION LTD	14/04/2010	13/04/2013	PRIVATE BAG A201, LILONGWE	MAJETE	MWANZA	Blantyre
2	OSHO VENTURES ENERGY LTD	29/05/2011	28/05/2013	GK ASSOCIATES, P.O BOX 31852, CHICHIRI, BLANTYRE 3,	NSANJE	NSANJE	Chikhwawa
3	MOTA-ENGIL ENGENARIA	09/07/2009	08/07/2012	P.O. BOX 31379, LILONGWE	LISUNGWE	NTCHEU	Dedza
4	NYALIHANGA ENTERPRISES	29/09/2011	28/09/2013	P.O BOX 1920, BLANTYRE	KAMEME	CHITIPA	Karonga
5	PALADIN (AFRICA) LTD	29/12/2010	29/12/2012	P.O. BOX 1147, BLANTYRE	CHILONGO	CHITIPA	Karonga
6	PALADIN (AFRICA) LTD	29/12/2010	29/12/2012	P.O. BOX 1147, BLANTYRE	MPATA	KARONGA	Karonga
7	PALADIN (AFRICA) LTD	11/12/2010	11/12/2012	P/BAG 32, LILONGWE	KAYELEKERA	KARONGA	Karonga
8	PALADIN (AFRICA) LTD	29/12/2010	28/12/2012	P.O. BOX 1147, BLANTYRE	CHILUMBA	RUMPHI	Karonga
9	PALADIN (AFRICA) LTD	12/29/2010	12/28/2012	PRIVATE BAG 32, LILONGWE.	MLIMBO-	KARONGA	Karonga
10	MAPUNDI INVESTMENTS	9/29/2011	9/28/2013	PLOT NO. 464, NYAMBADWE, BLANTYRE	NGANA	KARONGA	Karonga
11	SOGEOA COMPANY LIMITED	10/11/2010	9/11/2013	P.O. BOX 30759, LILONGWE 3	CHIWETA	RUMPHI	Karonga
12	HBDK EMAW MINING CO. LTD	14/04/2010	13/04/2013	P.O. BOX 2776, LILONGWE, MALAWI	MKANDA	MCHINJI	Lilongwe
13	SOGEOA COMPANY LIMITED	13/01/2011	12/1/2014	P.O. BOX 30759, LILONGWE 3	NATHENJE	LILONGWE	Lilongwe
14	SOGEOA COMPANY LIMITED	10/11/2010	9/11/2013	P.O. BOX 30759, LILONGWE 3	NAMWERA	MANGOCHI	Mangochi
15	OROPA EXPLORATION PTY LTD	12/12/2010	11/12/2012	25 CHARLES STREET, SOUTH PERTH, WA 6152, AUSTRALIA	KASUNGU-MZIMBA	KASUNGU-MZIMBA	Mzuzu
16	ANHUI FOREIGN ECONOMIC CONSTRUCTION LTD	13/01/2011	12/1/2014	NO.8 DONGLIU ROAD, PEOPLE'S REPUBLIC OF CHINA.	MZIMBA	MZIMBA	Mzuzu
17	GLOBE URANIUM LTD	29/12/2010	28/12/2012	14/15 ELIZABETH BAY ROAD, ELIZABETH BEY, NSW 2011, AUSTRALIA	LIVINGSTONIA	RUMPHI	Mzuzu
18	SOGEOA COMPANY LIMITED	13/01/2011	12/1/2014	P.O. BOX 30759, LILONGWE 3	MZIMBA	MZIMBA	Mzuzu
19	NYALIHANGA ENTERPRISES	29/09/2011	28/09/2013	P.O BOX 1920, BLANTYRE	CHINDE	MZIMBA	Mzuzu
20	NYALIHANGA ENTERPRISES	13/01/2011	12/1/2014	P.O BOX 1920, BLANTYRE	CHIKANGAWA	MZIMBA	Mzuzu
21	NYALIHANGA ENTERPRISES	18/03/2011	17/03/2014	P.O BOX 1920, BLANTYRE	CHIKANGAWA	MZIMBA	Mzuzu
22	GLOBE URANIUM LTD	28/12/2011	29/12/2013	14/15 ELIZABETH BAY ROAD, ELIZABETH BEY, NSW 2011, AUSTRALIA	SIMULEMBA	KASUNGU	Mzuzu
23	RESOURCE STAR LIMITED	10/12/2010	11/12/2012	SUITE 6, 9 HAMPDEN ROAD, NEDLANDS , WA 6009	KASUNGU-MZIMBA	KASUNGU-MZIMBA	Mzuzu
24	KRIPTO INTERNATIONAL LIMITED	14/04/2010	13/04/2013	PRIVATE BAG 54, BLANTYRE	ZOMBA MT FT	ZOMBA	Zomba
25	EASTBOURNE EXPLORATION PTY LIMITED	18/03/2011	17/03/2014	LEVEL 9, 440 COLLINS STREET, MELBOURNE, VIC 3000, AUSTRALIA	MWINJE MT	ZOMBA	Zomba
26	EASTBOURNE EXPLORATION PTY LIMITED	18/03/2011	17/03/2014	LEVEL 9, 440 COLLINS STREET, MELBOURNE, VIC 3000, AUSTRALIA	MWINJE MT	ZOMBA	Zomba

Source: Catholic Commission for Justice and Peace, Mapping of Extractive Companies in Malawi, October 2011

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