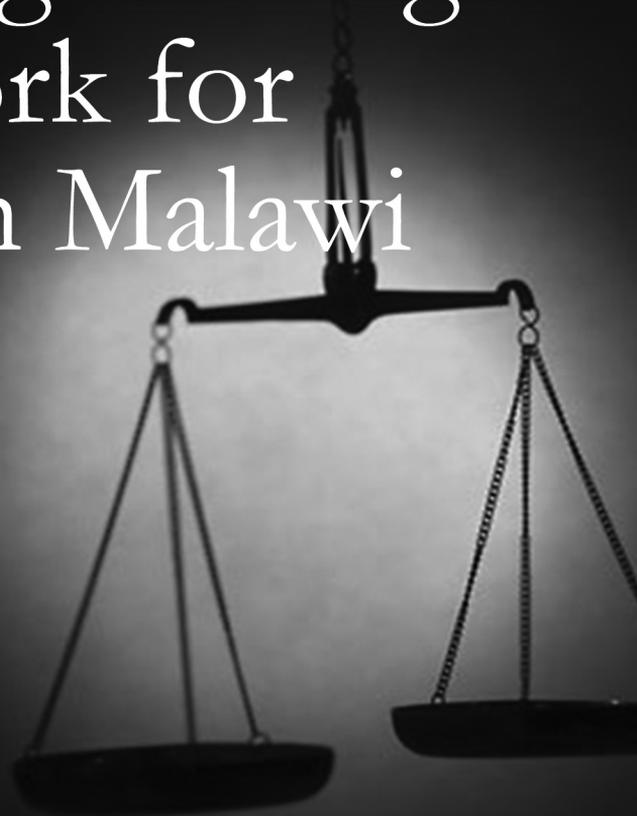


# Reviewing the Legal Framework for Mining in Malawi





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## **Contents**

<b>Introduction</b>	<b>5</b>
<b>Malawi's mineral potential</b>	<b>7</b>
<b>Mining and the environment in Malawi</b>	<b>10</b>
<b>National minerals policy</b>	<b>13</b>
<b>Political will</b>	<b>21</b>
<b>Recommendations</b>	<b>23</b>
<b>Conclusion</b>	<b>26</b>
Appendix 1	27
Appendix 2	32
Appendix 3	36
Appendix 4	40

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## Introduction

Malawi has historically been considered as a country low in mineral deposits, and has thus concentrated on building an agriculture-based economy which largely neglected mineral extraction as a means of generating economic growth and eradicating entrenched poverty. This perception has recently changed due to the emergence of new economic giants such as China, India, Brazil and Russia, and the subsequent scramble for declining global reserves of natural resources. This scenario has seen a proliferation of interest in the mining sector of the economy by both local and foreign investors who are keen to profit from exploitation of minerals such as uranium, niobium, bauxite and coal. The upsurge of investor interest has led to heightened awareness amongst stakeholders of the inherent weaknesses of the archaic mining legislation that could be used by unscrupulous exploiters to maximise profits without regard to essential issues such as environmental protection, social empowerment, and sustainable management of natural resources.

The mining or extraction industry has been particularly associated with inequitable distribution of wealth and related benefits – a paradigm that is otherwise known as the “resource curse”. The negative effects of resource wealth include greater poverty, lower growth, and slower development, compounded by corruption and weakening democracy through undermining of the rule of law and due process in fragile states. This erosion is facilitated by weak legislation that presents loopholes which are used by malefactors to maximise earnings and power, often at the expense of local communities who are left to cope with the effects of environmental degradation caused by mining operations.

Effective legislation and implementation of the regulatory framework pertaining to the extraction and processing minerals is key to ensure that the benefits accrued from them are widely enjoyed within a broad framework of sustainable development. This

paper critically analyses the mining legislation in Malawi, highlighting gaps and weaknesses, and suggesting remedial measures to enhance its efficacy.

## **Background of mining legislation in Malawi**

The legislation that has hitherto governed the mining industry in Malawi was enacted under the premise that Malawi as a nation was not heavily endowed with precious minerals. This premise was strongly influenced by the then life-president, Dr Banda, who told Malawians that the fertility of the soil (green gold) was the country's richest asset, and encouraged Malawians to concentrate on agriculture to attain self-sufficiency. His view of Malawi as a personal fiefdom influenced legislation that was ratified to regulate the mining of the minerals, vesting all land and minerals in his hands. Three pieces of legislation were instituted in the early 1980s: The Mines and Minerals Act (1981), the Mines and Minerals Regulation Act (1981), and the Exploration and Production Act (1983).

The dawn of democracy in early 1990s was accompanied by the need to address environmental concerns, and saw the insertion (though in a piecemeal manner) of additional provisions in the Mines and Minerals Act of 1981, and the enactment of the Environmental Management Act in 1996. However, the present legislation is sadly lacking in relevance and efficacy with regard to current realities, which is exacerbated by the fact that these pieces of legislation were enacted in the absence of a national policy on minerals and natural resources, and appear to have been undertaken in an ad hoc manner without adhering to any broad strategic objectives. In addition, the amendments and the enactment of new legislation only addressed environmental concerns, neglecting social, political and economic issues. This lack of comprehensiveness in addressing the varied needs associated with the mining industry renders the legislation incapable of effectively governing the burgeoning mining sector in Malawi.

## **Malawi's mineral potential**

The mapping of mineral potential in Malawi commenced with a reconnaissance mineral survey carried out between 1906 and 1909 by Andrew and Bailey under the auspices of the imperial Institute, followed by the appointment in 1918 of the first government geologist, who began by looking into the coal, limestone and water resources of the country. Between 1922 and 1939, a geological survey department was established, and subsequent investigations into the mineral wealth of the country were conducted. In 1965, the geological mapping of the country was done through the economic mineral survey development project. In 1971, an airborne geophysical survey of selected areas was undertaken, followed by the second phase which incorporated a ground-level follow-up survey. The results of these studies reveal that Malawi is not deficient in minerals. The country's geological survey department has classified these minerals into groups according to tonnage of the mineral. Appendix 2 lists the minerals and their location

According to revelations by a geologist at the Department of Geological Survey, the initial survey that was done by the colonialists did not reflect the reality on the ground. Most British companies who did the geological survey did not provide a full report to the government of Malawi, but rather to companies who later applied for prospecting and full-scale mining in areas that were characterised as having patchy deposits. The general perception that coal from Mozambique is of better quality than that from Nkombezi Wa Fodya coalfield in Lengwe (Bangula) is questionable, since the two coalfields are located in the same geological belt. A similar claim was made about Mzimba, when a British geologist in the 1970s claimed that aquamarine was only found in Lundazi, Zambia; later exploration revealed that Mzimba has aquamarine and gemstones like those of Lundazi by virtue of sharing the same gemstone belt.

Local ignorance on valuation of minerals and gemstones often leads to huge losses of potential revenue from these precious stones, as vividly demonstrated by the case of the Chimwadzulu Ruby Mine in Ntcheu, which produces the highly sought-after Nyala ruby. The mine has been in operation since 1964, with little discernible impact on national revenues or local infrastructure.

Lessons can be learnt from countries in the region such as Botswana, which was considered as poorer than Malawi at independence because the colonialists had left without realising the country's diamond wealth. The government of Botswana, upon discovering the treasure trove, moved quickly to enact strong legislation and regulatory frameworks to ensure good governance and national realisation of optimal benefits from that sector of the economy. Recently, the government went further, stipulating that diamonds mined must undergo processing within Botswana, thereby generating more revenue through a value-added approach. This prudent management of minerals by the Botswana government has transformed the country into one of the strongest economies in Africa.

By emulating such examples, Malawi can make significant strides in its quest for economic development and eradication of poverty, but this would require certain key factors to be put in place before any remedies can be applied. The vital requirements are:

- a national natural resource policy that adheres to internationally recognised best-practice standards, whilst remaining mindful of local realities and aspirations;
- review and modernisation of all extant legislation pertaining to mining, environment, natural resources and related issues, in line with international best-practice standards and local realities;
- development of overall capacity in relevant government ministries and departments to implement laws and regulations impartially, constructively and effectively;
- development of capacity in selected civil society organisations (CSOs) to augment and complement government efforts in regulating the sector – especially with regard to monitoring and operational audits;
- institutionalising a collaborative partnership between government and CSOs to tackle all issues related to mining and natural resource extractive operations in a balanced, equitable and transparent manner;

- educating the public at large, and especially grassroots communities, on salient issues pertaining to the sector and the remedies being formulated.

The significant weaknesses of the extant legislative framework have been emphasised against the backdrop of renewed interest by foreign investors, and subsequently translated into mobilisation of local communities by CSOs who are lobbying strenuously for a review of mining legislative frameworks in line with internationally recognised best-practice, in order for the country and its people to realise tangible benefits and sustainable economic development from this sector.

The recent proliferation of numerous mining companies (See Appendix 3) engaged in exploration of potential mining areas within the country is confirmation of the fact that Malawi's mineral wealth has now become economically feasible. It is therefore imperative to examine how these incoming investors operate, and to institute commensurate legislative safeguards and measures to ensure realisation of optimal long-term sustainable benefits therefrom. The legislative framework will necessitate effective monitoring mechanisms and adequate institutional capacity within government and civil society to regulate and aid the growth of the sector, while at the same time upholding salient aspects of prudent and equitable management of finite resources.

## Mining and the environment in Malawi

Research has shown that African countries generally face problems in mitigating the negative impacts of mining. This has been attributed to bad practices which have severe and irreversible consequences. A look at existing and decommissioned mines in various parts of Africa presents a painful revelation of the negative effects of bad practices. There is spontaneous combustion of coal in Zambia, Zimbabwe and South Africa, toxic serpentine dumps from Chromite and Asbestos mining in South Africa, Swaziland and Zimbabwe, diamond rubble dumps in Angola, South Africa, Swaziland, Botswana and Namibia, and the recent seepage of acid into the water system of Johannesburg from gold mining tailing reservoirs. These cases illustrate a myopic tendency by most African countries to overlook severe and devastating negative environmental impacts whilst negotiating mining agreements, ignoring the fact that the mining activity will have effects many years after the closure of the mine. Governments need to put in place mitigation measures that will incorporate sustainability principles into both emerging and existing mines.

These examples stand as stark lessons for Malawi. These mistakes can be attributed to the tendency of governments to negotiate mining deals out of desperation, or to satisfy personal selfish interests of officials at the cost of adverse environmental impacts. Even in Australia's highly regulated environment, uranium mining has impacted negatively on surrounding environments and food sources for local people (e.g. Ranger mine). It is therefore essential to ensure adequate environmental protection in all such activities.

Another clear example that could help Malawi to understand the devastating impacts of uranium mining is that of northern Saskatchewan (Canada), where the world's largest and most concentrated known uranium reserves are located. Routine releases and accidental spills of contaminated water from mining and milling operations have

poisoned major fisheries and threatened the health and livelihood of indigenous communities. If uranium mining has managed to wipe out the fishing industry in a first world country such as Canada, what chance does Malawi have of coping with a similar occurrence? Malawians living in Kayelekera and Karonga will have no escape from the nightmare of birth defects and disabilities commonly associated with communities living in close proximity to uranium mining operations.

The mining and quarrying industry is a rapidly growing sector with immense potential to contribute very significantly to various sectors of the economy, thereby catalysing substantial growth. However, if not properly managed, mining can have seriously adverse effects on other areas (such as fishing, tourism and agriculture) through environmental degradation. Recent statistics from the Reserve Bank of Malawi show that these sectors of the economy contribute approximately 38 percent of GDP, and non-adherence to internationally recognised standards in developing the mining sector could lead to reduced production, which in turn would have seriously detrimental impacts on the economy, negating any potential benefit – a quintessentially zero-sum game.

Long-term consequences potentially include pollution of land, water, and air, depletion of catchment areas, deforestation, siltation, and desertification. If uranium tailings in tailing dams at Kayelekera (for example) ever seep into the Rukuru river that flows directly into Lake Malawi, the entire lake-shore from Karonga down to Mangochi will be affected, along with the Shire River, which flows out of the Lake and Zambezi River. The effects would be truly catastrophic for the livelihood of millions of people living along the lake, resulting in extinction of rare fish species and collapse of the tourism industry.

In terms of agriculture, past experience shows that the mining industry may have caused infertility of arable land in the vicinity of the mining site, as illustrated by the Njuli and Chungalume quarries (decommissioned in 2003/4). The mining company at Njuli quarry has been asked to compensate villagers living in the vicinity of the mine since the dust from the quarry has rendered their arable land unproductive. Similarly, the villagers at the foot of Chungalume quarry have complained that their growing areas which used to be productive are now infertile because of the mine residue. The issue simmers on without any sign of amicable resolution due to the obduracy of government and the companies involved.

It is alleged that Eland, a coal-mining company, has been granted mining concessions on land that encroaches on the rice-fields of the indigenous villagers and, worse still, uses water from the same river used by the villagers for irrigation of their paddy fields. This is a highly charged situation, since disputes over land and right of access to water have already emerged between the company and the villagers. Apparently fish in the river have already been found dead due to pollutants from the mine, and it is feared that fertility of the land will deteriorate due to mining operations, thereby impairing local livelihoods. The villagers fear that they will be left holding a very polluted, unhealthy baby with no hope for their economic livelihood once the life-span of the mine expires. Malawi as a nation may emerge as the overall loser unless corrective measures are implemented immediately.

With the imminent expansion of the extractive industry in Malawi, the country needs to take serious steps to ensure that measures are in place to mitigate the environmental problems that are often associated with mining, or risk facing negative environmental impacts that the country is ill-equipped to deal with.

## National minerals policy

Public policy refers to a relatively stable, purposeful course of action taken by government or public actors in addressing a social problem (Chinsinga: 2008). Research has shown that deliberate policies have the potential to dramatically affect the national economy. Tea was the number-one foreign exchange earner in Malawi at independence in 1964, followed by tobacco. After instituting a deliberate policy to promote tobacco, the government of Malawi saw the product overtaking tea to become the major foreign exchange earner, and contributing significantly to the country's development.

The absence of a mineral policy in Malawi is indicative of the low priority that was historically accorded to the sector, resulting in an ad hoc and random evolution of legislation that does not follow any coherent strategy or rationale. This situation has created several anomalies in the legislation pertaining to the mining sector due to conflicting clauses in different Acts, and it is imperative to correct this vacuum without further delay. A draft policy has been in the formative phase for several years, but there is no indication of when it will finally be produced for public scrutiny and input prior to adoption.

The lack of encouragement of small-scale mining by the country's legislation scares local entrepreneurs who may have an interest in this sector. Mining (especially when diversified to small-scale mining) is critical to poverty reduction and economic development. Small-scale mining is particularly labour-intensive, and provides employment to a large number of people who are generally uneducated, poor and live in remote areas where no opportunity exists for formal employment (Lungu and Shikwe: 2006). Zambia's mining legislation (unlike Malawi's) encourages formal small-scale mining, which is dominated by mining of gemstones (ibid). By being silent on small-scale mining, Malawi's mining legislation inhibits the development of this sector. The lack of any minerals policy also scares away potential sponsors of

small-scale mining, who could have helped to provide alternative income-generating activities. In Zambia small-scale mining is promoted through legislation and donors are actively involved in supporting the sector, but Malawi presents an environment where potential donors shun small-scale mining because of lack of clear legislation.

## **The Environmental Management Act (EMA)**

The relationship that exists between the human race and the environment involves a continuous cycle which, if broken, has severe ramifications. The preservation and management of the environment is therefore pivotal to a country's history, progress and development. Any benefits (economic, social and political) accruing from the extraction of minerals will have some negative effect on the environment, in terms of the ecosystem and biodiversity that are crucial for the healthy existence of human life. Profit-oriented companies would normally have little or no regard for the environment, as their main agenda is to extract as much revenue as possible with minimal cost to themselves. It is therefore essential to have comprehensive legislation that will safeguard the environment against wanton degradation.

The Environmental Management Act (EMA) of 1996 provides for the protection and management of the environment, and the conservation and sustainable utilisation of natural resources in Malawi. This Act is a bold step taken by the government of Malawi to align with a world-wide initiative towards environmental protection. It embodies clauses that seek to ensure sustainable management of the environment. The realisation of the objectives envisaged in the Act depends on its implementation by the relevant ministries and departments, and adherence to its provisions by all stakeholders. However, the attainment of this vision has been a challenge due to the lack of official capacity and resources allocated for the purpose, and It is thus quite common for investors to resort to underhand means in a bid to sidestep regulations.

A case in point is the Eland Coal Mining Company in Karonga, which recently obtained a coal mining concession covering 9 x 2 kilometres, and a further extension of 6 x 4 kilometres. The local community raised bitter complaints against the company during a meeting with civil society activists who were touring the area. Further discussion revealed that there had been little or no consultation between the investors and the community prior to commencement of operations, although local community consultations are an integral part of preparation of the environmental

impact assessment (EIA) which is required by the EMA. Further investigation revealed that a government official had prepared the EIA and facilitated its processing with cursory or negligible consultation, in direct violation of the Act. Indeed, even the District Commissioner was unaware of the process leading up to operationalisation of the mine and its commitments toward empowering the local community. The matter has been exacerbated by the behaviour and attitude of the investors, who have bulldozed irrigation pipes that supply water to the village paddy fields where the unique and much sought-after Kilombero rice is produced, and have threatened to evict villagers from their customary land at gunpoint. This saga vividly illustrates the weaknesses in the system which can be exploited for personal gain by malefactors with seeming impunity.

One possible way of rectifying such excesses would be to use the Act to bring offenders to book through the courts. However the judiciary in Malawi has its own challenges, even though the country may have very comprehensive environmental legislation. This can be observed in the manner in which the courts handle public interest cases in which the principle of locus standi is brought to bear; in most cases the courts tend to dismiss cases on the grounds that the supplicants lack locus standi. A conspicuous example is that of a court injunction that was intended to prevent the International Fund for Animal Welfare (IFAW) from forcibly relocating all the elephants from their home in Phirilongwe forest in Mangochi to the Majete game park (situated in lower Shire) until such time as an EIA had been done as required by the EMA. The stay order was arbitrarily vacated by the court although it was premised upon Section 5 (2) a of the EMA, which states that

“Any person may bring an action in the High Court to prevent or stop any act or omission which is deleterious or injurious to any segment of the environment or likely to accelerate unsustainable depletion of natural resources”.

Thus, section 5 of the EMA has been nullified by the orthodox inflexibility of the judiciary, as argued by Nyasulu who states that “the whole rigidity rests on the country’s judicial system which retains the orthodox interpretation of the concept of locus standi”. There is a dire need for the judicial system to loosen its stance on the requirement of locus standi to enable the citizenry to play a supportive monitoring role in effective environmental protection and management.

## The mining tax regime

Globally, big corporations that are involved in mining are well-known for tax evasion. As a country, Malawi is poorly equipped to deal with the challenge of tax-dodging. It is only through ratification of regional or international policy on action against international tax-dodging that Malawi will be able to deal with this evil. The government of Malawi needs to abandon the widely-held assumption that having low tax rates will attract foreign direct investment. On the contrary, the reality is that low tax rates have resulted in low economic growth and development of the country, as benefits are accrued by the corporations who also dodge the already low tax rates. Thus, Malawi needs to subscribe to internationally agreed standards on tax regimes and key financial information in the mining industry in order to realise the trickle-down effect on economic growth and development.

It has been observed that Malawi must optimise returns from its mineral wealth (a finite resource) if it is to extricate itself from the unremitting grip of perpetual poverty, and the current tax regime does not accomplish that. Economically, there remains the question of how much the mining companies are actually contributing to the national economy through taxes and royalties from the mining corporations. Malawi gets a meagre 4 percent from the mining companies in the form of royalties, whilst taxes are mitigated by 100 percent amortisation of all fixed assets and machinery, and the government has a 15 percent shareholding in the mining company (Kayelekera). There is no guarantee that the company will declare any profit for at least five years, and the government may not realise any return on its shareholding. Further, mining companies are notorious for insider-trading techniques, and the government could easily be misled due to trade-tracking incapacity, which would result in little or no trickle-down effect to grassroots communities living within the proximity of the mine and bearing the brunt of the environmental, social and economic impacts.

## Local ownership

The people of Malawi are the custodians of the mineral wealth within Malawian soil – a fact that is only nominally alluded to by the current mining legislation. As has been observed, mining licenses have been granted after cursory or peripheral consultations with affected communities, thereby divesting them of their sense of custodianship and belonging in a certain area. The proceeds from mining operations have not benefitted (and will not benefit) communities who are, in reality, the ultimate

owners of the land. The Mines and Minerals Act (1981) does not address community participation or ownership in mining ventures. Although section 20 of the EMA does provide for consultation in preparation of the EIA, there is no guarantee that the views of the people would indeed be incorporated in the ensuing EIA.

International human rights laws stipulate that all peoples have the right to freely pursue their economic, social and cultural development, which is the right for indigenous peoples to control their own futures. However, this right is often violated during large-scale development projects, and indigenous peoples are more often than not left out of planning and decision-making processes, as well as from partaking of benefits accruing therefrom. The outcome can be devastating, including permanent loss of livelihoods and culture, dispossession, unusable land, and forced resettlement with inadequate compensation.

There is a need to reinforce the sense of custodianship in local communities with the capacity and mandate to monitor mining operations in their vicinities and hold them to account for any violations that are committed.

## **Civil society and mining**

Mining legislation in Malawi does not allow for civil society organisations (CSOs) to be involved in the scrutinisation process, although their contributions provide a degree of objectivity and analysis which is vital for an equitable paradigm in the mining sector. CSO expertise, resources and outreach capacity augment government efforts, and should thus be considered as part and parcel of the process from start to finish.

This was admirably proved during the Kayelekera saga, in which CSOs took the government to court on constitutional grounds and locked horns with top legal experts from Paladin for a week, resulting in significant tangible benefits accruing directly to the local community. This episode strengthened the nascent partnership between the government and CSOs and enhanced mutual respect, such that the same CSOs were invited by the government to participate in developing rules and regulations for the storage, handling and transportation of radioactive materials and to participate in a task force to monitor environmental, process, and financial operations of Kayelekera.

This was a very positive development, but it will need to be formalised before the impetus is lost. It is absolutely essential to include the CSO role in all future legislation pertaining to the mining sector.

## **Parliamentary scrutiny**

Parliament is the most logical conduit for public participation in vetting mining agreements through their elected representatives, and countries such as Tanzania and Sierra Leone have vibrant parliamentary committees that scrutinise mining agreements prior to endorsement. However the national assembly in Malawi does not have a committee specifically responsible for the mining sector, and parliamentary approval is not required to ratify such agreements. This could be construed as a significant weakness in the process of granting mining licences.

Indeed, when the national assembly requested the then minister of finance to produce the mining agreement for Paladin Resources (Kayelekera Uranium Mine), he adamantly refused to disclose anything, citing the confidentiality clause (section 7 of The Mines and Minerals Act). The MPs were powerless to do anything about it. While it is imperative to ensure confidentiality to protect the company's interests, it is of equal significance to draw a line between public interest and private needs.

The government is the machinery for the state and derives its mandate from the people. Transactions entered into by the government on behalf of the people require accountability to same. Government duties, obligations and interests far exceed mere profit maximisation, especially in areas such as mining which can have such far-reaching consequences. The increasing calls for transparency in state-investor contracts by many sectors of the country are a sign of the growing concern and unease with regard to mining contracts (Hajat: 2007).

This practice of secrecy could result in non-disclosure of vital data on salient issues (such as gross earnings, transfer pricing, human rights and environmental violations), which could seriously hamper government efforts to regulate the sector effectively.

## **Presidential and ministerial powers**

The Mines and Mineral Act (1981) vests all minerals in the office of the president, and bestows wide discretionary powers in the minister. Section 2 states that: "The

entire property in, and control over, minerals in land in Malawi are vested in the President on behalf of the people of Malawi”

This section vests enormous power in the person of the president, who can grant or revoke licenses at will to suit personal agendas. Indeed, such power without checks and balances invites abuse, as can be observed by the issuance of a court injunction by a South African mining company to suspend all activities at Kangakhunde in Balaka. The company’s license was revoked after the company allegedly refused to give a significant stake in the mine to the then incumbent president, Mr Elson Bakili Muluzi. This is a typical example of how abuse of presidential power can derail development, even more so when it is premised upon mining legislation that is a throwback to the days when Dr H Kamuzu Banda ruled Malawi with an iron fist for 30 years.

Another weakness in the legislation is the discretionary powers of a minister in granting mineral rights under Section 10 of the Mines and Minerals Act. The powers granted by this section make the minister a likely target for applying pressure, influence or inducement by vested interests to obtain mining permits. In view of the huge fortunes to be made, it is conceivable that companies will leave no stone unturned to gain an advantage. This situation, augmented by the concentration of too much power without any countervailing accountability, is an open invitation to abuse.

## **Institutional capacity: government versus mining corporations**

Mining in Malawi is in its infancy, and this is reflected in the existing structures that are responsible for executing its functions. The sharp contrast between multinational mining corporations (who can employ the best expertise in the world) and the government of Malawi (who have one woefully inadequate department to service the entire sector) is obvious. This raises questions about the credibility of current processes responsible for negotiating, regulating, monitoring, assessing and mitigating this suddenly vibrant sector.

It is evident that the government of Malawi will have to embark on numerous programmes of vigorous capacity-building and, with time, create a fully-fledged ministry boasting well-trained staff and experts, in order to realise its aims of harnessing the minerals of Malawi for economic growth and national development. This ministry,

once realised, will be able to negotiate, regulate, monitor, assess, and mitigate all mining activities, and ensure substantial contributions to GDP from this sector.

According to some interviewees, there is already a well-entrenched informal trade mechanism, whereby informal traders from Tanzania and west Africa buy gemstones at lower prices in local currency (MK) and sell them at higher prices in US dollars outside the country. These traders bring goods which they sell in order to acquire the local currency, which they use to buy minerals after using unscrupulous means to obtain gemstone buying licenses. This virtual barter trade has resulted, amongst other things, in huge losses of potential foreign exchange earnings due to lack of adequate regulation of the buying and selling of minerals, and if the present status remains it is going to be open season for every unscrupulous operator to come and pillage our finite natural resources while the going is good.

## Political will

The inexplicable lack of political will to address these issues can also be observed in the budgetary allocation made to this sector as compared to other sectors. According to the 2010/2011 budgetary allocations, the mining sector was granted a remarkably meagre allocation for its development, notwithstanding the fact that the minister commented upon the sector's contribution to the GDP and foreign exchange earnings as "significant". This statement is not, unfortunately, borne out by the 2009/10 financial earnings of the Kayelekera mine, of which Malawi got approximately 7.7 percent of the total earnings in taxes and royalties, which leaves much to be desired if the envisaged goal is to be attained.

The above argument does not dispute the potential of the mining sector to contribute significantly to the country's GDP and foreign exchange earnings, but much more is required in terms of training, capacity-building, technology and infrastructure before the fruits can be realised. According to the Reserve Bank of Malawi's 2010 projections of GDP contribution per sector, mining and quarrying ranks second to last of the country's seventeen sectors.

One geologist observed that if adequate support is provided to the mining sector through budgetary allocations and up-to-date legislation, the sector has the potential to overtake tobacco as the main foreign exchange earner for the country. He further observed that the Mozambique scenario could hold valuable lessons for Malawi, because the geology of the two countries is similar. Unquestioning reliance on foreign consultants to conduct studies may be counter-productive, as such consultants have been known to offer vital information to the highest bidder, providing only a glimpse of the real wealth to the government. It is imperative for the government to allocate more funds to geological exploration surveys with local consultants, in order to ascertain what exactly is in the ground.

## Corporate social responsibility and mining

According to Farrell et al (2004), social responsibility can be defined as an organisation's obligation to maximise its impact on stakeholders and minimise its negative impact. This definition indicates that corporate social responsibility goes beyond mere involvement in social actions (such as neighbourhood improvement or charity). It calls for responsible economic, social and environmental behaviour. Corporations should ideally take responsibility for all the consequences of their actions throughout the operational life (and beyond), by being accountable and engaging in a dialogue with all stakeholders.

Although there are numerous advantages associated with adherence to corporate responsibility by mining corporations, Malawian mining legislation, charters or empowerment programmes do not require significant responsibilities of the mining corporations. The prolonged existence of outdated mining legislation and the country's apparent enthusiasm for foreign investment is creating a situation in which the country appears to be repeating all the costly mistakes committed by its neighbours in demanding accountability and responsibility from mining corporations.

## Recommendations

The Lusaka Declaration on Mining Taxation (that was issued by IANRA in Zambia on 27 September 2010) and The SADC PF Communiqué of 30 October 2010 (see Appendix 4) offer many recommendations that must be included in any legislative frameworks, but it would not be amiss to further emphasise that all mining legislation within the sub-Saharan region must henceforth:

- 1 Safeguard the interests of local communities living adjacent to extraction areas, including those who have been moved from their traditional lands (who are often neglected). There is a need to ensure that they become the ultimate beneficiaries through participation and overall empowerment. The concept of local ownership in terms of shares in mining operation, entrenched in the legislative framework, is one way in which many imbalances can be addressed. While it is an undisputed fact that private ownership optimises business efficiency and profitability, greater inclusivity will ensure a degree of social empowerment that government cannot deliver, thereby providing a means through which local communities can extricate themselves from the perpetual cycle of grinding poverty and, in so doing, attain a level of human dignity that has long been denied them.
- 2 Reflect environmental degradation and impact possibilities through long-term future contingency planning. Environmental degradation resulting from mining activities adversely affects local communities and the country at large, but the burden of consequent rehabilitation is normally left to governments instead of the operators. It is globally recognised that environmental impacts often emerge long after the mines have closed down and moved on. The case of acid mine drainage (AMD) which is threatening the very existence of Johannesburg (South Africa) is a vivid example of this problem. It is imperative that all agreements must have long-term environmental liability clauses that make the mining com-

panies directly responsible for any environmental degradation that may manifest at any time prior to, during or after closure.

- 3 Accentuate the oversight role of parliament through legislative review, gathering more information, enhanced interaction between the relevant portfolio committees and concerned stakeholders, tracking contributions of the extractive industries to the national budgets, and audits thereof. This can be achieved through requisite training and capacity-building with development partners and civil society.
- 4 Ensure that environmental and social impact assessments (ESIAs) be prepared by reputable experts, who are independent of both government and private sector interests, after due consultation with local communities and other stakeholders prior to the commencement of operations. These assessments must be adhered to and reviewed throughout the lifespan of any extractive operation and beyond.
- 5 Undergo regular review for loopholes and include provisions for windfall taxes, environmental levies, labour training levies, and stringent penalties for insider-trading, non-compliance with regulations, false declarations and environmental violations. Research into the activities of the extractive industries (with, amongst other things, the aim of identifying best-practices in resource governance that are available in fiscal regimes in SADC) will provide a sound basis for ensuring optimal benefit from our finite precious resources.
- 6 Ensure that mining agreements:
  - are transparent, including provisions for adhering to international standards such as the Extractive Industries Transparency Initiative (EITI) and Publish What You Pay (PWYP);
  - are consultative, involving all stakeholders, including civil society;
  - are subject to oversight and scrutiny by parliament;
  - incorporate essential elements of corporate social responsibility.
- 7 Benefit the local economy in terms of shareholding, taxes, spin-offs, and value-added production, and contribute to local infrastructure and development. The

host country must see tangible benefits in the form of infrastructural developments that will boost national economic viability, both short-and long-term.

- 8 Include essentials of human resource management, such as capacity-building, training, and safe labour practices, and contain the same stringent standards that are prevalent in the investors' respective countries of origin.
- 9 Discourage the common practice of hoarding revenues emanating from extractive industries outside the borders of the country where the mining operation is actually taking place, as this militates against the balance of payments of that country.
- 10 Set common benchmarks or standards and best practices for policy and legislation on environment and natural resources management for extractive industries, which are harmonised in accordance with international standards so as to prevent tax or concessional shopping.
- 11 Include the role of civil society, including the media, as being crucial in providing a sound partnership in tracking and raising public awareness on critical issues and assisting in the oversight function.

## Conclusion

Whilst the mining industry in Malawi may still be at an embryonic stage, it is an ideal time to revisit extant legislation before it is too late to mitigate some of the adverse effects outlined above. By vigorously implementing a vibrant legislative framework that applies internationally-recognised standards in addressing social, political, economic and environmental issues with stringent monitoring mechanisms and well-trained human resources, Malawi will make giant strides in turning the problem of resource curse into an equitable and sustainable growth curve – provided we can surmount hurdles such as lack of political will, corruption and technological paucity. The challenges are squarely in our court and we will have to muster the requisite capacity, unity and solidarity to meet them squarely. Failure to do so will have unthinkable ramifications. It is imperative for all stakeholders (including government, civil society, the media and grassroot community structures) to work together and extract maximum benefit from this exciting opportunity before it degenerates into a resource curse.

## **APPENDIX 1: CONSULTATIVE MEETING ON MINING LEGISLATION AND WORLD BANK PROJECT WITH MEMBERS OF PARLIAMENTARY COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES<sup>1</sup>**

### **Introduction**

The meeting with Members of the Parliamentary Committee on Agriculture and Natural Resources on Mining legislation and World Bank Project was convened by the Institute for Policy Interaction (IPI) to ensure informed interaction between key stakeholders on pertinent issues stemming from the legislative framework for the mining sector. The emphasis of the meeting was to sensitise the lawmakers on the analyses drafted by IPI with support from the Southern African Resource Watch (SARW) on the legislative framework pertaining to natural resource exploitation, as well as analysis of the World Bank Governance Support Project that will soon be implemented by the government of Malawi. The meeting consisted of members from the Department of Mines, Members of Parliament from the Committee on Agriculture and Natural Resources, a mining expert, and the team from the IPI. The meeting, which was facilitated by the consultant, started with high expectations from the MPs as they expressed keen interest to learn more about the World Bank programme and other initiatives in the mining sector.

To ensure that all stakeholders at the meeting were on the same page during the discussions, the facilitator started by providing background on systemic procedures that are applied prior to granting mining licenses. In addition, the government officials from mines department elaborated how a technical committee checks if all the processes were followed by a company before granting a license. The officials added that mining licenses are granted by the minister responsible, with the exception of oil and gas exploration licences (which are referred to the president).

Participants were provided with copies of the following documents:

- SADC Parliamentary Statement: Towards Enhancing Parliamentary Legislative and Oversight Role in Extractive Industries Sector (SARW)
- The Lusaka Declaration on Mining Taxation (IANRA)
- An Analysis of the Legal Framework on Mining in Malawi (SARW)
- World Bank Mining Growth and Governance Support Project: Analysis and Recommendations (IANRA).

## **Malawi's mining legislation**

The meeting was briefed on the current status of the archaic mining legislation in Malawi, and on the various initiatives that are underway to reform the laws and plug the gaps that have been identified in papers by various institutions (such as IPI), as well as international best-practice standards as principles such as those enshrined in the SADC PF Declaration and the Lusaka Declaration.

The timing of the meeting was deemed opportune because the Draft Mining Policy and Amendments to the Mining Act were presently awaiting Cabinet approval, after which they would be tabled before parliament and would, in all likelihood, be referred to the parliamentary committee for study and comment before discussion in the plenary.

The MPs were intrigued by all the information they had received, and expressed keen interest in learning more about the subject because they had, up to that point been in the dark about many issues that were being raised. They expressed concern that the time provided for this consultation was much too short to cover the subject matter comprehensively. They were not satisfied by the “dragonfly” skimming approach, but were mollified when informed that this meeting was only meant to be the start of a series of such meetings in which civil society and academic experts would be enlisted to equip the parliamentary committee on various aspects that are pivotal to the efficient performance of their legislative and oversight roles.

The MPs did not dwell much on the issues raised because they felt that more study of the papers was needed before engaging in discussions of such a technical nature, but they promised to study and, where possible, internalise the information gleaned before applying it in their professional capacities.

The chairperson, Dr Allan Chiyembekeza, requested that IPI and other such institutions should make themselves available for future parliamentary committee meetings, where they would certainly be called to provide technical expertise and insights on technical issues from time to time.

## **Discussions on the the World Bank project**

The participants were then briefed on the World Bank (WB) US\$12 million loan to the government of Malawi which had just been approved by parliament. They were made to realise that that this was a loan which the government of Malawi would have to repay after a stipulated period of time. Participants were then advised to use the critique of the WB project and recommendations to ensure that the project benefits all Malawians.

It was pointed out that that the draft WB Project Agreement of December 2010 included provisions for Malawi to join the Extractive Industry Transparency Initiative (EITI) as an important ingredient in ensuring good governance in the sector. Interestingly, the references to EITI were deleted from the final WB Project Agreement of March 2011, and substituted with the term “good governance” in the draft which was approved by parliament. This raised questions as to how the project intended to achieve its stated objective of ensuring good governance if important ingredients in pursuit of good governance of the mining sector (such as EITI) are deliberately omitted.

The chair of Parliamentary Committee on Agriculture and Natural Resources, Dr A Chiyembekeza, further questioned the WB project, observing that the name of the project (Mining Technical Assistance Project) that was being discussed was different from the one that was approved in parliament (which was entitled the Mining Growth Support Project). He wondered if this was the same thing, and warned that such differences in designations could entail giving with one hand and taking back with the other.

The MPs raised concern that many bills pass through the committee with perfunctory scrutiny, without substantive input from committee members due to lack of technical knowledge. Mr Mulombwa observed that it is only through such forums as this one organised by IPI, that the committee gets salient information on bills that

they are expected to scrutinise. He asked for more of these forums to ensure that the committee discharges its responsibility with greater competence and efficacy. It was also observed that members of the parliamentary committee had no prior knowledge of the WB project, which proved that the formative process of the project was not consultative. In this case, it was observed by the MPs (and echoed in the IPI critique) that the project document does not include the oversight role of parliament, which is a fundamental departure from the objectives stipulated therein with regard to good governance.

It was also discovered during the meeting that the MPs are ignorant of the amount of money available in Agriculture, Environment and Natural Resources. This lack of knowledge hampers critical questions or scrutiny by the committee. One example given by Dr Chiyembekeza was the mineral policy which has been sent to cabinet for approval without consulting with the parliamentary committee.

Mr Mulombwa pleaded with IPI that there has to be another forum on land issues with the members of the committee, since the mining sector has a direct impact on this crucial element in the lives of ordinary Malawians.

The members present applauded the meeting as very enriching and informative, and asked IPI to continue organising such meetings so that they are equipped for thorough scrutiny of the bills or reports that go through the committee.

The MPs observed that although the WB project was already approved by parliament, it was not too late since there are other areas (such as oversight) that can be brought into play to ensure that the project benefits the nation. Officials from the Department of Mines emphasised that the government has categorically told the WB that it will not employ foreign consultants where the country has experts in the requisite field (the rationale being to ensure that government does not spend money on foreign consultants, thereby defeating the set goal of the project). However, Dr Chiyembekeza expressed doubts as to whether the executive arm government will be in a position to call the shots since the loan has conditions which the government has to observe.

## Conclusion

It was apparent that there is a significant lack of knowledge amongst the legislators. This knowledge gap is, in part, due to lack of informative fora in which they are exposed to issues that fall under their mandate. As observed during the meeting, the legislators require intensive capacity-building in the mineral sector to ensure that they are equipped with the requisite skills to enable them to effectively perform their roles of legislative scrutiny and oversight. The IPI initiative was hailed as a step in the right direction, but with a caveat that it is imperative for this process to continue with increased frequency and intensity for optimal efficacy and the ultimate realisation of natural resource justice in Malawi.

### Participants

Name	Designation and organization
Hon. Dr A Chiyembekeza (MP)	Chairperson - Parliamentary Committee on Agriculture and Natural Resources
Hon. Pillane Mia (MP)	Member - Parliamentary Committee on Agriculture and Natural Resources
Hon. J Tembo	Member - Parliamentary Committee on Agriculture and Natural Resources
Hon. Mulombwa	Member - Parliamentary Committee on Agriculture and Natural Resources
Mr Kabitchi	Clerk of the Committee
Mr Wona	Director (Department of Mines)
Mr Chiwambo	Mining Engineer (Department of Mines)
Mr Bandazi	Environmental Specialist (Ministry of Natural Resource, Energy and Environment)
Mr F Nga'mbi	Consultant - Mining and Development
Mr R Hajat	Executive Director (Institute for Policy Interaction)
Mr J Galagade	Research Officer (Institute for Policy Interaction)

## APPENDIX 2: MINERAL DEPOSITS IN MALAWI

### Classification of mineral deposits

Group 1	Group 2	Minor mineral occurrences
Apatite	Barytea	Asbestos Molybdenite
Bauxite	Chromite	Beryl Nickel minerals
Kaolin	Copper Minerals	Diatomite Platinum
Coal	Corundum	Galena Semi-precious
Kyanite	Fluorite	Gold Ornamental stones
Limestones	Graphite	Gypsum Talc
Monazite Strontianite	Mica	Iron ore Tantalum minerals
Niobium Minerals	Nepheline syenite	Magnesite Zinc minerals
Uranium Minerals	Sulphur Minerals	Manganese Zircon
	Titanium minerals	
	Vermiculite	

**Malawi's mineral reserves and their locality**

<b>Location</b>	<b>Mineral deposit</b>
Chimwadzulu Hill, Ntcheu	ruby, sapphire, padparadscha, hercynite, zircon and diaspore included in gem-quality corundum (metapyroxenites, harzburgites, amphibolites, clinozoisite- ortho zoisite amphibolite-Precambrian Basement Complex)
Thambani	corundum, diaspore, muscovite (pegmatites intruded into nepheline gneisses-Precambrian Basement Complex)
Mwanza	zircon (albite-enriched pegmatitic rocks-Precambrian Basement Complex)
Kapiridimba	kyanite with inclusions of rutile, replaced by muscovite and kaolinite (kyanite fels to kyanite-gneiss in hornblende-biotite gneiss-Precambrian Basement Complex);
Mzimba	beryl, aquamarine (zoned mica pegmatites in sillimanite-gneiss-Precambrian Basement Complex)
Rumphi, Ilomba Hill	pyrochlore, eudialyte (nepheline syenite-Precambrian Basement Complex),
Kapiri Kamodzi	vermiculite, phlogopite, magnesite (pyroxenites-Precambrian Basement Complex),
Katengeza	graphite, utile, Fe-Cu sulfides (kyanite-graphite-mica gneiss-Precambrian Basement Complex)
Choma Hill, Likudzi River	amphibole asbestos (metagabbros, amphibolite-Precambrian Basement Complex),
Kayelekera-Karonga	uranium oxides and uranyl silicates (coal-bearing arkoses and claystones- Permian to Triassic Karroo Group)
Finishi Village	chalcedony, calcite, magnetite, chrompicotite (tholeiitic basalts - Lower Jurassic Stormberg Volcanics )

Kangankunde, Songwe, Tundulu, Chilwa Island, Zomba	monazite, strontianite pyrochlore, bastnaesite apatite, fluorite, barite (carbonatitic igneous rocks, nepheline syenite – Upper Jurassic to Cretaceous Chilwa Alkaline Province
Mulanje Mountains	gibbsite, kaolinite - bauxite (Cretaceous to Tertiary)
Linthipe, Nkhonde	kaolinite (regolith on weathered meta- anorthosite (Cretaceous to Tertiary)),
Tengani, Chikwawa	ilmenite, rutile (colluvial to fluvial placer (Quaternary))
Mpyyuyu Hill	ilmenite, zircon, rutile, leucosene, garnet (fluvial to deltaic lacustrine placer (Quaternary)),
Salima, Linthipe River, Unga River, Monkey Bay	rutile, ilmenite, zircon, garnet, magnetite (fluvial to deltaic lacustrine placer (Quaternary))
Chimwadzulu Hill, Thambani, Mwanza, Kangankunde	garnet, zircon, sapphire, ruby, REE phosphates, apatite (residual, eluvial and part of the colluvial placers, Tertiary to Quaternary)

Source: Dill, HG (2007) A review of mineral resources in Malawi

### Mineral reserves in Malawi

Deposit	Location	Delineated reserves (Million tonne/grade)
Bauxite	Mulanje	28.8/43.9 Al <sub>2</sub> O <sub>3</sub>
Uranium	Kayelekera Karonga/Chitipa	2.4/
Monzanite/ Strontianite	Kangankunde – Balaka	11.0/8%Sr, and 2% REO
Corundum	Chimwadzulu – Ntcheu	8.0/75.6 gm per m <sup>3</sup>
Graphite	Katengedza – Dowa	2.7/5.8%C
Limestone	Malowa Hill – Bwanje	15/48% CaO, 1.2% MgO
Titanium Heavy Mineral Sands	Salima-Chipoka Mangochi (Makanjira)	700/5.6% HMS 680/6.0%HMS
Vermiculite	Feremu -Mwanza	2.5/4.9% (Med + Fine)
Coal	Mwabvi – Nsanje Ngana -Karonga	4.7/30% ash 15/21.2% ash
Phosphate	Tundulu -Phalombe	2/17% P <sub>2</sub> O <sub>5</sub>
Limestone	Chenkumbi -Balaka	10/46.1% CaO 6.3% MgO
Pyrite	Chisepo-Dowa	34/8% S
Glass sands	Mchinji	1.6/97% SiO <sub>2</sub>
Dimension Stone	Chitipa, Mzimba, Mangochi, Mchinji	Black and blue granite, pink granite, green granite
Gemstones	Mzimba, Nsanje, Chitipa, Chikwawa, Rumphi, Ntcheu	NA

Source: Malawi Annual Mining Economic Report 2002

## APPENDIX 3: MINING COMPANIES IN MALAWI

Numerous corporations are currently engaged in mining and prospecting activities in Malawi, and the following presents a brief outline of their activities.

### **Allied Procurement Agency Limited (APA)**

APA is developing the Chipoka HMS project for the extraction of ilmenite, rutile, zircon, and garnet. Since Chipoka is a freshwater harbour on Lake Malawi, this project envisages conveyance of concentrate by pipeline from the mine to the harbour, and thence onwards by barges. Sources indicate that, although this project is at an advanced stage, it may have temporarily stalled due to technical difficulties.

### **Albidon Limited**

Albidon hold concessions over four areas, comprising Mpemba Hill and Kapeni River (in the southern region) and Linthipe and Katakwi (in the central region) in respect of nickel, copper, and platinum group metals (PGM) exploration. Albidon and its joint venture partner Western Mining Corporation (both Australian companies) were involved in interpretation of airborne geophysical data acquired over their licence area of the southern region.

### **Gondo Resources**

This is a new player in the field that seeks to exploit the bauxite reserves in Mulanje Mountain. Their lack of experience, coupled with the complexity of extraction in a very delicate ecological environment that has been recognised as a World Heritage site, does not inspire much confidence.

Further, it will be necessary to import huge amounts of electricity from Cabora Bassa in Mozambique to power the extractive process – thereby resulting in outflows

of revenue from Malawi. This is compounded by the fact that the ore will not be refined in Malawi, but transported by rail to Mozambique, where a processing plant is already in existence. This means that Malawi will merely export crude ore, with no value-adding spin-off benefits that could make a huge difference in the revenues realised from this project.

It is unclear as to what benefits, if any, will accrue to Malawi and its people, despite the potential ravages of a unique and breathtakingly beautiful natural site that has great potential for eco-tourism.

### **Global Metals & Mining (Africa) Limited**

Global Metals & Mining (Africa) Limited, a Malawian Company owned by Globe Metals & Mining Limited (an Australian publicly listed resource company) is proposing to develop a new mining operation at Kanyika in the Mzimba District. The mine will produce niobium metal for export to the steel industries. Other metals that are to be produced include zircon, tantalum and uranium. The proposed operation will include mining of mineral-bearing rock from an open pit. The rock will then be processed in order to extract the metals. According to the fact-sheet of the company, the expected lifespan of the project is more than 20 years. The feasibility study commenced in 2009 and will finish in 2011. This will be followed by construction phase which will be from 2012 to 2014, and then the actual operation will start.

### **Lisungwi Mineral Resources Limited (LMRL)**

LMRL together with ACA Howe International carried out compilation and analysis of geological, geochemical, and geophysical data and identified three gold and platinum sites for detailed exploration work (including drilling) to be carried out during the dry season of 2004.

At Chimwadzulu, the analytical results indicate platinum and palladium concentration in the location for platinum group mineralisation towards the base of the ultrabasic intrusion. Further work will involve the analysis of selected infill auger samples and a series of additional sampling lines along strike to close off anomalous trend. This will be followed by trenching to bedrock with the hope of intersecting bedrock-hosted mineralisation.

It is worth noting that this area also has the Chimwadzulu ruby mine in Ntcheu, owned and operated by the Hargreaves family since 1964. The mine is the only known source of the world-famous Nyasa Ruby that fetches premium prices on the global market, but it is not known exactly what benefits have accrued to Malawi or the local population due to the shroud of secrecy that surrounds the mine and its owners.

The Likudzi prospect has been sampled and the analytical results may justify trenching to bedrock. Historical results analysis seems to indicate positive position for better grade gold mineralisation in an inclined shaft. Sampling results in old workings seem to be comparable with the historical values at the surface level. Further work will consist of drilling at least one drill hole to examine the setting of mineralisation, within, above, and below the main horizon, and to confirm grade and thickness of mineralisation. Auger sampling will be carried out along strike from the old workings.

#### **Millennium Mining Limited (MML)**

Millennium Mining hold licence numbers: EPL 096/2000, 103/2000 and 0115/2002 for exploration of three heavy mineral sands (HMS) projects in Salima, Makanjira (Mangochi) and Lake Chilwa (Zomba), which aim to extract ilmenite, rutile and zircon. A feasibility report and environmental impact assessment were submitted for the Halala HMS project in Lake Chilwa area and a deposit of 15 million tonnes with economic grades for ilmenite and zircon has been delineated.

#### **Mchenga Coal Mines Limited (MCML)**

MCML is involved in coal extraction in the Chiweta mountain range (near Karonga) and plans to increase production of coal to some 5000 tonnes per month with exploration for additional coal resources within the Livingstonia coalfield. The site is an eyesore, with a thick coating of black coal-dust on all buildings, machinery and vegetation, and the local community complain of proliferating lung diseases with no school, hospital or infrastructure to provide essential services.

#### **Maravi Minerals Development Limited (MMDL)**

Maravi Minerals Development Limited is exploring the Thambani Mountains and Mzimba pegmatites for tantalite minerals, zircon, and corundum, under EPLs 0118/2002 (Thambani) and RL 033/2002 (Mzimba).

### **Paladin Resources Limited**

Paladin Resources Ltd of Australia is involved in mining of uranium at Kayelekera in Karonga. It started its mining operations in 2009 after numerous concerns expressed by civil society augmented by experts from Australia. According to the Malawian government, the Kayelekera mine is expected to contribute greatly to the country's GDP. The capital costs for the company were estimated to range from \$50 million to \$55 million. The life of the mine was expected to be 10 years (Paladin Resources Ltd., 2004), but has now been revised to 7 years. In its 2010 annual report, Kayelekera Uranium Mine has registered a profit before tax and finance costs of US\$7.9million.

### **Rare Earth Company**

Rare Earth Company is developing the Kangankunde Hill monazite and strontianite deposit under mining licence ML 0122/2003, and plans for full-scale operations are well underway.

## **APPENDIX 4: PARLIAMENTARY STATEMENT TOWARDS ENHANCING PARLIAMENTARY LEG- ISLATIVE AND OVERSIGHT ROLE IN THE EXTRACTIVE INDUSTRIES SECTOR**

Saturday, 30 October 2010, Birchwood Hotel, Johannesburg, South Africa

### **PREAMBLE**

Sub-Saharan Africa continues to be resource-rich but paradoxically remains unlikely to meet most of the United Nations Millennium Development Goals (MDGs), and more especially the goal on Eradicating Extreme poverty. In line with their representational, law-making and oversight function, parliamentarians from Angola, Democratic Republic of Congo, Malawi, Swaziland, Zambia, and Zimbabwe, assisted by Southern African experts, met under the auspices of the SADC Parliamentary Forum and the Southern Africa Resource Watch (SARW). The overall aim of the consultative meeting was to critically review extractive industries in Southern Africa in order to identify issues pertaining to further parliamentary awareness and capacity development.

The meeting, amongst other things, dealt with important matters such as contract negotiations, regional policy harmonisation, revenue transparency, environmental protection, sustainable development and social empowerment through corporate social responsibility.

### **The resolutions emanating from this meeting are:**

- There is great urgency in Southern Africa to turn the resource curse into a blessing for the benefit of the SADC citizenry, and the role of parliament in this endeavour is indispensable.
- Whilst the enhanced China-Africa relations seem to have created new opportunities and alternatives to the traditional trade with the west, African countries are

urged to prioritise their own development needs and zealously guard national interests and sovereignty. The foregoing paradigm must be cognizant of an overarching regard for human rights and human dignity in every respect.

- The legislative and institutional environments are currently weak and urgently require strengthening to ensure greater returns from the extraction of natural resources.
- It is imperative that environmental impact assessments (EIA) be prepared by reputable experts, who are independent of both government and private sector interests, after due consultation with local communities and other stakeholders prior to the commencement, to be adhered to and reviewed throughout the lifespan of any extractive operation and beyond.
- Local communities living adjacent to extraction areas, including those who have been moved from their traditional lands, are often neglected and there is a need to ensure that they become the ultimate beneficiaries through participation and overall empowerment.
- Environmental degradation resulting from mining activities adversely affects local communities and the country at large, but the burden of consequent rehabilitation is normally left to governments instead of the operators. Mining companies should be held liable for remediation for the entire operation.
- The oversight role of parliament must be strengthened through legislative review, gathering more information, enhanced interaction between the relevant portfolio committees and concerned stakeholders, tracking contributions of the extractive industries to the national budgets and audits thereof. This can be achieved through requisite training and capacity building exercises with development partners and civil society.
- Research into the activities of the extractive industries with, amongst other objectives, the aim of identifying best practices in resource governance, such as fiscal regimes, in SADC, will provide a sound basis for ensuring optimal benefit from our finite precious resources.

- Our governments are deemed to be lenient towards foreign direct investors (FDI) whereas it is necessary to uphold stringent standards prevalent in their respective countries of origin.
- The corporate practice of hoarding mining revenues outside the borders of a country where mining is taking place, militates against the balance of payments of that country and should thus be discouraged.
- The creation of common benchmarks/standards and best practices for policy and legislation on environment and natural resources management for extractive industries must be pursued with ardent diligence.
- There is thus a need for a SADC parliament that, amongst other objectives, would ensure harmonisation of legislation and lead to greater regional oversight of extractive operations.
- The role of civil society, including media, is crucial in providing a sound partnership in tracking, raising public awareness on critical issues as well as assisting in the oversight function.

The meeting highly commended the SADC Parliamentary Forum and SARW cooperation, and urged its continuation for the benefit of greater parliamentary awareness, oversight and capacity development in the quest for resource justice in Africa.

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Pursuant to the finalisation of the above report, it was presented to a consultative meeting with the Parliamentary Committee on Agriculture and Natural Resources and other stakeholders held at the Crossroads Hotel in Lilongwe on 15 June 2011.

