



AFRICAN FORUM AND NETWORK  
ON DEBT AND DEVELOPMENT



# THE REVENUE COSTS AND BENEFITS OF FOREIGN DIRECT INVESTMENT IN THE EXTRACTIVE INDUSTRY IN MALAWI

THE CASE OF KAYELEKERA  
URANIUM MINE



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31 Atkinson Drive, Hillside, Harare, Zimbabwe

ISBN: 978-0-797-5546-7

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## LIST OF ACRONYMS

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AFRODAD	African Forum and Network on Debt and Development
CFC	Control Foreign Company Rule
EPL	Exclusive Prospecting License
FDI	Foreign Direct Investment
FEP	First Equi-marginal Principle
FOREX	Foreign Exchange
GDP	Gross Domestic Product
GIS	Geographical Information System (GIS)
GoM	Government of Malawi
km <sup>2</sup>	Square Kilometers
Lbs	Pounds
MGDS	Malawi Growth and Development Strategy
MK	Malawi Kwacha
ML	Mining License
MNC	Multinational Corporation
Mt	Metric tonnes
NEPLs	Non-Exclusive Prospecting Licenses
OLS	Ordinary Least Squares
pa	per annum
ppm	An equivalent concentration of grammes of mineral product per tonne of ore (g/t)
RL	Reconnaissance License
STDs	Sexually Transmitted Diseases
tph	tones per hour
U <sub>3</sub> O <sub>8</sub>	Uranium Oxide

## ACKNOWLEDGEMENT

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AFRODAD wishes to acknowledge their gratitude to the Lilongwe University of Agriculture and Natural Resources and in particular, Dr. Kingdom Kwapata and his research associates Messrs Ron Phiri and Richard Nyoni for investing considerable time and effort in the research process and writing of this report. Further tribute goes to the Steering Committee of the Tax Justice and Extractives Platform coordinated by Malawi Economic Justice Network (MEJN) and comprising of Human Rights Consultative Committee (HRCC), Centre for Human Rights and Rehabilitation (CHRR), Action Aid Malawi (AAM), Centre for Social Concern (CFSC) and Malawi Council of Churches (MCC). The support from joint partners, EURODAD and LATINDADD was also imperative for the successful completion of this report. The report was enriched by special contributions made by various institutions including Norwegian Church Aid, Malawi through editing and commending. The research work would not have been possible without their input and assistance.

This report benefited greatly from the tireless work of the AFRODAD Secretariat: Dr. Fanwell Kenala Bokosi-the Policy Advisor who gave advice and incisive comments, Tafadzwa Chikumbu-the Economic Governance Policy Officer, and Tafadzwa Mabenge-the Economic Governance Policy Research Assistant for coordinating and facilitating the research. Special mention also goes to AFRODAD Executive Director, Dr. Collins Magalasi for his professional guidance to this report and to Jonathan Zinyandu and Angela Machonesa for proof-reading the report. AFRODAD will forever be indebted to them for their valuable contributions.



Special mention goes to the Government of Malawi through various Ministries and Departments for their cooperation and making the information available. This study was made possible with funding from NORAD and AFRODAD will forever be grateful to their support. We also thank other colleagues not mentioned but whose input into the final product remains vital.

## PREFACE

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Natural resources have the potential to transform national economies in developing countries towards pro-poor and sustainable development if properly managed. In the absence of sound policies and procedures governing natural resources, mineral resources can be a source of economic instability, social conflict, and lasting environmental damage<sup>1</sup>. Failure by African governments to harness revenue from natural resources for development is twofold; i.e. poor mining and investment policies and machinations of the investors which make use of complex systems to evade and avoid taxes. The onus is therefore upon the national governments to develop and implement concrete policies that govern investments in the extractive industry and also address the problem of illicit financial flows.

Natural resource governance will remain a serious challenge in developing countries unless policies are revised. However, most governments are resistant to change and it is sad to note that the majority of those responsible for negotiating contracts on behalf of the general citizenry support policies that disproportionately benefit the investors at the expense of the nation, thereby raising suspicion that the responsible government officials are corrupt. In spite of an avalanche of resistance by national governments and Multinational Corporations (MNCs), AFRODAD remains committed to influencing African governments to revise national policies in order to effectively and efficiently harness natural resource revenue for development.

Transparency and accountability in the licensing, exploration, contracting, extraction, revenue generation and allocation of resources from the extractive sector lies at the heart of natural resource governance globally.

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1 The natural resource charter, [www.naturalresourcecharter.org](http://www.naturalresourcecharter.org), November 2010

However, in spite of a plethora of global governance initiatives like the Kimberly Process, Publish What You Pay Campaign and the Extractive Industries Transparency Initiative, there is still a lot of secrecy around the negotiation and signing of mining contracts in Africa as well as utilisation of revenues from the extractive sector. Such lack of transparency and accountability in this sector inhibit socio-economic development in the continent.

The report looks at the cost and benefits of Foreign Direct Investment in the extractive industry with a particular focus on the Kayelekera Uranium Mine in Malawi. Kayelekera was chosen on the basis that it is the largest MNC in Malawi's extractive industry. The study examines the existing legal and institutional framework for mining and investment in Malawi. Loopholes in the existing laws are identified and suggestions are made on the possible policy changes. The absence of laws to address illicit financial flows perpetuates tax dodging by MNCs and a strong recommendation is herein made that the Government of Malawi should put in place such policies in order to avoid further financial leakages. Specific to the Kayelekera Uranium Mine, AFRODAD recommends that the Government of Malawi should renegotiate the contract. The challenges facing Malawi's extractive industry are common to African countries and the solutions proffered in this report are universally applicable.



Dr. Collins Magalasi  
Executive Director

## EXECUTIVE SUMMARY

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Malawi's extractive industry has begun to attract worldwide attention due to recent discoveries of various mineral resources ranging from coal, bauxite, niobium, uranium and rare earth of which Malawi has got the largest deposit reserves in Africa. Momentum and interest in Malawi's extractive industry was ignited by the commissioning of Kayelekera mine in 2007/2008 which is by far the largest Foreign Direct Investment (FDI) in the country with an investment portfolio of over US\$500 million and producing one percent of the world's uranium. Despite this large investment, many sectors of society have criticized government in the manner in which the deal was negotiated with the investor. This research study was specifically designed to unravel the revenue costs and benefits of foreign direct investment in the extractive industry in Malawi. Whilst appreciating the numerous players in the extractive industry, Kayelekera was taken as a case study to build lessons for future investment deals.

Consistent with what many analysts and commentators have said, this research study unequivocally established that the benefits that Malawi, as a country, is gaining from the deal made with Kayelekera are tangential and dismal. Among the reasons why benefits are skewed more favourably towards the mining company are that the negotiations were done hastily under an atmosphere that was not transparent. Furthermore, the government officials involved were not experienced and were no match for the skilled negotiators for Paladin.

Above and beyond this, the major problem that contributed to the disproportionate sharing of benefits are the country's archaic laws that fail to hold the Multinational Corporation (MNCs) more accountable to pay taxes and remit profits to Malawi. The laws that govern FDI in the extractive industry are weak and in disharmony. Taxation laws fail to

adequately address issues of capital flight, tax avoidance or evasion, which the study findings have revealed are being perpetrated by MNCs. To this extent the MNCs in the extractive industry have evolved to use more rigorous and complicated accounting systems that evade the detection radar of the local tax and revenue authorities.

The investment incentives offered to Paladin have revenue implications to the Malawi government. These include; (1) 15% carried equity in project company to be transferred to the Republic of Malawi, (2) Corporate tax rate reduced from 30% to an effective 27.5%, (3) 10% resource rent reduced to zero, (4) Reduced Royalty rate from 5% to 1.5% (years 1 to 3) and 3% (thereafter), (5) removal of 17 % import VAT or import duty during the stability period, (6) immediate 100% capital write off for tax purposes, The capitalisation (debt: equity) ratio of 4:1 for the project, and (7) stability period of 10 years where there will be no increase to tax and royalty regime and commitment to provide the benefit of any tax and royalty decrease during the period. This clause in the agreement statement implies amortization of profits. This means that there shall be a reduction or cancellation of taxes to be paid during future years of subsequent profits as a means to compensate the debt accrued by the company during years of registering losses.

As a result of this concessionary agreement, the government of Malawi lost billions of Malawi Kwacha from royalties, resource rent and value added tax against a meager MK5.35 billion which it has received in taxes and royalties within the three years that Kayelekera has been operating commercially.

Recommendations have been made that in future dealings the laws need to be reformed before any major deal is negotiated and signed to avoid repetition of previous mistakes.

## 2.0 INTRODUCTION

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Despite the abundance of mineral resource endowments in Africa, the associated development impacts do not accrue to the continent. Right from the contract design, foreign direct investors are given a lot of investment incentives in the form of tax holidays, tax exemptions, depreciation incentives, reduced royalty rates and export incentives among others. In return, multinational corporations fail to meet their obligations claiming that they fail to make profits, thereby prejudicing the government of its earnings which are normally based on profits. In addition to the generous investment incentives, the investors use complex accounting systems and procedures to evade and avoid paying taxes. The major forms of capital flight from Africa include corruption, tax evasion, transfer mispricing, non arms length rule and smuggling. Through such mechanisms, the MNCs drain hard currency reserves from the continent. As a result, Africa remains at the receiving end of donor and aid funds instead of championing its own development processes.

Further than that, lack of transparency in the negotiation of mining contracts and agreements, perpetuates corruption. Therefore, income meant for national development will end up benefiting the few elites, no wonder why most resource rich countries in Africa are marred by education, health and infrastructure challenges. Over the years, Civil Society Organisations, Faith Based Organisations and development partners have been trying to reverse the gains of natural resource exploitation to benefit the resource rich countries but little progress has been made so far. Unless the contracts are renegotiated and policies to curb illicit financial flows are in place, self driven socio-economic development in Africa will remain a fantasy.

Equally important is the role of Civil Society and Parliamentarians in ensuring that the MNCs disclose revenue payments to the government. Such engagements with government are critically important for demanding accountability for the use of natural resource revenue. Failure to publish, disclose and verify revenue and payments made to government by companies in the mining sector impedes African governments from harnessing revenues for development. However, access to information remains a major challenge amongst African governments especially, regarding revenue from the extractive industry. Malawi is not an exception, hence the need to interrogate the revenue and non revenue benefits and costs of foreign direct investment in the extractive industry.

In this study an analysis is done through reviewing the existing policies governing foreign direct investment in the extractive industry. The research team used both quantitative and qualitative data in carrying out the analysis. Existing mining sector policies, programme strategies and frameworks were reviewed. The first component of the study was a comprehensive review of secondary data aimed at generating an overview of the role and contribution of mining to the Malawian economy with respect to its contribution to GDP, social welfare, employment, international trade and foreign exchange generation.

Furthermore the review looked at how the mining sector has developed over the years outlining major challenges, threats and opportunities. A comparison of the mining sector in Malawi with its neighboring countries was made to give a perspective of the sector in the region. Specific desk literature information for Kayelekela Uranium mine was gathered and synthesized. The key types and sources of secondary data included government policies related to mining, policy briefs, reports on studies

and workshops, conference proceedings, journal articles, periodicals and data from the internet. The thematic approaches used were key informant interviews that mirrored the types of institutions visited. These themes were: (1) policy (2) research and development (3) regulatory (4) practicing institutions/ companies in mining (5) supporting institutions of mining policy, research and practice.

The outcomes of this research will thus form the basis for lobbying and advocating to governments, Civil Society Organisations and Parliamentarians in order to effect policy change towards pro-poor and sustainable development, driven by Africa's extractive industry.



### 3.0 COUNTRY PROFILE

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Malawi is a small landlocked country in Eastern Southern Africa with a surface area of about 118,480 km<sup>2</sup>. The country is among the least developed countries in the world with a Gross Domestic Product (GDP) of about \$2 billion<sup>2</sup> and has a population of about 15 million people. Predominantly, Malawi's economy is agrarian, with tobacco, tea, and sugar as its major export crops. Agriculture represents 31% of GDP and about 80% of all exports. Nearly 90% of the population engages in subsistence farming. Smallholder farmers produce a variety of crops, which include maize, beans, rice, cassava, tobacco, and groundnuts (peanuts). The agricultural sector employs 87% of the work force in Malawi and contributes 64% of the total income for the rural population as well as it provides 65% of manufacturing sector's raw materials.<sup>3</sup>

In recent years Malawi's agriculture sector has been struggling mainly due to the failing tobacco sub-sector which is the main forex earner. This failure is attributed to several factors one of which is the growing strength in worldwide anti-smoking campaign which saw most European countries banning smoking of tobacco in public places such as bars, buses, shopping malls and pubs. In view of this and in realization that agriculture alone cannot satisfy all the economic needs of the country, the government has identified two other priority sectors to complement agriculture, these are tourism and mining.

There is enormous potential to develop the extractive sector in Malawi due to the fact that the country is endowed with a number of valuable minerals. As a testament to this assertion, the government has issued

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<sup>2</sup> World Bank Development Report 2010

<sup>3</sup> Government of the Republic of Malawi. (2012) Malawi Growth and Development Strategy II 2011-2016, Ministry of Economic Planning and Development, Lilongwe, Malawi

more than 120 mining licenses to local and international companies, predominantly for the extraction of rock aggregate, coal, limestone, rare earths, Kaolin, dolomite, bentonite, semi-precious gemstones such as ruby, garnet, amethyst, tourmaline and sapphire and ornamental stones such as rose quartz and uranium which is the highest mineral forex earner.

The main players in the mining industry in Malawi are Kayelekera uranium mine, Globe Metals & Mining Limited, who are interested in Niobium. Mkango Resources is exploring rare earths together with Lynas Corporation Limited. Malawi has three heavy mineral sand deposits. These are Tengani, Mpyukyu/Kachulu and the lakeshore deposits of Monkey Bay, Salima and Unga deposit with estimated reserves of over 150 Mt of heavy minerals, such as ilmenite, zircon and rutile. Coal is also mined and its production increased from 59,201 metric tonnes (t) in 2009 to 78,186 (t) in 2010.

Malawi contributed 1% of world uranium production in 2010 according to the Ministry of Economic Planning, in that same year the production of uranium rose by 58%; that of sulphuric acid which is required in uranium processing rose by 493%. Uranium accounted for close to 10% of Malawi's exports, by value. In 2012, the mining sector contributed 10% to both GDP and exports, but ironically, it contributed only 0.76% to government revenue and 1.2% to domestic revenue<sup>4</sup>. The mining sector is expected to contribute more than 30% of GDP in the next five years. This increase is largely accredited to the increase in uranium production with four more potential mines in the offing.<sup>5</sup>

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4 Ministry of Development Planning and Cooperation, Annual Economic Report, 2011

5 Paladin (Africa) Ltd. (2012) Reconciliation of Export Proceeds, Paladin (Africa) Ltd. Lilongwe, Malawi.

Due to this overall increase in mining activities in the country, the level of employment in the mineral industry rose between 2009 and 2010, from 11,565 workers to 21,022. Out of this the uranium sector directly employs 933 Malawians. The general picture painted by FDI is that it lives up to its promise of providing employment which is what most countries anticipate of FDIs. However, a closer look at the picture reveals that most of the jobs offered to the majority locals are usually of low paying levels. Sadly, governments cannot recover any tax from such jobs. For example in Malawi, the Management of Kayelekera Mine comprises of the General Manager, Process Manager, Engineering Manager, Maintenance Manager, Commercial and Administration Manager, Human Resource Manager, Environment Manager, Safety Manager, Security Manager and Supply Chain Manager who are all foreigners. Even the Social Responsibility Program is headed by foreigners. The company Geologist who is a middle manager is a Malawian. An examination of the positions shows that the most senior Malawian is the geologist despite having Malawians capable of occupying more senior positions.

## 4.0 REGIONAL CONTEXT

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In the provision of incentives to FDI, most African countries anticipate benefits which include employment, industrial development, the uplifting of the economically disadvantaged, sustainable economic and social development of the country, citizen empowerment, small business development, technology spillovers, enhanced human capital, international trade integration, environmental friendly technologies and corporate social responsibility among others. Surprisingly for most of these countries the realization of these benefits seems far-fetched. Most countries' focus is on the investment that they will receive and not the losses they would incur through profits repatriated from the countries as well as the revenue losses through the tax incentives they offer. The countries are in tax competition and offer tax incentives with the intention of attracting foreign investment.

Ultimately, the competition which has been called “race to the bottom” has resulted in the countries losing large amounts of tax revenue. While the countries continue experiencing the net loss of resources it is unlikely that they would manage to mobilize the net saving imperative for the mobilization of domestic resources for development. For example, in the Democratic Republic of Congo, tax exemptions in a single mining contract cost the government about US\$360,000 a year<sup>6</sup>. One can appreciate the magnitude of loss in revenue and outflows of resources due to the nature of agreements entered by African countries.

Such realization has led to some countries such as the DRC and Zambia contemplating revisiting all mining contracts. DRC for instance, announced the review of 61 mining contracts with local and foreign

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6 <http://www.christianaid.org.uk/Images/breaking-the-curse.pdf>

mining companies in 2007, aimed at overhauling deals that were agreed to during the chaos of the 1998-2003 civil war. In Zambia, Civil Society managed to work with the President and Parliamentarians to develop the Mines and Minerals Act and to start collecting taxes from the mines.<sup>7</sup> In Malawi there has been continued talk over the Kayelekera Mining Project agreement concerning the extent to which the nation was benefiting from the mine. This has brought into question the effectiveness of the Mines and Minerals Act (1981) which calls for its review.

In countries such as Zimbabwe there has been a shift in government direction towards indigenization of the extractive industries. Under the indigenization policy, foreign mining companies are compelled to transfer 51% of their ownership into the hands of local investors. In South Africa, questions have been posed over the possibility of revoking licenses of companies that do not comply with increasing shareholding of black people in mining firms as stipulated in the mining charter which calls for 26% of all companies' shares to be sold to Africans by 2014. In Botswana the government encourages joint ventures. Government shares are 50%. In Botswana and Namibia where government involvement in the extractive minerals industry is extensive the level of benefits is higher unlike in Malawi, Zambia and DRC where it is minimal.<sup>8</sup>

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7 Tax Justice Network for Africa, ADASA and AFRODAD. (2010) Southern Africa Tax Policy Roundtable Report, AFRODAD, Johannesburg, South Africa.

8 Economic Commission for Africa and Southern African Development Community. (2009) The Impact of the Current Global Financial Crisis and Recession on the SADC Mining Sector: An Issue Paper. ECA/SA/AEGM/MINING/2009/2.

## 5.0 OVERVIEW OF MALAWI'S MINERALS LEGISLATION

All minerals are vested in the President on behalf of the people of Malawi. The search for mining and disposal of these minerals is governed by the Mines and Minerals Act (1981). The Administration of the Act is the responsibility of the Commissioner for Mines and Minerals in the Ministry of Energy and Mining.

The overall policy objective is to maximise the economic benefit to the nation that can be realized from the exploitation of the nation's mineral resources. The government encourages investors to explore, delineate, evaluate and where viable exploit the resource using appropriate technologies.

### Licenses

1. **Reconnaissance Licenses (RL)** are issued for one year for an agreed programme over an area not exceeding 100 000 km<sup>2</sup> at a fee of MK1 000 for the license and annual charges of MK0.1 per km<sup>2</sup>. No subsurface operations are permitted unless specifically authorized. However, holders may erect camps and temporary buildings.
2. An **Exclusive Prospecting License (EPL)** confers exclusive rights to carry out a programme of prospecting operations for specified minerals over a specified area. A detailed programme of exploration, expected expenditures and personal details are required. There must also be a proposal for the training and employment of Malawi citizens in the operations. The license is issued for a maximum of three years and may be renewed twice for periods not exceeding two years each. The fees payable on issue is MK500 and an annual charges at MK10.00 per km<sup>2</sup>. A fee of MK200 is payable for each renewal requested. The maximum area at initial grant is 2 500 km<sup>2</sup>. This is reduced by 50% at

each renewal. The holder has the automatic right to apply for and be granted a Mining License after recording a final report and on submission of a feasibility study report. Progress reports must be submitted to the Minister at the end of each phase including a work programme and cost estimates for the next phase.

3. A **Mining License** (ML) may be issued to holders of an EPL or non holders. The applicant must give a detailed feasibility report including the anticipated programme of mining operations, an environmental impact assessment, and proposals for the employment and training of Malawians. The license confers the holders the exclusive right to prospect, mine, produce and sell specified minerals from the designated area. The maximum area for non holders of EPL is 250 km<sup>2</sup> and for holders not more than the land subject to the EPL. The ML fee is MK1000 per km<sup>2</sup>. The initial term for a ML is for a period not exceeding more than 25 years or estimated life of the mine, whichever is shorter. It may be renewed for a period of 15years thereafter. Regular reports on the operation must be made to the Minister.
4. Three types of licenses are issued for small scale mining and prospecting operations. These licenses are:
  - 4.1. **Mineral Permits** which are issued to individuals by the District Commissioner for building and other construction materials upon payment of a prescribed fee. The fee depends upon the quantity to be extracted.
  - 4.2 **Non-Exclusive Prospecting Licenses'** (NEPLs) which are issued to individuals or firms who cannot afford large scale prospecting operations but have technical expertise. The

holder may conduct prospecting operations in one or more districts for any mineral specified in the license. The holder may not prospect in an area held under exclusive license. The initial term of the license is one year but may be renewed for additional one year periods. Applicants must be Malawians or foreign nationals who have resided in Malawi for not less than four years. The holder must seek permission from owners of the land before commencing operations.

**4.3 Mining Claims** which are issued to holders of NEPLs after submission of sketches and fees. A claim license confers the holder of an exclusive right to prospect mine and sell the product. The maximum area to be pegged for each claim is two hectares and up to three claims may be pegged with one NEPL. Fees payable are MK35.00 and MK30.00 for grant and renewal respectively. A claim license does not prohibit the land owner from grazing and farming on the property. A claim may be cancelled where either conditions are not being met or the deposit can be exploited using large scale equipment. Annual reports on prescribed forms must be submitted to the Commissioner of Mines and Minerals.

## Legislation

Apart from the Mines and Minerals Act (1981), the following pieces of legislation govern mining activities in Malawi.



**Table 1**

*Legislation governing mining activities in Malawi*

<b>Type of Legislation</b>	<b>Law or Statutory instrument</b>	<b>Type of legislation</b>	<b>Law or Statutory instrument</b>
Employment	Occupational safety, Welfare and Health Act 1997 Employment Act, Workers Compensation Act	Fiscal and Commercial	Companies Act Investment Promotions Act 1991 Taxation Act Customs and Excise Act Export Processing Zones Act 1995 Exchange Control Act
Environmental	Environment Management Act 1996 Water Resources Act Water Works Act 1997 Forestry Act Fisheries Conservative and Management Act 1997 National Parks and Wildlife Act	Land	Land (Amendment) Act Land Acquisition Act 2004 Registered Land Act Customary Land Act Adjudication of Titles Act Local Land Boards Act

*Source: Economic Commission for Africa and SADC 2004*

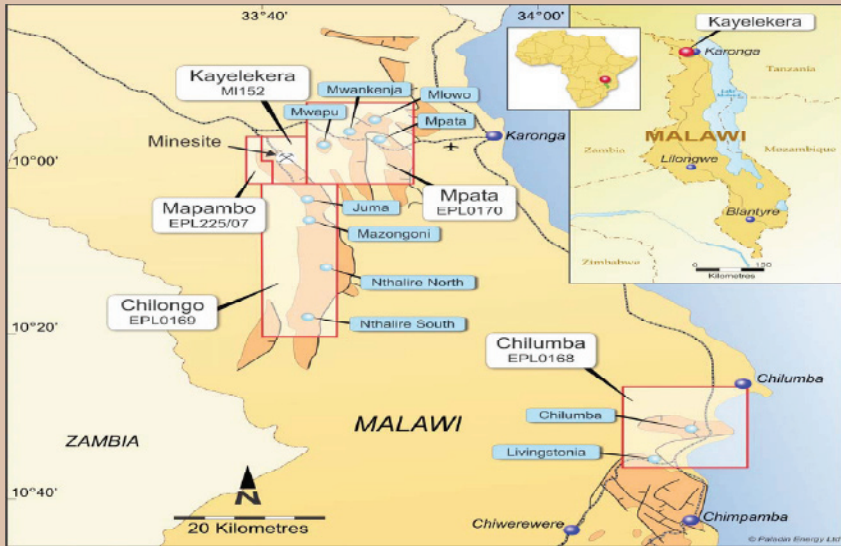
## 6.0 ABOUT KAYELEKERA MINE

Kayelekera mine is located in Karonga district, northern Malawi (*see Figure 1*). The mine is owned 100% by Paladin (Africa) Limited (PAL) a subsidiary of Paladin Energy. In July 2009, Paladin issued 15% of equity in PAL to the Government of Malawi under the terms of the Development Agreement signed between PAL and the Government in February 2007. The Mining Licence, ML 152, covering 5,550 hectares was granted in April 2007 for a period of 15 years, following the completion of a Development Agreement with the Malawi Government.

A Bankable Feasibility Study and Environmental Impact Assessment followed and construction started in June 2007 with completion in early 2009. The mine is currently ramping-up to full scale production with commercial production achieved in July 2010. The mine is optimizing production to 3.3 Million pounds per annum of Uranium Oxide (Mlb pa  $U_3O_8$ ) from the processing of 1.5 Metric tones (Mt) pa of sandstone and associated ores by grinding, acid leaching, resin-in-pulp extraction, elution, precipitation and drying to produce saleable product. Kayelekera has a current resource of 46.4Mlb of  $U_3O_8$  which will be exploited over a minimum 9 year mine life. The processing plant is designed to produce 3.3Mlb pa, treating up to 190tph of material. Results from the ramp-up of Kayelekera are not representative of those expected during full operation with 948,536t of ore mined at an average grade of 1243ppm. Additional low-grade material of 261,577t was mined at an average grade of 506ppm. The average strip ratio for the year was 1.6:1 with 551,025t of ore crushed. Mechanical availability and recoveries were below plan and optimization is occurring to increase these to expected levels of 85% and 86% respectively.

Figure 1

*The location of Kayelekera and four other prospective uranium mines.*



Source: (Paladin annual report 2010)

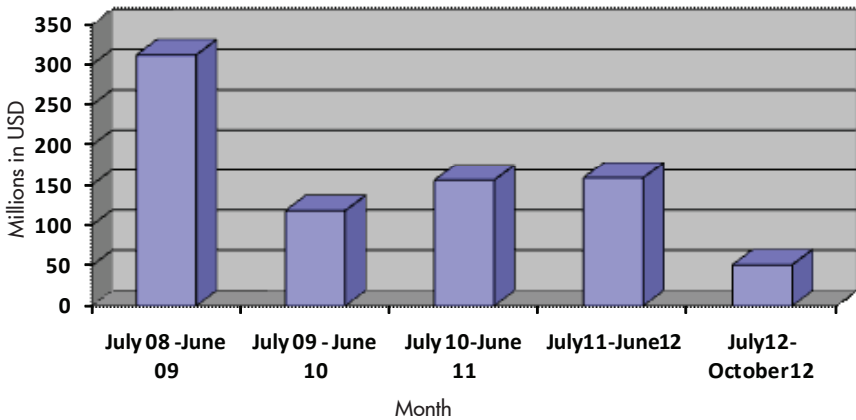
## 6.1 Investment made by Kayelekera

Paladin Africa Limited spent over US\$ 796,032,617 in uranium mining in the past four years of operating Kayelekera Uranium mine in Karonga. In the initial year (2008), the company spent US\$ 312,416,110. Expenditure declined in the following year to US\$ 117,826,379 in 2009. Between July and October 2012, the company spent US\$ 50,654,590.<sup>9</sup> Figure 2 below summarizes the amount of money Paladin has spent on Kayelekera Uranium mine.

<sup>9</sup> Paladin (Africa) Ltd. (2012) Converter Sales and Stock, Paladin (Africa) Ltd. Lilongwe, Malawi

Figure 2

*Amount of money invested in Kayelekera mine in millions of US\$*



*Source: Paladin (Africa) Ltd. (2012) Converter Sales and Stock, Paladin (Africa) Ltd. Lilongwe, Malawi*

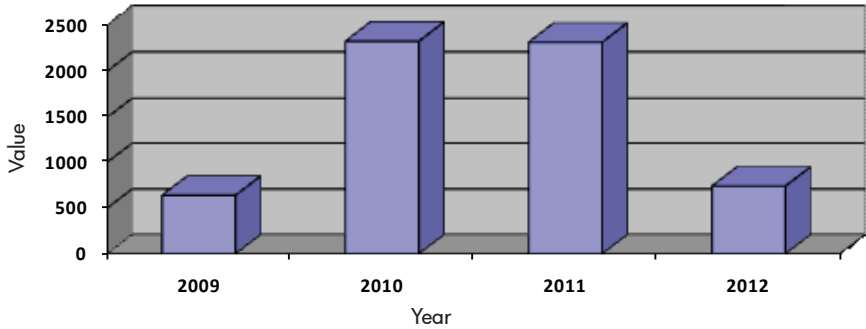
## 6.2 Uranium Oxide Export Levels

In terms of the export levels, the company exported about 690,000 lbs of uranium oxide in 2009 realising estimated revenue of US \$ 45.54 million. The export level of the yellow cake rose tremendously in 2010 to about 2.3 million lbs and the following year, the company maintained the quantity of uranium exported. From July to October 2012, the company has exported 34,395,691 lbs of uranium oxide.<sup>10</sup> The graph below (figure 3) summarizes the trend of uranium oxide exported by Paladin Africa's Kayelekera Uranium mine.

<sup>10</sup> Ibid

Figure 3

Export level of Uranium Oxide ('000 lbs)



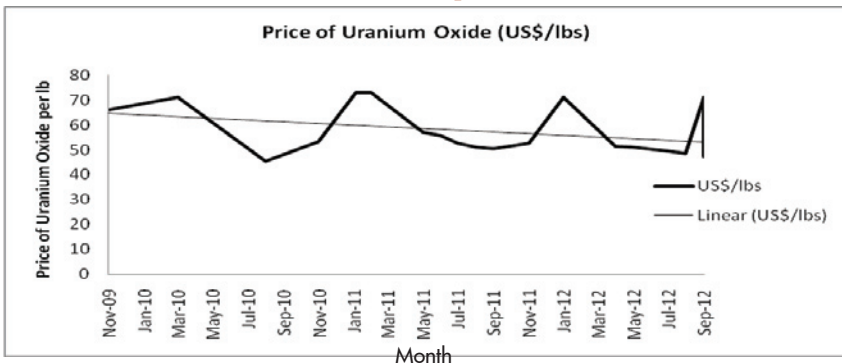
Source: Paladin (Africa) Ltd. (2012) Converter Sales and Stock, Paladin (Africa) Ltd. Lilongwe, Malawi

### 6.3 Price of Uranium Oxide

The price of uranium oxide (yellow cake) has not been consistent over time. In 2009, the price of uranium oxide per lbs was US\$66 per lbs. In the following year the price of uranium on the international market increased to US\$70 per lbs. Shortly afterwards it has been fluctuating across the years. The overall fluctuating pattern is a downward trend in uranium prices<sup>11</sup> (Figure 4). In September 2012, the price of uranium oxide per pound was at a record low of US\$47.40.

Figure 4

Shows the time series data of uranium prices and the associated trend line



Source: Paladin (Africa) Ltd. (2012) Converter Sales and Stock, Paladin (Africa) Ltd. Lilongwe, Malawi

11 Paladin (Africa) Ltd. (2012) Converter Sales and Stock, Paladin (Africa) Ltd. Lilongwe, Malawi

## 7.0 REVENUE AND NON REVENUE COSTS OF FOREIGN DIRECT INVESTMENT IN MALAWI

### 7.1 Revenue Costs and Benefits

#### 7.1.0 *Fiscal Incentives*

In order to enjoy the benefits associated with FDI such as income generation, export promotion, employment creation and skills transfer, small business development, industrial development, and revenue inflows, the Government of Malawi offered investment incentives to Paladin. The investment incentives included tax holidays, tax exemptions, low royalty rates and low resource rent among others. The government of Malawi has thus lost a considerable amount of revenue as a result of the concession it signed with Paladin Africa Limited.

#### 7.1.1 *Taxes*

Paladin Africa Limited pays minimal taxes to the government of Malawi. In return for the 15% stake transferred to the government of Malawi, the corporate tax was reduced from 30% to an effective 27% (2.5% less) apart from the resource rent which was reduced from 10% to zero. Reduction of the tax was perceived as an incentive for the FDI to invest in Malawi. Since the declaration of commercial production of Kayelekera Uranium mine in 2009, the company has not paid any corporate tax to the government of Malawi. However, the Government of Malawi received revenue from payroll taxes, withholding taxes and non residence taxes amounting to MK4, 55 billion as shown in table 2 below.

**Table 2**  
*Taxes paid to the Government of Malawi (Million MK)*

	July – October 2012	July 2011 – June 2012	July 2010 – June 2011	July 2009 – June 2010	July 2008 – June 2009	Total
Payroll taxes	573	1,110	907	599	191	3,379
Withholding taxes	235	239	188	222	20	904
Non- residence taxes	4.5	22	29	158	49	262
<b>Total</b>	<b>812.5</b>	<b>1,371</b>	<b>1,124</b>	<b>979</b>	<b>260</b>	<b>4,545</b>

*Source: AFRODAD's own calculations based on data available at Paladin*

Furthermore, the mining company was exempted from paying value added tax (VAT) completely. The 17.5% VAT tax would have contributed to the revenue gains, however, it has been lost due to this provision in the agreement. This means that the government is devoid of revenue from value addition tax for the entire life span of the mine. The tax holiday has been viewed as being too long and exorbitant considering the life span of the mine which is 15 years. Further than that, VAT exemption on imports discourages local consumption of goods and services thereby hurting economic growth in Malawi.

### 7.1.2 Royalties

In the agreement, the company would pay reduced royalties. The Mines and Minerals Act (1981) stipulates that royalties from radioactive minerals be at 5% of the gross value of the minerals<sup>12</sup>. However, the rate for Kayelekera Uranium Mine was reduced to 1.5% for the first three years and 3% thereafter. As of October 2012, Paladin Africa had paid a total of MK800, 856,231 in royalties since 2009. The reduction of percentage

<sup>12</sup> Malawi Mines and Minerals Act, 1981, Schedule (reg5), 2(d)

of royalties is a loss to the government of Malawi and as a result of this concessionary agreement, the government of Malawi lost MK1, 32 billion in royalties (table 3) for the period 2009 to April 2012. In the agreement, it is stipulated that the government will not increase the royalties for the remainder of the life span of the mine.

**Table 3**  
*Revenue lost as a result of reduced Royalty rates (in MK)*

	2012	2011	2010	2009	Total
Royalties (1.5%, 3%)	331,464,017	182,837,878	215,017,350	71,536,986	<b>800,856,231</b>
Royalties (5%)	552,440,029	609,459,594	716,724,500	238,456,620	<b>2,117,080,742</b>
Foregone revenue	220,976,012	426,621,716	501,707,150	166,919,634	<b>1,316,224,511</b>

*Source: AFRODAD's own calculations based on data available at Paladin*

### 7.1.3 Resource Rent

Another source of revenue loss is on the resource rent which was removed as part of the incentives the Government of Malawi negotiated with the uranium company. Under the laws of Malawi, the resource rent is pegged at 10% and is taxed on profits after tax, if the company's rate of return exceeds 20%. However, the company has been registering losses up to date, therefore even if the resource rent was included the government would still have gained nothing from this source of revenue.

### 7.1.4 Cost benefit Calculation

Data provided indicates that the company has been incurring losses from the year 2009 and as a consequence, the net benefits are negative. The nominal benefits are pegged at US\$466,185,948 while the discounted value is at US\$432,551,922.89 using a discount rate of 4.6% (table 4).



Table 4			
<i>Calculation of net benefits of the mine</i>			
<b>Period</b>	<b>Production Costs (in US\$)</b>	<b>Revenue (in US\$)</b>	<b>Benefits (in US\$)</b>
2008	312, 416, 110	-	(312, 416, 110)
2009	117, 826, 379	68, 500, 000	(49, 326, 379)
2010	156, 008, 547	100, 288, 478	(55, 720, 069)
2011	159, 126, 991	126, 662, 500	(32, 464, 491)
2012	50, 654, 590	34, 395, 691	(16, 258, 899)

*Source: AFRODAD's own calculations based on data available at Paladin*

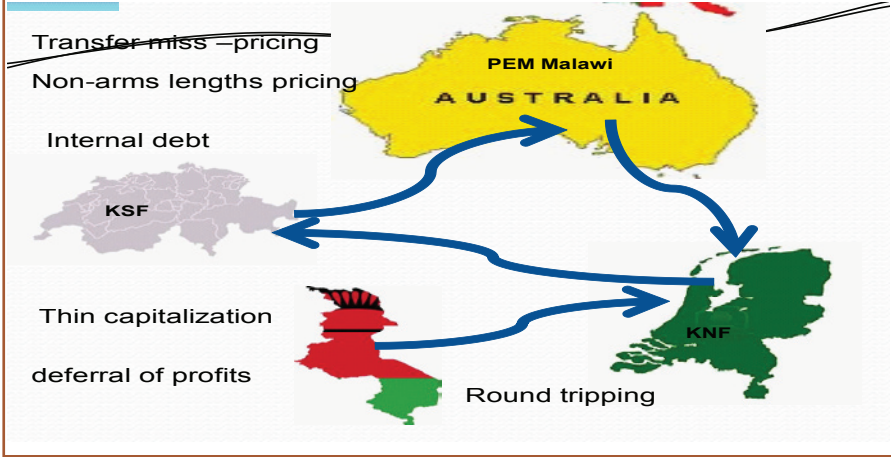
## 7.2 Shares

The Government of Malawi owns 15% of the company while Paladin Africa owns the remaining 85%. From this percentage share, the government is in a position to benefit if the company makes a profit. However, from the financial records, the uranium company has been making losses since the year it was established which means that the government has not yet benefitted from the mine in terms of shares.

## 7.3 Illicit Financial Flows

Illicit financial flows, generally, refers to a form of capital flight that occurs when money is illegally earned, transferred, or spent. The common forms of illicit capital flight include mis-invoicing of trade transactions, transfer mispricing, unscrupulous wire transfers, thin capitalization, round tripping, payment of bribes and corrupt monies into offshore accounts of government and other officials.

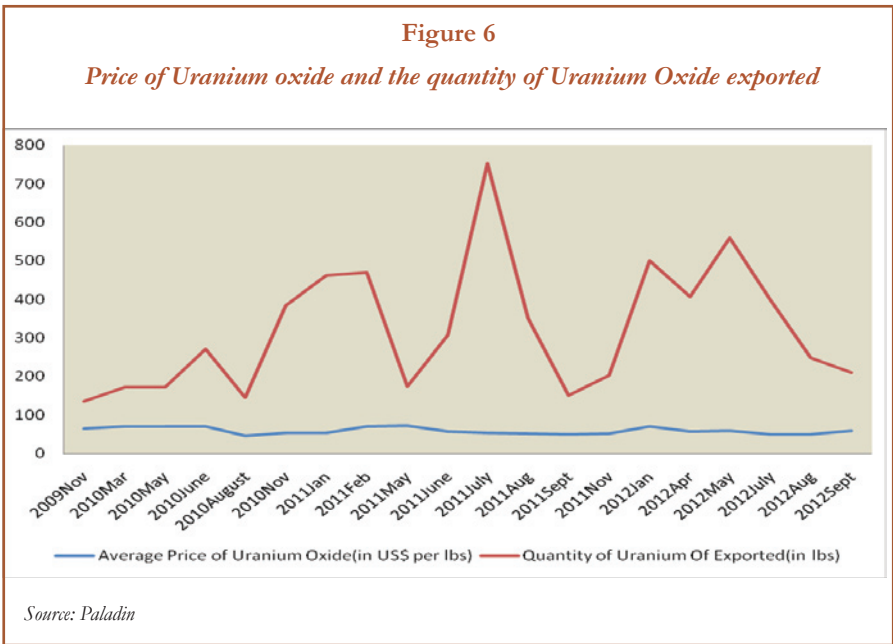
**Figure 5**  
*Forms of Illicit Financial Flows*



Such similar tactics were compared with the practices and conduct of Kayelekera to establish similarities and probabilities for the occurrence of activities leading to capital flight. In order to appreciate the comparative analysis of firms practicing capital flight and Kayelekera, it is necessary to define the mechanisms involved in the execution of capital flight.

Despite various allegations being made in the local media accusing Kayelekera of giving bribes to senior government officials which is one of the characteristics of capital flight, the research could neither establish the authenticity nor the extent to which these claims are being practiced. However when mal-practices such as mis-priced financial transfers were examined, it was established that there were discrepancies in the relationship between the price of uranium oxide and the associated quantity exported. From the analysis, there seems to be no relationship between the price of uranium oxide and the quantity exported. The

Ordinary Least Squares (OLS)<sup>13</sup> method was applied to examine the relationship between the price of uranium and the quantity sold. It was noted that the quantity of uranium oxide exported over time did not depend on the price of uranium. In other instances huge quantities of uranium were being exported despite the prices being constant over time. This observation raised questions, as it was perceived to have been an anomaly that violates the natural laws of economics for supply and demand. In view of this clandestine practices of mispriced financial transfers, which are intimately associated with mis-invoicing, are highly suspected. Figure 6 below shows this discrepancy.



Another piece of evidence for mis-invoicing and fled capital, comes from the scrutiny of Kayelekera export proceeds in 2012, it was discovered that the sum of quantity reported does not match what was actually

<sup>13</sup> Ordinary Least Squares (OLS) method is used for estimating the unknown parameters in a linear progression model.

documented. Furthermore, the value of uranium exported does not match the actual value of uranium computed by AFRODAD. According to AFRODAD computations and analysis, Kayelekera did not account for 350,000 lb of uranium oxide in 2012 of value worth close to \$18.5 million (see table 5). Such an unaccounted for value is less the total revenue generated that could have contributed to the final profit.

**Table 5**  
*Discrepancy in USD between Kayelekera reported figures and the re-calculated values*

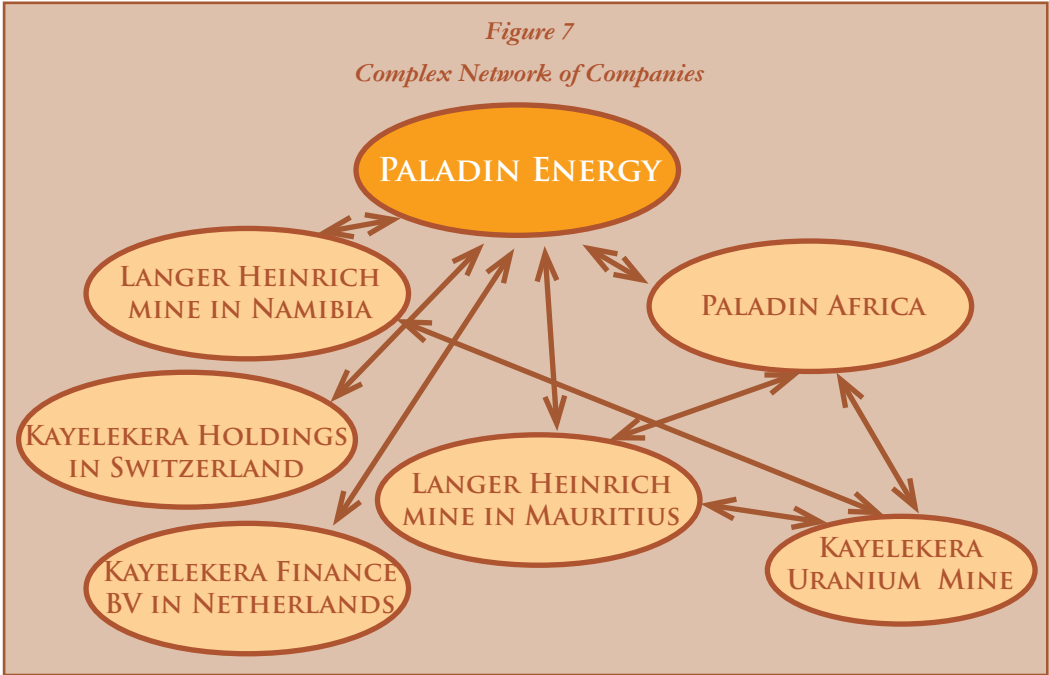
Description	Quoted Amount	Calculated Amount	Difference
Production Level	5040000	5390000	350, 000
Value of Export (\$)	301, 471,669	319,946, 672	18, 475, 003

*Source: AFRODAD's own calculations based on data available at Paladin*

Another indicator of capital flight is the large number of companies involved in the same industry.<sup>14</sup> From literature review, Paladin Energy owns Paladin Africa. The company, Paladin Africa owns 85% of Kayelekera Uranium mine and the other share is owned by the government of Malawi. Paladin Africa also owns Langer Heinrich mine in Namibia. The same Paladin Africa is owned by Paladin Energy which also owns Langer Heinrich holdings in Mauritius, Kayelekera Holdings in Switzerland and Kayelekera Finance BV in Netherlands according to the 2010 Paladin annual report (see figure 7). The pattern of holding companies that have been mentioned to be associated with Paladin Energy is a classical scheme of clear intent of shifting profits around and navigating the financial proceeds to countries with low taxation regimes like Switzerland and Netherlands. It is clear that the aim of this arrangement is to avoid and

<sup>14</sup> Sony Kapoor, Illicit Financial Flows and Capital Flight, A Re-Define Briefing Paper

evade tax and export capital through transfer mispricing using the large number of associated holding companies. From this scrutiny it is not surprising why Paladin Africa has been registering losses since the time it started its operations in Malawi.



No laws in Malawi definitively spell out measures to curb capital flight. However the Finance Act, Taxation Act and the Customs and Excise Act partly attempt to address elements and activities leading to capital flight such as (i) transfer pricing, (ii) internal debt between associated enterprises and (iii) deferral of profits by controlled foreign companies in the low tax countries.

#### 7.4 Non Revenue Costs

In addition to the revenue costs outlined above, the research examined the non revenue costs which include the following:-

#### *7.4.1 Increase in prices of goods and services*

Residents of Karonga have bitterly complained that prices of goods and services have risen and continue to rise as a result of an increase in circulation of money into the local economy originating from mine workers. This has triggered a corresponding increase in demand for goods and services leading to inflation. The people mostly affected are those who are not employed or those who have very low paying jobs.

#### *7.4.2 HIV and AIDS*

Among the costs in the extractive industry is the increase in HIV and AIDS prevalence rate. Villagers around Kayelekera reported that incidences of this disease are increasing and this has been as a result of the migrant workers employed by the mine. In addition Karonga residents have indicated that there is also an increase in the number of prostitutes and prostitution activities. As a consequence they bemoaned the spread of Sexually Transmitted Diseases (STDs) which have been rampant since the commissioning of the mine. Associated with this is also an increase in crime as observed by the Karonga police.

#### *7.4.3 Environmental Loss*

In order for the mine to operate, vast amounts of vegetation was cleared to pave way for the erection of infrastructure, which would assist the mine in mining as well as processing the uranium ore. From this activity, it is anticipated that the company and the Malawi government would benefit in terms of profits, royalties, and taxes respectively. However, the environmental cost should not be underrated. The mine has a life span and its existence has resulted into the loss of biodiversity that would have supported life systems for current as well as future generations.

## 7.5 Efficiency of Foreign Domestic Investment

In order to determine the efficiency of the FDI, the First Equi-marginal Principle (FEP) was employed. Basically, this is a point where the marginal benefits equal its marginal costs, that is, where marginal net benefits equal zero<sup>15</sup>. In this case, the company should increase its operations up to a point where the marginal benefit equals the marginal cost. The analysis shows that the firm is not operating efficiently.

By extrapolation it has been demonstrated that the net benefits are negative and that the company's operations are not efficient. Despite some nominal revenue being injected into the economy the overall picture shows that Malawi is not getting what it ought to be getting if all parameters regarding the conditions of the agreement together with the internal operations of the mining company were favourable.

## 7.6 Non revenue benefits

Since the inception of the uranium mining project, a number of people in Karonga have benefitted from a number of activities done and carried out by Paladin Africa Limited. Paladin has constructed a water plant in Karonga district which is valued at US\$ 10,000,000. However, communities which expected the water to be offered for free were surprised when the water plant was subsequently transferred to the Northern Region Water board where it will not be offered for free. In view of this anomaly, the community would have appreciated, had they been involved in making decisions that are pertinent to them.

The mining company has also renovated a primary school in Kayelekera

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<sup>15</sup> By definition, the marginal cost is the incremental cost for producing 1 extra unit of a commodity, in this case, 1 additional pound of uranium oxide.

village. The primary school was dilapidated and Paladin rehabilitated the primary school and went on further to construct a multipurpose hall near the school. In terms of ensuring that the health sector is improved, Paladin has renovated hospitals in Karonga. The airport in Karonga has also been improved. The runway track was rehabilitated to improve the aviation sector. However, some community members are of the view that, the airport only serves the interest of the mine as most of the community members cannot afford air transport.

Another infrastructural development is the construction of the foot path bridge in Kayelekera village. The community, however doubt the durability of the footbridge which is shown in the picture below.



The company is also involved in on-the-job training exercise employing local villagers as casual laborers. Additionally the company has trained people in different areas of specialization both within the country and abroad in order to effectively improve the mining operations. Another significant indirect benefit worth mentioning is that since the commissioning of the mine a number of banks have established themselves in Karonga. This is an indicator that more money is in circulation.



## 8.0 STRATEGIES TO ADDRESS CAPITAL FLIGHT

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### 8.1 Transfer Pricing Rules

Effective July 2009, transfer pricing rules were introduced and enacted into legislation in Malawi. The law has been enacted to give power to tax authorities to apply arm's length principle to transactions between related parties where non-arm's length transfer pricing is believed to exist. The "arm's-length principle" of transfer pricing states that *"the amount charged by one related party to another for a given product must be the same as if the parties were not related"*. An arm's-length price for a transaction is therefore what the price of that transaction would be on the open market. Prior to July 2009, tax authorities had no specific transfer pricing rules, but instead used Section 56, subsections (5) and (6) of Law number 4 of the 1995 Taxation Act. Section 56 (6) empowered the Commissioner of the tax authority to adjust taxable income of a person or corporation by determining a market value of goods, property or services that have been sold, exported, transferred or disposed off at a value lower than the market value. Although the section appeared to be closer to transfer pricing rules there were no clear guidelines that authorities could use to enforce such regulation.

### 8.2 Thin Capitalization Rule

Until now, there is no legislation in the Laws of Malawi on thin capitalization. By way of definition, thin capitalization is when the capital of a company has a greater proportion of debt to its equity. Thinly capitalized firms pay less tax to government because the bulk of their revenue is used to repay the debt and hence cannot declare dividends that are subject to taxation. In addition where thin capitalization rules are

not applied or stipulated clearly in the laws in particular when it involves firms with foreign subsidiaries, there is always potential danger of tax leakage to foreign countries where the firm is repaying the debt.

In Malawi as much as thin capitalization rules do not exist, the tax authorities are guided on case by case basis or agreement between investor and the Government of Malawi (GoM). There are certain agreements where a loan interest paid to non-Malawi related party (being parent or subsidiary) is deemed as dividends when the debt-to-equity ratio exceeds 3:1 while in other cases like that of the Paladin Africa Limited development agreement, a tax will be imposed on loan interest payment as dividend when the debt-to-equity ratio will exceed 4:1. This therefore allows PAL to be more thinly capitalized than most firms in Malawi which creates a threatening situation for the revenue authorities as described above.

### **8.3 Controlled Foreign Company Rule**

Malawi does not use worldwide tax system, there is no legislation enacted relating to Controlled Foreign Companies (CFC) income in the tax haven countries. Therefore, corporations that have subsidiaries or branches abroad and earn active or passive income can defer repatriation of their income as dividends without breaking any tax law. This weakness in the laws of Malawi is what Paladin Africa is exploiting, having subsidiaries in tax heaven countries such as Switzerland and the Netherlands where repatriations are differed to Malawi but yet dividends are declared in those countries.

## 9.0 KEY CHALLENGES IDENTIFIED

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This study has revealed that Malawi has a number of challenges that it must address in order for it to fully maximize benefits emanating from its mineral resources. Failure to address these challenges would mean that Malawi will find herself continuing to be exploited and losing economically in the long term. The key challenges identified that need to be addressed include;

### 9.1 Technical Challenges

This mainly has to do with the technology disadvantage related to the extractive minerals industry. The country has no manufacturing company capable of designing and developing or even servicing the heavy machinery and equipment required in the extractive industry. This disadvantage also extends to lack of trained local personnel capable of handling the modern technology equipment and machinery necessary in the extractive industry.

### 9.2 Economic and Financial Challenges

Many of the major companies in the extractive industry are foreign based. This is because of the heavy capital investment demanded by the industry which in many cases such capital is not available to locals.

### **9.3 Governance Challenges**

There are no clear guidelines or policy instruments outlining the mechanism for governance in the mining sector. As a consequence negotiations and other transactions are done in an atmosphere that lacks transparency. The cabinet or minister appointed by the President can discretionarily decide what taxation regime and other concessions to impose on an FDI without following any set standard guidelines or regulations. Key players with potential of influencing favourable outcomes in the negotiation deals are often excluded, for example the Reserve Bank and the Malawi Revenue Authority among others.

### **9.4 Legal and Institutional Challenges**

Malawi does not have clear and internationally standardized legal and institutional frameworks adequately regulating the mining industry. The existing law is outdated reflecting past thinking of one party state. The investment guidelines are inadequate and compounded by cumbersome procedure. Malawi lacks a predictable tax regime that is credible, transparent and consistent with the legislative framework. Instead cabinet orders are used to discretionarily impose taxation regimes to FDIs on a case by case basis. This brings about a lot of inconsistencies and confusion creating an opportunity for unscrupulous MNCs to dodge paying the real value of tax.

### **9.5 Environment and Health Challenge**

There are weak regulatory frameworks in environmental management coupled with lack of personnel to inspect and enforce regulation on health and environment. Water and air pollution that occurs through accumulated mineral dust dumping poses a serious health hazard.

## **9.6 Infrastructure and Logistical Challenges**

Malawi's geopolitical position and land lock situation creates a huge logistical and transportation challenge in the exports of minerals. Regional transportation connections to coastal ports in Mozambique and Tanzania should be speeded up with the possible introduction of railway link that can help to reduce Malawi's remoteness from major markets and lower the costs and risks associated with mineral development. Furthermore considerable improvement to transportation by upgrading the road infrastructure within Malawi will still be needed to take full advantage of improved access to points of export. Power insufficiency and interruption, are serious constraints for developing the mining sector which requires energy-intensive mineral processing operations. There is therefore a need to improve on the power generation supply.

## **9.7 Financial and Human Resource Challenges**

The public mining institutions that govern the sector have been deprived of resources for years and will face considerable difficulties in exercising their mandates as mineral sector activity gathers pace. Lack of resources is compounded by a lack of experience in regulating a sector that has languished for years. For example, the Department of Mines is chronically understaffed, only 50% of total posts are filled with just 34% of required professional positions having been filled. Moreover, few of those in professional posts were suitably qualified. Significant institutional strengthening of the core agencies engaged in regulating the mineral sector is clearly needed but should be preceded by a sector-wide assessment of management arrangements and needs that takes into account other key government institutions engaged in revenue and environmental management, not only at national level but at sub-national level as well.

In addition to having poorly funded departments, Malawi lacks experts trained in forensic accounting or international auditing who are able to competently audit the FDI's who often use very complicated accounting systems aimed at hiding real profits. The institutional challenges further extend to lack of trained personnel on the ground who are able to monitor and verify the amount of uranium being exported. The experts should also be able to verify the price at which the uranium is being sold and ensure that non-arms length pricing is not taking place.

## 10.0 EMERGING POLICY OPTIONS AND RECOMMENDATIONS

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The existing legislative arrangements for mining in Malawi place excessive reliance upon the discretionary exercise of ministerial powers. The Act empowers the Minister to (i) attach conditions to licenses as he or she sees fit, (ii) waive or vary many of the provisions of the Act, if considered appropriate, (iii) implement many important aspects of the Act by issuing regulations that are not subject to parliamentary approval and (iv) have the final say on matters in dispute without further appeal. These provisions in the Act need to be repealed because government as sole negotiator of mining deals is ill-equipped to negotiate with large investors who have years of experience supported by an army of sophisticated lawyers, technical and financial experts. In order to set minimum standards a model mineral agreement needs to be developed which will form part of the mining law.

The mining legislation makes provision for numerous and, in some cases, redundant licenses. The licensing system is also very general and regulations have not been fully developed to create clarity as to how it is administered. The licensing system should be streamlined, the fee structures which are ridiculously so low need to be revised upwards and made more transparent, underpinned by legislation. The functions of the Mineral Rights Office should be strengthened by establishing a Geographical Information System (GIS)-based mineral titles system to remove the need for manual verification and processing. The role of the Minerals Licensing Committee in advising the Minister on the award of mineral rights should be reviewed. Accountability of this body for the advice it prepares would require that its composition, functions and reporting requirements are regulated by law. Weaknesses in the licensing system can also be addressed by insisting that mineral right holders

deliver tangible outputs and sanctions should be imposed for non-performance, to deter companies from hoarding licenses in various areas for the interest of speculation. In addition applications for mineral rights should be sought by means of competitive tender when circumstances are suitable.

Mineral royalty remains an item which is left open to negotiation on a case by case basis, resulting in several different royalty rates co-existing. This system is increasingly at odds with international trends for royalties and places an undue burden on those that administer royalty payments. The objective should be to have a standardized royalty regime that is not too crippling for FDI's at the same time favorable enough for the country to generate substantial amount of revenue.

Clearly, Malawi is getting a raw deal from the mining and exploitation of uranium by Kayelekera Mine. This study, therefore, makes the following recommendations:-

1. The 15% equity stake by government is rather on the lower side. It is in fact the lowest in the SADC region (second lowest is South Africa at 26%) and considering the fact that Malawi is a least developed country, it would be economically prudent if the government ownership is consistent with regional standards.
2. The 10 year stabilization period where Paladin is supposed to enjoy certain concession is rather too long given the fact that the agreement is for 15 years with a mining life span of about 9 years. In progressive economies there is no stabilization period granted and if ever it is to be there, in the case of Malawi, it should have been only 3 years, that is, expiring of stabilisation period in 2012, and this would be consistent with the mining life span.



3. Royalty rates should be consistent with the provisions of the Mines and Minerals Act of 1981 which is pegged at 5% and should be consistent with regional standards. In addition, companies should not be getting deals outside the legislation and as such the 10% resource rent should not have been removed completely. The same goes for the Value Added Tax which should not have been scrapped off completely but rather retained in order to ensure the government benefits a certain percentage from the proceeds of uranium.
4. A community trust fund where there is direct injection of percent profits into the communities should be established. A proposal of 5% of royalties to be deposited into this fund is being recommended.
5. Purchase of uranium products should be done within Malawi as is the case with tobacco through local banks and not in foreign countries. This will create greater transparency and accountability and reduce the risk of capital flight and tax leakage to foreign countries.
6. The constitutional provision that vest all minerals in the hand of the President should be repealed because it promotes heavy political involvement in the affairs of the extractive industry. An independent professional body should be constituted to govern the affairs of the extractive industry.
7. Key legislation concerning thin capitalization rules and control of foreign company rules need to be enacted in order to minimize revenue losses.
8. Local communities should be engaged and properly informed on the activities surrounding the mine as early as during the reconnaissance stage. A clear distinction of the social roles of the mining company and government should be made to manage expectations and minimize future conflicts. This is in light of the fact that local communities were expecting more from the mining companies

than it can offer, such as provision of ambulance services, drugs etc which is the role of government.

9. Deliberate policies need to be put in place to ensure that local Malawians have ownership shares in the mining companies to reduce incidences of capital flight or non-repatriation of profits. Government at this level can establish mechanisms for financial opportunities that locals can access in order to purchase equity shares in the mining companies.
10. Government should provide an ongoing opportunity to debate all issues concerning mining and minerals policy. This would provide a forum in which the views of other interested parties can be canvassed. Such a structure and process are imperative in order to achieve a transparent and collaborative approach to policy formulation, and also to give coherence and focus to what could otherwise be a fragmented and insufficiently consultative approach to policy.
11. There is need for a greater degree of co-operation and co-ordination among government ministries/departments such as the Ministry of Labour, Ministry of Energy and Mines, Ministry of Environment, Ministry of Health, Ministry of Trade and Industry, Ministry of Economic Planning and Development, Treasury, Malawi Revenue Authority and Ministry of Justice. Such cooperation should also extend to the private sector and civil society.
12. The government should, through the National budget, be able to quantify the annual revenue benefits and losses accruing from investment incentives to Multinational Corporations. The analysis would enable the government of Malawi to make optimal investment decisions.
13. The new piece of draft legislation needs to be enacted as soon as possible in order to bridge some of the gaps created by the old law.

## 11.0 CONCLUSION

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This study has revealed unequivocally that the mining industry in Malawi is very promising and if well nurtured can be one of the key drivers of Malawi's economic growth and development. The mining industry can promote the improvement of Malawi's infrastructure and most of the country's secondary industry. The industry is amongst the major employers and also offers other business opportunities, both directly and through backward and forward linkages. For the mining industry to contribute effectively with respect to economic development and the earning of foreign exchange, it is imperative that there is a strong connection between Government, labour and the industry. Good co-operation between these players is a catalyst for the growth and development of the industry. However, this can only be attained when policy formulation, management and regulation are conducted in a manner that promotes transparency and in close consultation with stakeholders in the industry.

Generous concessions were made to Kayelekera Mine due to lack of experience in negotiating such deals. Coupled with this, the existence of weak legislation and institutional framework enabled the FDI to take advantage of the situation and in the process pay less taxes and let alone dividends. This example and experience with Kayelekera should serve as a lesson that in future, the GoM needs to be more cautious and tactful in negotiating contracts. Before signing any new contract, the government needs to institute sound and robust laws that can be derived through wide consultations with stakeholders. It is only when such laws are in place that Malawi will be able to reap real benefits from her natural resources.

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This report has been co-published by the African Forum and Network on Debt and Development (AFRODAD) and its National partners in Malawi.



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