



# **POLITICAL ECONOMY ANALYSIS OF MINING IN MALAWI**

## **FINAL REPORT**

**May 2013**

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## 1. INTRODUCTION

The Political Economy Analysis (PEA) of the mining sector in Malawi was commissioned by the Tilitonse Programme in order to support it to identify the right issues related to mining that would be considered in the preparation for a Thematic Call for project proposals. The issue of mining falls under the socio-economic development theme, which is one of the four thematic areas for the Thematic Call. The PEA, which was conducted between 21 December 2012 and 4 January 2013, followed a multi stakeholder consultation exercise that was organised by Tilitonse on 14 November 2012 in order to gain more insight into relevant fundable issues. As a way of thinking and a tool for practitioners, PEA explores the links between a structural context for an intervention, the key stakeholders affected, and the influence of institutions on stakeholders' opportunities and incentives for action.<sup>1</sup> Therefore, PEA has the potential to inject greater realism into practice through more open discussion of power, political culture, ethnic divisions, corruption, capacity and incentives, sources of opposition and indifference etc. The goal is to achieve more context-specific 'best fit' responses.<sup>2</sup>

Mining is becoming an important issue in Malawi because of its potential to significantly contribute to Malawi's Gross Domestic Product (GDP). It is estimated that the contribution of the mining sector to the country's GDP has grown from as low as 1 percent by 2001; to about 3 percent by 2004;<sup>3</sup> and to 10.8 percent by 2010 as a result of the Kayelekera Uranium Mine.<sup>4</sup> It is projected that a well-managed mining sector could contribute between 20 and 30 percent of Malawi's GDP in the next five years.<sup>5</sup> There is consensus that the mining sector has the potential to overtake agriculture as a major source of foreign exchange in the country. This perspective is based on three factors. Firstly, unlike agriculture, the mining sector is resilient since it is not vulnerable to the vagaries of weather and climatic patterns. Secondly, the prices of tobacco, the country's main foreign exchange earner, continue to tumble. Thirdly, the existing data shows that Malawi has significant potential reserves of various minerals.<sup>6</sup>

The close examination of the issue of mining is also warranted because mining is directly related to land, which is a critical policy area. As the findings of this PEA will reveal, massive tracts of land are being alienated from communities in order to accommodate mining. This is perpetuating the fragility of land rights of customary land users, arising from the lack of a comprehensive legal framework related to customary law. Further, the current scenario brings up the issue of land grabs that are being promoted by land related investments. The current land law in Malawi does not offer protections from these challenges. Though work towards reviewing land related laws was concluded by the Law Commission through its report of March 2010, the proposed laws are yet to be passed by Parliament. So far, concerns that have created a legislative impasse on the land question have not related to the issue of mining. But clearly, negotiations on the law cannot be divorced from the important issue of the need for the land law to secure a balance between communities' land rights on the one hand, and interests in land related investment like mining, on the other hand.

Though the focus of the PEA was on mining, many respondents preferred to use the term 'extractive industry.'<sup>7</sup> The two terms are therefore used interchangeably in this report. By definition, extractive industry is any processes that involve the extraction of raw materials from the earth to be used by consumers. The extractive industry consists of any operations that remove metals, mineral and aggregates from the earth. Examples of extractive processes include oil and gas extraction, mining, dredging and quarrying.<sup>7</sup>

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<sup>1</sup>Copestake, J., and Williams R., The evolving art of political economy analysis: Unlocking its practical potential through a more interactive approach, February 2012. Oxford Policy Management document.

<sup>2</sup> Ibid.

<sup>3</sup> Ministry of Natural Resources, Energy and Environment /Chinsinga B., A Social Development Assessment of the Mining Sector in Malawi: A Baseline Study for the Mining Growth and Governance Support Project.

<sup>4</sup> Government of Malawi, Malawi Growth and Development Strategy (MDGS) II, 2012-2016.

<sup>5</sup> Action Aid International Malawi, Review Report of the Globe Metals Mining Africa Environmental Impact Assessment and Environmental Management Plan, 30 October 2012. Work conducted by Francis Ng'ambi; Ministry of Finance, Impact Analysis of EITT Implementation in Malawi, 22 June 2011. Work conducted by Nils Junge, Francis Ng'ambi, Jürgen Reitmaier; and Chinsinga, Ministry of Natural Resources, Energy and Environment /Chinsinga B., note 3 supra.

<sup>6</sup> Ministry of Natural Resources, Energy and Environment /Chinsinga B., *ibid.*

<sup>7</sup> <http://www.businessdictionary.com/definition/extractive-industry.html>

## **2. METHODOLOGY**

This PEA applied qualitative methods that gathered both primary and secondary data aimed at exposing broad and gender specific issues related to the mining sector. The data was collected by applying a research plan that was contextualised within the framework of the political economy analysis. The research plan contained thematic challenges related to the issue of mining as exposed by literature drivers (potential winners and losers should changes occur to the current situation), key institutions, and possible research questions. Such a plan was important because it facilitated focus on gathering data that would highlight areas where a collaborative approach between civil society and other interests in the mining area could be most productive. This was in acknowledgement of the reality that development practice is a complex business which requires working with others who often have radically different, and frequently unclear, understandings of context and priorities and how to pursue them.<sup>8</sup>

Primary data for the research was gathered at national level and from Mulanje district. National level respondents included officials from central government, international NGOs, donors, civil society organisations, and mining companies (**Annexure 1**). Mulanje was chosen as a research site because in this district, Spring stone Mining Ltd is facing a court action against its license to explore rare earth on Mulanje Mountain. The list of government, NGO and civilian respondents from Mulanje district is also contained in **Annexure 2**. The questions in the research plan were used as a checklist, and during interviews, were tailored to suit the nature of interests any given stakeholder. For mining companies, the PEA's specific interest was also to gauge their challenges associated with operating in Malawi.

## **3. ANALYTICAL FRAMEWORK**

The analysis was conducted by isolating key and common themes from the data that was obtained from the respondents. With the PEA in mind, the particular focus of the analytical approach was to determine:

- The specific institutional change required to address the problems or challenges identified.
- The tractability of the issue.
- Key stakeholders who are able to influence and could potentially make up an informal coalition.
- Key stakeholders who may be against change or elements thereof.
- Ideas for possible activities that could be carried out to achieve the desired change.

## **4. LIMITATIONS OF THE RESEARCH**

The PEA was conducted during the time when many institutions were on Christmas break. As a result, it was not possible to get interviews with a few targeted stakeholders. Another limitation was that since the issue between Concerned Citizens in Mulanje district and Springstone Mining Ltd over the latter's mining exploration venture is in court, the Concerned Citizens, who include chiefs, were reluctant to grant an interview. However, some members of the group who appreciated the value behind the PEA only agreed to speak anonymously.

## **5. CAVEAT**

Some information in this report was provided on a confidential basis. Even mining companies provided information on the basis that they would not be quoted. This report is therefore only meant for Tilitonse's programming, and should not be quoted otherwise.

## **6. FINDINGS**

The findings of the PEA are discussed in two parts: the general developments related to mining in Malawi; and the key issues revealed by the findings. As Tilitonse considers its programmatic responses to the findings, it should be mentioned that the Royal Norwegian Embassy (which also funds Tilitonse) is planning to scale up its support for extractive industry related interventions in order to cover a wide spectrum of issues that can improve the management regime of the industry. The Embassy is therefore keen to understand the exact interests that Tilitonse would be funding in the mining sector in order to avoid funding duplication.

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<sup>8</sup> Copestake, J., and Williams R., note 1 supra.

## 6.1 MINING RELATED DEVELOPMENTS IN MALAWI- GENERAL CONTEXT

### 6.1.1. Scale of mineral resources

Malawi has a variety of solid mineral resources such as bauxite, uranium, niobium, tantalum, monazite, strontianite, corundum, graphite, limestone, titanium, heavy sands, vermiculite, coal, phosphate, pyrite, glass sands, dimension stones and gemstones.<sup>9</sup> Table 1 illustrates probable mineral reserves in Malawi in 2011.

**Table 1: Potential Mineral Reserves in Malawi**

Mineral	Potential Reserves (Million Tonnes)
Uranium	11.6
Niobium, tantalum, zircon	60
Coal	800
Conrundum	100,000
Strantranity/magnate	11
Graphite	2.7
Phosphate	2.3
Heavy Sands	11.9

*Source: Geological Survey Department, 2011*

The awarding of six petroleum exploration licenses<sup>10</sup> in recent years also suggests that Malawi's mineral resource base could extend to liquid minerals. As of April 2012, the Ministry responsible for Mining had issued 61 Mining Licenses. By July 2012, it had issued 106 Exclusive Prospecting Licenses.<sup>11</sup> In 2012, the Malawi Government advertised a project on geological remapping for purposes of producing new geological, geophysical and geochemical maps. This exercise has been long overdue because Malawi has been using outdated maps that were produced in the 1950s when the country was under the British Protectorate.<sup>12</sup>

### 6.1.2 Medium to large scale mining

At the time of this PEA, companies that were engaged in medium to large scale mining activities in Malawi included: Paladin Energy Limited, Eland Coal Mine, Mchenga Coal Mines Limited, Kaziwiziwi Coal Mines, Shayona Cement Company, La Farge Cement Company, Nyala Rubies and Globe Metals and Mining Africa.<sup>13</sup> The significance of the mining sector in Malawi was established with the commissioning of the first Foreign Direct Investment (FDI) in the sector and the biggest FDI in Malawi,<sup>14</sup> Kayelekera Uranium Mine in Karonga district. Kayelekera is owned 100 percent by Paladin (Africa) Limited (PAL), a subsidiary of Paladin. The Mining Licence, ML 152, covering 5,520 hectares was granted in April 2007 for a period of 15 years, following the completion of a Development Agreement with the Government of Malawi. In July 2009, Paladin issued 15 percent 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.<sup>15</sup>

Globe Metals and Mining Africa (GMMA), would be a second largest<sup>16</sup> Foreign Direct Investment in the sector to have conducted a successful prospecting exploration on Niobium Mining and to produce an Environmental Impact Assessment (EIA) report in readiness for applying for a mining license.<sup>17</sup> Though there are deposits of niobium, tantalum and uranium on the site, GMMA is only interested in mining niobium and tantlum, since it deems the quantities of uranium to be economically insignificant. The company was issued an Exclusive Prospective License (EPL) Number EPL 0289 on 14 April 2010 expiring on 13th April 2013 and has been prospecting in Kanyika, Mzimba district.

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<sup>9</sup> The Malawi Mines and Mineral Policy 2007.

<sup>10</sup> To Surestream, Sankara, Ophir, SacOil, Tillow and Lonrho.

<sup>11</sup> Action Aid International Malawi, Review Report of the Globe Metals Mining Africa Environmental Impact Assessment and Environmental Management Plan, 30 October 2012. Work conducted by Francis Ng'ambi.

<sup>12</sup> Mining Review, 3rd Edition 2012.

<sup>13</sup> Ibid.

<sup>14</sup> To the value of USD500 million.

<sup>15</sup> Paladin Energy Ltd Annual report 2012.

<sup>16</sup> Worth USD 272 million.

<sup>17</sup> Action Aid International Malawi, note 5 supra.

The GMMA EIA report was submitted to the Malawi Government of 27 July 2012. The Department of Environmental Affairs is yet to approve the report, and it has since reverted to the company on several issues that should be addressed before the approval. The exact nature of the Malawi Government's concerns is not known. However, pursuant to the release of the EIA report, Action Aid International Malawi commissioned a review of the EIA that exposed that issues of relocation procedures, compensation, pollution and land rehabilitation are yet to be fully clarified (**see Annexure 2**).

GMMA had already submitted a Development Agreement to the Malawi Government. By January 2012, the agreement was still pending before cabinet—to be seriously considered upon approval of the EIA report. GMMA expected the agreement to be discussed in the first quarter of 2013. However, the respondent emphasized that whether or not GMMA will proceed to apply for a mining license would depend on the findings of a Detailed Feasibility Study that it was conducting with the primary objective of weighing the economic viability of the mine. Both Paladin and Global Metals are registered with the Australian Stock Exchange. As interest is growing and as more minerals are being discovered, the numbers of Foreign Direct Investments in the sector is expected to grow.

### **6.1.3 Small scale and artisanal mining**

The artisanal and small scale mining (ASM) sector in Malawi is yet to be fully understood by establishing an inventory of resources capable of exploitation. Nevertheless, the sector has the potential to grow by increasing output and producing higher value products, especially cut and polished gemstones.<sup>18</sup> Most ASM operators in the country often belong to either the Gemstone Association of Malawi or the Malawi Women in Mining Association (MAWEMA).<sup>19</sup> Apart from those engaged in mining, some are simply 'collectors' who collect precious stones and sale them, whether in raw or processed forms. It has been observed that the positive development of ASM is the medium to long term and depends critically on increased organization of miners and communities, access to capital and more efficient technology.<sup>20</sup> Beyond this, the ASM sector can best positively contribute to economic development if its various governance and environment related challenges are equally addressed in mining policy and legal frameworks.

### **6.1.4 Government interest in mining**

Since coming into power in April 2012, the administration of President Joyce Banda clearly considers mining a priority sector. The administration's 2012 Economic Recovery (ERP) contains specific strategies for ensuring that the sector's maximum potential is achieved through increasing production and value addition of mineral resources. The implementation of the various strategies in the ERP could actually address some of the concerns raised in this PEA, including the need for; a robust legal and institutional framework, expertise in mining, transparency in mining contracts and close monitoring of the implementation of both mining contracts and projects. In January 2013, the President launched the Mining Governance and Growth Support Project with the aim of improving the efficiency, transparency and sustainability of management of the mining sector in Malawi. In April 2013, a revised Minerals Policy was also launched by the Ministry of Mines. These developments have been supported by Ministerial leadership in giving visibility to the sector, which is not surprising since he is expected to champion the priority interests of the government.

### **6.1.4 Media interest**

Another important development in the mining sector is that the media is paying growing attention to the sector. There are two main forms of media on the issue of mining in Malawi (the mainstream print media, as well as the newly introduced 'Mining Review,' which is published by the Ministry responsible for Mining. The 3rd edition of the Mining Review in 2012 was selling at MK100, which is less than half the price of daily newspapers in Malawi. The difference between the two forms of print media is that mainstream media seems to focus more on exposing the challenges related to the mining sector, including issues of presidential powers, the chaos in the mining sector, the dynamics behind the Kayelekera deal, and generally publishing critical voices. On the other hand, the Mining Review is labeled the 'voice of the mineral sector in Malawi,' and is co-sponsored by the Malawi Government and mining companies like

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<sup>18</sup> World Bank, Malawi Mineral Sector Review: Source of Economic Growth and Development, 2009.

<sup>19</sup> Ministry of Finance, note 5 supra.

<sup>20</sup> World Bank, Malawi, note 18 supra.

Surestream Petroleum, Globe Metals and Mining, and Mkango Resources. Predictably, it provides positive coverage of the developments regarding the mining sector, and the various contributions that mining companies are making to the economy and social development.

The two forms of media are complementary to each other because they focus on different forms of information. However, citizens can only be informed if the two are read together, and not in isolation of each other. And for the mainstream media, it has been observed that sometimes, it lacks accurate data. Its challenge is therefore to conduct proper investigations that can rise above the mere sensationalisation of the mining topic, and instead provide a strong information base about the dynamics of the mining sector in Malawi—both positive and negative.

## **6.2. KEY ISSUES IN MINING**

The research uncovered four key issues (which also have sub-issues) that require attention if the booming mining sector is to translate into sustainable socio-economic development for Malawi. These are (a) weak and out dated legislative, policy and institutional frameworks; (b) weak and fragmented role of civil society organisations; (c) lack of a framework for stakeholder engagement at community level; and (d) absence of robust revenue management and transparency mechanisms.

### **6.2.1 Key Issue One: Weak and out dated institutional, policy and legislative**

#### ***The institutional framework related to mining***

For now, Malawi's institutional framework for the mining sector is ruffled, as there is no single legal or policy framework that articulates where the roles of the different institutions interact and detach. Instead, reliance is placed on piecemeal legislations that were not developed with a vibrant mining sector in mind, and all of which may not be taken into account when necessary. The research uncovered that some of the institutions that are at the centre of mining related decisions include the Ministry responsible for Mining, the Revenue Policy Department of the Ministry of Finance, and the Department of Environmental Affairs. Further, high level government officials (including Ministers or the President) have a lot of influence over mining related decisions. Therefore, it was alluded by one official (without giving an example of a specific decision) that although technocrats may make recommendations, final decisions that are made at higher levels have sometimes ended up being different and unfavourable to public interest. Those left out include the District Councils and the Forestry Department.

The findings of the 2009 World Bank supported Mineral Sector Review recommended a sector wide assessment of the mineral sector as the basis for a medium to long-term programme of institutional strengthening and capacity building encompassing all institutions and agencies both at the national and sub-national levels which were expected to exercise responsibilities for assuring sound regulation and good governance in the minerals sector. The idea was to ensure that there is a clear delineation of roles and responsibilities among agencies within the sector to ensure unity of purpose and direction. According to the assessment, weak capacity, broadly defined, remains one of the pressing challenges undermining the prospects of the mining sector.<sup>21</sup> The inaction to improve the capacity of the mining sector could also be attributed to the lack of a strategic plan on capacity building.

In late 2012, the Ministry responsible for mining was for the first time separated from the ministry responsible for energy and environment. In the words of the Minister of Mining, "*the government has decided to make the ministry stand on its own to give the sector the attention and visibility that it much deserves because it is an important sector.*"<sup>22</sup> The Ministry of Mining has two departments—Mining and Geological Survey. The Department of Mining is responsible for facilitating different types of mining licensing. It is also responsible for receiving mining royalties, ground fees and application fees. The Office of Commissioner of Mines and Minerals has the primary responsibility to assist the Minister to administer the Mines and Minerals Act in the management of application and granting of mineral licenses.

The Revenue Policy Department of the Ministry of Finance is responsible for fiscal policy relating to mining. It negotiates on tax related issues with investors, and the Malawi Revenue Authority ensures the

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<sup>21</sup> In Ministry of Natural Resources, Energy and Environment /Chinsinga B., note 3 supra.

<sup>22</sup> The Daily Times, Government to Hunt Down Dubious Miners, Friday January 11 2013.

implementation of the tax arrangements. The Revenue Policy Department acknowledges that the current approach of conducting fiscal negotiations with investors on a case by case basis is not strategic. Therefore, there is intent to review Malawi's tax law in order to create a uniform and binding formula for calculating taxes and royalties that all investors will be required to adhere to. The Department of Environmental Affairs is responsible for approving Environmental Impact Assessments (EIAs) that have been conducted by the investors. Both Paladin and Globe Metals conducted commissioned their own EIAs. Leaving investors to conduct their own EIAs has been detected to be an anomaly, since objectivity and full disclosure of key issues cannot be guaranteed.

The mining sector in Malawi is highly centralized. When the country was adopting decentralization, there had been intent to devolve responsibilities for small scale mining activities to the local councils. However, the low human resource capacity in mining has not permitted this. And because the Mining Act and Decentralisation Act have not been harmonized, the role of collecting royalties and fees from small scale miners has not yet devolved to local councils. However, the Department of Mining agrees that implementing the decentralization of functions relating to small scale mining activities may not be a solution to the outcry from communities where mining operations are taking place—that they need to have a share of the royalties that are being paid by Foreign Direct Investors. The position of officials from the Mining Department is that:

*There is need to remove legal constraints because for now, all royalties and fees are payable into the national coffers (account no.1). All money that comes into this account is distributed across the nation in accordance with development needs and priorities. However, time has come to review and reconcile the Taxation Act and the Mining Act, so that part of mining royalties should begin to be paid directly to the districts. We recognize that this may be an uphill battle, since other sectors (i.e. Tourism) may protest because the law does not give tourism districts this type of consideration. But it looks like with communities increasingly crying foul, we in mining may have to stand our ground, otherwise the current state of the law may close down mining possibilities if the communities start protesting aggressively.*

This incentive by the Department of Mining to adopt a framework that would suit needs of communities in the mining sector is an opportunity for NGOs to influence the adoption of a rights-based mining regime. At the same time, it should be recognized that the strengthening of the institutional framework in the mining sector will not be complete without clarifying and strengthening the roles of District Councils.

### **Broader political economy issues on laws and policies**

Mining activities in Malawi are still taking place in a fragile legislative and policy environment. Though it is officially acknowledged that the continued application of the laws is a problem, the Government stance is that licensing will continue, as the country may lose potential investors if it was to wait for a more modern and protective legal framework. The Mines and Minerals Policy which was launched in April 2013 is far from being fully implemented, and as the policy analysis below demonstrates, the policy also has gaps. In January 2013, the press reported that the Ministry of Mining had taken a position not to *renew* mining licenses (**Box 1**). Officials from the Department of Mining gave the following reasons for not just *suspending* mining licenses:

*Waiting to regulate before we start issuing mining licenses would be self-defeating, as it would mean that there would be suspension of mining activities. Considering that market prices of minerals shift over time, it would be risky to halt activities since there may not be a vibrant market by the time we improve our laws. Imagine if we had waited to issue the license for uranium mining at Kayelekera – now that prices of uranium on the world market have dramatically fallen since the issuance of the license, it is unlikely that the investors would have remained enthusiastic to proceed with the deal if they were still waiting for us to enact new laws.*

The question that the officials failed to clearly answer was why, if indeed seriously concerned and committed, has the government not been able to dedicate a specific time frame (i.e. six months), to put up strong policies and regulations, and meanwhile suspend licensing?. It was observed that the Department of Mining lacks the political muscle to assert its priorities and challenges. The fact that the Minister and President has a strong influence in the sector puts them in a weak position where they have to defer to political decisions, whether wrong or right. On the other hand, the fact that a demand for speeding up the institutionalisation of a strong regulatory framework has not been made at the highest political level signifies that either the implications of the weak regulatory challenges have not been clearly

understood by the country's leadership, or that there is a deliberate omission to take urgent action because some leaders are benefiting from the weak state of matters.

**Box 1: Government suspends mining licenses renewal**

Mining and natural resources authorities are to launch a campaign to hunt down companies that are engaged in dubious mining activities in the country, Minister of Mining John Bande has said . . . He admitted the country is fast becoming a minerals looters paradise as some companies are carrying out mining activities without following procedures while others are ripping the country off the minerals after securing substandard deals from the government. He said his Ministry already has a list of the suspected dubious companies and will soon be pouncing on them in a sweeping exercise that will take him and his officials across the country. *"We want to bring sanity into the sector. We want people coming into the country to do mineral exploration to be formal to ensure that the country benefits and communities where they are protecting well protected. . ."* Bande also announced that the government has suspended renewal of mining contracts. *"We are not renewing contracts any more. We want to study these companies further and know what they are all about and how they got these licenses. When giving out and renewing mining licenses, we want to be transparent and do it in an open manner."*

*Source: Daily Times, 11 January 2013*

The PEA uncovered that the decision by government to proceed with issuing licenses despite the weak legal framework could be driven by several incentives. For starters, there is desperation for economic diversification though there is no concrete strategy and expertise. This is in a quest to replace tobacco as a major foreign exchange earner, but also to expand avenues that would guarantee economic independence. Then there is the false impression that employment will soar due to mining activities. While CSOs held the view that locals have not benefited from mining opportunities, mining companies were insistent that this could not be further for the truth. For instance, it was claimed that when building the Kayelekera Mine, local labour was in the thousands. The other incentive by government is the direct gains by top government officials from the mining companies (corruption). However Mining companies quickly dismissed these allegations, with one respondent pointing out that:

*There are strict anti-corruption standards both in Australia and within the company. Any officer found engaged in corruption would be liable to 5 years imprisonment apart from other penalties that a company may face. Now, in as much as I love this company, I do not love it to the extent of putting my life on the line in this manner by engaging in corrupt practices. Last year, when there were allegations by one MP in Parliament (without any evidence what so ever) that we had been paying the late President's son some money under the table, I personally went to the Anti-Corruption Bureau to request them to investigate these corruption rumors against us.*

One thing was obvious—that if corruption is to be exposed and addressed in the mining sector, then CSOs and other stakeholders should move from making speculative allegations to producing tangible evidence that can withstand professional scrutiny. One last incentive for rushing into mining that is that there is the false impression that weak/low terms regarding mining will attract investments. Civil society is convinced that many investments on poor terms may not in fact result in robust economic development, as the government will only be ripped off. On the other hand, mining companies stress that they are not proponents of "poor terms", but rather "competitive terms." Their fear is that if Malawi demands terms that are uncompetitive and gains the reputation of tarnishing the corporate reputation of investors, then investors will simply go elsewhere. One of them observed that:

*A good starting point for Malawi should indeed be to generate its own investment terms. However, after doing that, Malawi should thoroughly weigh its terms against the terms/ fiscal regimes of governments that have been successful at mining (i.e. Botswana, Namibia, or Zambia etc). Then Malawi should decide what it wants its final terms to be. This way, the investor will also be helped to make an informed decision on whether to come to Malawi or to go to countries where investment climates are more favourable. For now, the tax that we are paying to Malawi (which we negotiated from 30 percent to 27 percent, is even higher than that in Botswana which is about 25 percent. As things are now, there is clear fiscal framework by the Government of Malawi, which is making it an unsecure investment environment. The fact that it considering renegotiating our Development Agreement after we have made the investment is sending the simple message to investors that it is a government that cannot be trusted to adhere to a deal—which is the last place an investor wants to be. Mind you, contrary to popular opinion, this was the best deal that Malawi could have negotiated at that time. Though there are rumours that royalties were pegged at a low 1.5 percent in the agreement, the reality is that this this rate would only run for three years as an incentive for us as the first largest FDI (worth USD 500 million). Afterwards (from 2013), we would be paying 3 percent,*

*according to international standards. Therefore, we are particularly disappointed that government has not come out to clarify these things.*

Basically, according to mining companies, the choice for Malawi is therefore for it to either let investors in with fair and competitive terms that are well regulated, or to remain under development with unexploited resources after scaring investors away with prohibitive terms or a culture of backtracking on agreements. Looking at all the noted incentives, one thing that is certain is that the current regulatory environment is susceptible to abuse and possible corruption, particularly as private investors are usually much more experienced in legal and investment policies and in negotiating contracts and agreements than the Malawi Government.<sup>23</sup>

### ***Policies related to mining***

The analysis below focuses on two issues—the nature of mining related policies in Malawi; and the lack of a gender responsive framework to support women in mining.

#### *The policy environment*

At the time of this PEA, the challenge with the policy environment in Malawi was that though the National Mines and Minerals Policy had been reviewed, it is yet to become operational. The policy was approved by Cabinet in principle in 2012. But even when the policy was still pending before Cabinet, several pertinent concerns had been raised regarding the revised policy document (**Box 2**). And with the change of the administration following the death of President Bingu wa Mutharika, there was still one outstanding consultation so that the new administration could also formally endorse the policy. Eventually, the policy was “adopted” on 25 January 2013 and launched on 10 April 2013.

#### **Box 2: Gaps within the Revised Mining Policy**

The policy was noted to have the following gaps:

- No indication of how decentralization might apply to the governance and management of the sector.
- Lack of arrangements to ensure maximization of local content in the mining activities.
- Absence of arrangements governing provision for community development and benefits sharing, including the role to be played by different stakeholders.
- No indication of how the rights of women, children and other vulnerable groups might be affected by the mining industry.
- Lack of clarity about the role and interface between and among various agencies involved in the regulation of the mining sector.

*Source: 2009 World Bank supported Mineral Sector Review*

Malawi also lacks a specific policy on petroleum exploration and production, despite that the country has already issued six petroleum exploration licenses. The Government disclosed that there is interest by the Commonwealth Fund to sponsor the development of the petroleum policy. However, the extent to which this funding may allow for a comprehensive consultative process is unclear.

On a positive note, Malawi’s overarching policy frameworks target the growth of the mining sector. The 2004 Malawi Economic Growth Strategy first recognized the mineral sector as a potential source of economic growth and development. The strategy established a long term goal of increasing the contribution of the mining sector to GDP by at least 10 percent annually.<sup>24</sup> Policy statements in MGDS I (2006-2011) and II (2012-2016) and the 2012 Economic Recovery Plan (ERP) also clearly identify mining as the major area for diversification from the ailing agriculture sector.<sup>25</sup> In particular, envisaged medium term expected outcomes for the mining sector under MDGS II include: updated geological information system; increased exploration and mining; increased participation by small and medium miners; and improved legal and institutional framework.<sup>26</sup> It remains to be seen whether the identification of the need

<sup>23</sup> Ministry of Finance, note 5 supra.

<sup>24</sup> World Bank, note 18 supra.

<sup>25</sup> Action Aid International Malawi, note 5 supra.

<sup>26</sup> Chapter 5, Key Priority Area 2.3.

for new legal and institutional frameworks in the MDGS II will result in speedier progress to enact laws or adopt relevant policies. However, the MDGS II cannot be a substitute of a detailed minerals sector policy which should propel the country towards economic growth.

#### *Gender unresponsive frameworks*

The mining sector, particularly at artisanal level, remains male dominated due to lack of an enabling policy environment geared at boosting the role of women in mining. Even the overarching development and economic policies described above have not paid attention to gender sensitive strategies in mining. As a result, though the Malawi Women in Mining Association (MAWEMA) was established in August 2000, it is still working towards establishing itself into a productive entity for mining, selling, and value addition of precious and semi-precious stones. For now, its major challenges are lack of adequate capacity and government support. The Chairperson explained that:

*We have unsuccessfully tried to lobby the Ministries responsible for trade and mining to promote our exposure and businesses. Unlike in other neighbouring countries, there has not been strong support from government to link women in mining to international trade fairs and markets, meaning that we remain economically under developed. The only opportunity we have so far gotten has been from OVOP, which recognised the need of adding value to precious stones, and gave us a loan to procure cutting and polishing equipment—though the quality still does not meet international standards. However, the condition from OVOP was that we had to form a cooperative together with the Blantyre Minestone Association and the Gemstone Association. This resulted in males from the other Associations taking the position of President and Vice President, and leaving MAWEMA the position of Secretary. As a result, men, even with little mining experience compared to us women, dominate trips and other opportunities that arise within the cooperative. What we need is the empowerment of our Association, including a revolving fund that we can manage ourselves.*

MAWEMA reported that recently they lost funding to establish an academy that would build mining capacities in partnership with TEVET. The funder wanted a letter of support from government, and despite many efforts, all relevant agencies of government simply refused to write the letter. The funder eventually withdrew. MAWEMA remains at pains to identify reasons why this happened, except that they suspect that the government officials were afraid of making decisions that would backfire on them in case since the president is also directly connected to the minerals sector.

#### ***Laws related to mining***

The mining legal framework in Malawi places monopoly on the Minister and the Presidency.<sup>27</sup> This makes mining licensing highly prone to abuse and corruption. Though laws related to both solid and liquid minerals exist, they are outmoded. The minerals sector is still governed by the 1981 Mines and Minerals Act, whose shortfalls have been well chronicled (**Box 3**). The review of this Act was commenced in 2005, but it is still dragging. Yet, this is supposed to be the main regulatory framework to govern the minerals sector. Critics have interpreted this as a sign of low political will to improve the mining regime by the Government, including the current administration. However, the Department of Mining anticipates the revised Act to be presented before Parliament by June 2013.

The Petroleum (Exploration and Production) Act 1983 is also overdue for revision. Since the review of this Act may await the development of a petroleum policy, it is imperative that the latter process should be speeded up. The only law that has been recently passed is directly relevant to the uranium mining. On 31 May 2011, Parliament passed the Atomic Energy bill into law, marking a first step on the introduction of comprehensive legislation to provide for adequate protection of people as well as the environment against harmful effects of radiation, nuclear material and radioactive materials. The law is relevant in view of the uranium mining activities in the country which have the potential of not bringing in wealth alone, but harmful effects on people who work there and in surrounding communities.<sup>28</sup> However, there is concern by NGOs that Paladin also made input into the law, viewing this as a case of “the regulated becoming the regulator.”

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<sup>27</sup> Ministry of Finance, note 5 supra.

<sup>28</sup> Daily Times Jun. 2, 2011. <http://www.wise-uranium.org/uregafr.html>.

### **Box 3: Challenges concerning the Mines and Minerals Act, 1981**

- The Act vests exclusive ownership of the mineral resources in the people of Malawi through the President.
- The Act gives too much discretionary powers to the relevant minister to decide on critical issues without due regard to the role of technical advice.
- The Act lacks a model of mineral agreement which implies that agreements are decided on a case by case basis which undercuts the potential of developing a shared vision in the mining sector.
- The Act does not outline how mining ventures would address the needs of vulnerable segments of society as well as promoting value addition and community development.
- The Act is so outdated that it is out of tune with new pieces of legislation that have a direct bearing on the mining sector, for instance, the Environmental Management Act 1996, which makes a transparent and accountable Environmental Impact Assessment (EIA) a mandatory requirement before any mining activity is commissioned.
- The Act accords mining companies exclusive rights without taking into account the livelihoods of the people displaced by mining projects.

*Source: 2009 World Bank supported Mineral Sector Review*

Other relevant pieces of legislation that need to be reviewed to support the surge of mining include the Explosive Act, the Environmental Management Act, the Occupational Safety, Health and Welfare Act, the Land Act, the Investment Promotion Act, Taxation Act, the Decentralisation Act and the Forestry Act.

The critical question is why the legislative reform of the mining sector dragging yet it is very critical for the country to create a competitive mining sector that maximizes benefits for the country? The benefits of a competitive mining sector regulated by a sound and credible legislative framework cannot be overemphasized. While the PEA shows that the main constraint in this area is limited political will mainly due to the benefits accruing to the key stakeholders with power, authority and influence to facilitate the desired changes, the notion of political will needs to be more nuanced to put the barriers and opportunities for change into proper perspective. This would in turn help to critically think about what exactly can be done in order to successfully push through the desired legislative reforms.

Apart from issues related to Parliament and change of government that are addressed in the next sections, it is important to determine who is pushing or facilitating the reforms—is it the government or civil society or donors or some combination of these stakeholders? The pace of law of reform is thus affected by who exactly is pushing for the reforms. The relative power, authority and influence of the stakeholders matter a great deal. It matters who puts together the draft proposed legislative enactments. Is it the Law Commission or the Ministry of Justice or a civil society agency? There is inherent inter institutional rivalry which often slows down the law reform process. The mounting empirical evidence shows that the Ministry of Justice is often reluctant to push forward draft bills that originate from elsewhere. The Ministry of Justice officials regard themselves as the ultimate experts hence they would not readily push a bill through the necessary processes without their expert input.

#### ***Parliament and extractives law reform and transparency***

The Parliamentary Committee on agriculture and natural resources (in collaboration with committees on budget, public accounts and the women's caucus) would be expected to champion issues related to extractives, but currently, this is not the case. This may not so much be an issue of lack of interest, but a reflection of lack of knowledge of issues affecting the extractive industry, lack of capacity (both technical and financial) that can enable it to play a meaningful oversight role in issues of environmental assessments, contracts, revenue transparency, as well as generally ensuring that gender considerations are fully considered and addressed in all aspects of mining. The fact that there is no specific committee on mining could also contribute to the weak role of Parliament.

At the same time, there is potential for Parliament to frustrate legal reforms related to the extractives if it does not have the necessary political will to pass a Bill. Therefore, when presenting a Bill before Parliament, some important questions to be asked are: what is the political climate at the time the legislative reforms are being initiated? Are political parties represented in Parliament engaged in some sort of hostilities or rivalry on some issues? What are the spillover effects of these hostilities on other parliamentary activities? The political climate is very important because it can either promote or act as a barrier to law reform. If a law reform process is introduced at a time when political parties in represented in Parliament are engaged in some sort of hostilities or rivalry on issues in or outside Parliament, these tend to have mar legislative processes even though the hostilities or rivalry may not be related to the issues at stake.

***Central government and extractives law reform & institutional shifts***

With regards to the development of legal and policy framework, the line Ministry (Mining) would have a lot of influence. The speed at which the Ministry of Justice would develop a Bill and submit it to Cabinet would also depend a lot on the level of pressure from the presidency. Current indications are that the President is very interested in the mining sector, though the extent to which she regards law reform in the sector as an utmost priority is inconclusive. Because there is a lot of deference to the President in Malawi, it is likely that Cabinet and senior government figures may quickly support law reform processes if the President urgently wants a law passed. Similarly, those who are benefiting from legal gaps would take advantage of a President’s lack of interest in a law to delay law reform processes either during formulation or at cabinet level.

Then there is the reality that a law reform process often hits a snag when it coincides with change in government. This is deeply rooted in the country’s political culture. The tendency for incoming governments is to demonize whatever was happening in the previous government. Every new government wants to start on a clean slate almost on everything primarily to ensure that its interests are fully taken into account. For example, as revealed in this PEA, the next stages pertaining to the review of mining policy which was completed and the draft endorsed by the previous administration stalled because there was need to await one last consultation with the new administration.

***Summarised PEA Analysis of the issue of weak institutional, policy and legislative frameworks***

<b>The specific institutional change required to address the problems or challenges identified</b>
Policy, institutional and legal reform for the mining sector
<b>Summary of key interventions:</b>
While the information under (a) to (d) is a PEA analysis regarding various activities for achieving several strategies towards addressing the weak institutional, policy and legal framework, the following is an overall summary of activities:
<ul style="list-style-type: none"> <li>• Comprehensive mapping of the key actors in the mining sector (both large scale and small scale &amp; artisanal) including their underlying interests vis a vis various aspects of the mining regime.</li> <li>• Comprehensive audit of efforts and initiatives to reform the policy, institutional and legal framework of the mining sector in order to understand what has been done and what needs to be done including the opportunities for change and constraints to action. Regard should be paid to how these address small scale and artisanal mining issues and gender perspectives.</li> <li>• Developing an engagement strategy with different stakeholders in order to determine what is possible and what is not possible.</li> <li>• Building on insights from preceding activity, developing a reform programme working with various stakeholders to implement the desired changes to the policy, institutional and legal framework including capacity building for the relevant stakeholders.</li> <li>• Developing an advocacy programme to push for the adoption and implementation of the reforms to policy, institutional and legal frameworks for the mining sector in Malawi.</li> </ul>
<b>a) Lobbying for a gender sensitive revised mining policy and Mining Act that address noted gaps and meet international standards:</b>
<i>Key stakeholders who are able to influence and could potentially make up an informal coalition</i>

CSO Natural Resources Network, CCJP National Secretariat, MAWEMA, Gemstone Association, the ACT Alliance sponsored network (international church organisations), MCCI, Local Government/District Councils, Ministry responsible for Gender, Donors- World Bank, GIZ, African Development Bank, and Norwegian Embassy, EITI taskforce, ACB, Judiciary (Commercial Court), Parliamentary committees on agriculture and natural resources, budget, public accounts and the women's caucus

*Key stakeholders who may be against change or elements thereof*

- Department of Mining, who may view the interventions as a delay towards adopting policy and legal frameworks
- Investors, who may be benefiting from the loose policy, legal and institutional frameworks
- Senior government officials and politicians, who may be benefiting financially from investors
- Cabinet, who may delay discussing new laws if there is low political will.

*Ideas for possible activities that could be carried out to achieve the desired change*

- Evidence based advocacy meetings with Department of Mining and senior officials/Ministers in key Ministries
- Documenting international standards, lessons and best practices as a basis for advocacy
- Forming partnerships with international advocacy groups that guarantee international scrutiny of companies. This way, the FDIs would be more willing to watch dog themselves first in order to convince their investors that their companies are well within risk profile and are following internationally recommended procedures and standards.

**b) The development of a comprehensive petroleum policy that meets international standards following a thorough consultative process**

*Key stakeholders who are able to influence and could potentially make up an informal coalition*

CSO Natural Resources Network, CCJP National Secretariat, the ACT Alliance sponsored network (international church organisations), MCCI, Local Government/District Councils, Donors- World Bank, GIZ, African Development Bank, and Norwegian Embassy, EITI taskforce, ACB, Judiciary (Commercial Court), Parliamentary committees on natural resources, budget and the women's caucus, Petroleum Importers Limited.

*Key stakeholders who may be against change or elements thereof*

- Department of Mining, who may view the interventions as a delay towards adopting policy and legal frameworks
- Investors, who may be benefiting from the loose policy, legal and institutional frameworks
- Senior government officials and politicians, who may be benefiting financially from investors
- Cabinet, who may delay in adopting new policy if there is low political will.

*Ideas for possible activities that could be carried out to achieve the desired change*

Department of Mining and NGO (or EITI taskforce) led consultative process

**c) The reconciliation of the Mining Act with relevant Acts, i.e. the Explosive Act, the Environmental Management Act, the Occupational Safety, Health and Welfare Act, the Land Act, the Investment Promotion Act, Taxation Act, the Decentralisation Act and the Forestry Act**

*Key stakeholders who are able to influence and could potentially make up an informal coalition*

CSO Natural Resources Network, CCJP National Secretariat, the ACT Alliance sponsored network (international church organisations), MCCI, Sector Ministries, District Councils, Donors- World Bank, GIZ, African Development Bank, and Norwegian Embassy, EITI taskforce, ACB, Judiciary (Commercial Court), Parliamentary committees on natural resources, budget and the women's caucus, Law Society

\*Mining companies could be an ally on the issue of pushing for mining royalties to go into a special account and not the central account. This is because the investors are keen to have a conducive operating environment, which is currently at risk due to communities' resentments that they are not having direct and specific benefits from the mining ventures.

*Key stakeholders who may be against change or elements thereof*

- Central Government, which may have to split revenues with districts with mining activities
- Sectoral Ministries that pay revenues into central account, i.e. tourism
- Investors, who may be benefiting from the loose policy, legal and institutional frameworks
- Senior government officials and politicians, who may be benefiting financially from investors
- Cabinet, who may delay in discussing and approving amended laws if there is low political will.

<p><i>Ideas for possible activities that could be carried out to achieve the desired change</i> Development of a comprehensive position paper as a basis for targeted advocacy</p>
<p><b>d) Capacity assessment of the minerals sector to support a transparent and accountable mining regime that is gender sensitive</b></p> <p><i>Key stakeholders who are able to influence and could potentially make up an informal coalition</i> CSO Natural Resources Network, CCJP National Secretariat, the ACT Alliance sponsored network (international church organisations), MCCI, Sector Ministries, Donors- GIZ, African Development Bank, and Norwegian Embassy, EITI taskforce, Parliamentary committee on natural resources, budget and the women's caucus</p> <p><i>Key stakeholders who may be against change or elements thereof</i></p> <ul style="list-style-type: none"> <li>• Investors, who may be benefiting from the loose institutional frameworks</li> <li>• Senior government officials and politicians, who may be benefiting financially from investors</li> </ul> <p><i>Ideas for possible activities that could be carried out to achieve the desired change</i> Capacity assessment as a basis for advocacy for more systematic institutional arrangements, i.e. the creation of an independent mining regulatory authority.</p>

### 6.2.2 Key Issue Two: Fragmented role of civil society organisations

The research established that civil society organisations are working on the issue of extractives, including mining, at NGO level, as well as at network level. However, the organisations are implementing separate agendas without no or little collaboration, and maximum impact has not been achieved. Further, several networks exist, none of which has yet claimed the role of a leader in national level advocacy aimed at strengthening the mining regime and its socio-economic benefits in Malawi. As a result, there has not been a persistent and collective voice to act as a watch dog over the sector. Yet, an organized NGO network is necessary for effective 'voice' that can articulate citizen's views. Further, governments or states are more likely to respond to their population when needs and demands are clearly articulated.<sup>29</sup> While mining companies appreciate the relevance of NGOs in a healthy debate process, they are wary of criticisms by NGOs that are usually unsubstantiated by evidence; and that NGOs are economically and politically driven, instead of being socially driven.

#### **NGO actors**

The PEA found that a number of civil society organisations (CSOs) have projects or programmes related to the extractive industry, and these interventions share the common objective of protecting the interests of communities or the nation in the context of the industry boom. On the other hand, there are conflicts within NGOs arising from a scramble for funding opportunities, as well as the absence of coordination of activities. The working in isolation is a result of NGOs wanting to be viewed as pioneers in mining related interventions, as well as a general culture on non-collaboration—probably due to lack of technical know-how.

Dan Church Aid, Catholic Relief Services, and Action Aid International are three international NGOs (INGOs) that are funding local NGOs or networks to implement mining related interventions. The nature of the programmes being funded by Dan Church Aid and CSR is explained under **Annexure 3**. The involvement of AAIM with a relevant network is discussed below.

Local NGOs that have specific mining related projects or activities and were part of the PEA include Citizen for Justice (CFJ), Institute for Policy Interaction (IPI), Catholic Commission for Justice and Peace (CCJP) Mzuzu Diocese, CCJP Karonga Diocese, CCJP National Secretariat, and the Centre for Human Rights and Rehabilitation (CHRR). Most of these institutions have projects in Karonga and Mzimba districts, where Kayelekera and Global Metals have mining schemes.<sup>30</sup> However, projects implemented by CCJP Mzuzu and Karonga Dioceses have also expanded to Eland Coal Mine in Karonga District, and the Mchenga Coal Mine in Rumphi District and the planned Kanyika Niobium Project in Mzimba District.

<sup>29</sup> Sharma B., Voice, Accountability And Civic Engagement A Conceptual Overview, April 2009. Discussion Paper No. 14, UNDP Oslo Governance Centre.

<sup>30</sup> Global Metals is yet to get a production license subject to its submission of the EIA.

National level advocacy with a focus on pushing for a responsive framework to regulate extractive industries has also been pursued by CFJ, CCJP National Office, IPI, CHHR and Malawi Economic Justice Network (MEJN). The CCJP National Secretariat is also tackling the issue at church level, and has supported the Episcopal Conference of Malawi (Catholic Bishops) to produce a policy brief on extractives in Malawi, which was released in April 2013. This brief has issued guidelines for specific actors within the extractives industry to implement certain actions in order to achieve a balance between moral values and profits in the industry.<sup>31</sup>

### ***Mining related CSO networks***

The research established the existence of about three networks that are working in isolation with each other, and a fourth one that is planned to be set up.

Dan Church Aid supports the Civic and Political Space Platform (The Platform). This is a forum for capacity building that aims at creating a well-informed civil society that can strategically push for sustainable rights based approaches in the mining sector. The Platform comprises the four CCJPs (Lilongwe, Mzuzu, Karonga and Chikwawa Dioceses); Christian Service Commission, Evangelical Association of Malawi, Public Affairs Committee, Women Legal Resources Centre, Association of Progressive Women and Renaissance Solutions. Then there is the ACT Alliance, which has brought together all church related INGOs, i.e. Dan Church Aid, Norwegian Church Aid and Christian Church AID to explore possible interventions on extractive industries. So while Dan Church Aid is a mere sponsor of the Platform, it is an active member in the network sponsored by the ACT Alliance.

Action Aid International Malawi is the sponsor of what is the “main” CSO network in the extractive industry—the Civil Society Natural Resources Network. This was formerly the CSO Mining Network, but has since broadened its interests to cover a range of natural resources concerns, including logging. Within this network are CSOs that are part of thematic groups like the Extractive Industry Transparency Initiative Taskforce (EITI) taskforce—discussed in 6.2.3.

Currently, the CSO Natural Resources Network has an incoherent agenda, and is struggling to take off due to several challenges. These include lack of adequate capacity by CSOs to understand legal and social implications of mining. So far, no institutional capacity assessment of network members has been conducted in order to get baseline information that could inform the capacity building of the membership. The other difficulty is that issues of tribalism often creep in, with other players not wanting CSO leaders that do not originate from the “trouble” areas to play a role. Conversely, other CSOs do not want to be interfering in other parts of the country if they themselves come from a different district/region. This was justified by one respondent who shared that:

*I like what people in Mulanje are doing, because they are protecting their own interests against a mining company. Imagine if it was me as someone from the north going to make noise against mining in Mulanje when the community was quiet. Wouldn't I look awkward and overzealous?*

There was a consensus that the network is also disunited, largely because there is an unhealthy competition for resources. The root cause of this competition is twofold. Firstly, there has not been any mapping of issues of interest of specific organisations, including their target areas. This has increased duplication of interventions. Also there has not been any comprehensive mapping of the whole extractive industries to clarify questions like—who is where? exploring or mining what? NGOs believe that if they would have all this information, the network would be more organized as members would be able to distribute interventions without stepping on each other's toes. However, nothing has yet been done on these issues because there has not been financial or technical support towards resolving them. And it was felt that since NGOs may undermine each other, it would make sense for efforts to organize the NGOs to be led by the Department of Mining, which has the official mandate to coordinate the mining sector.

Secondly, the competition emanates from air around certain NGOs, who view themselves as pioneers, and regard mining as their exclusive domain. Therefore, this group of NGOs resists opening up to other CSO players. This problem may be linked to the lack of a systematic approach by the network to address the diverse emerging issues in mining. If all challenges were mapped, players would understand that there

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<sup>31</sup> Statement on the Booming Extractive Industries in Malawi by The Episcopal Conference of Malawi.

is power in having a wide network whose members would use their unique expertise to comprehensively address the different facets of challenges in the mining sector. The overall result has been that CSOs have usually not been able to influence the government agenda as a collective voice for them to have the needed force, as NGOs mainly work in isolation. One NGO official rightly remarked that “*we see the same faces at different mining spaces and hear the same [tired] ideas. If we are to network in earnest and begin to produce tangible results, we need to welcome new members with new ideas.*”

Discouraged with the weak networking that is happening, Catholic Relief Services, which funds the work of the CCJPs in Malawi, has secured funds to set up another parallel network in the extractive industries. The plan is to first create a network of the CCJPs, and later co-opt others. Should this plan materialize, the CCJPs could be members of two networks on a related issue since they are also involved in the Dan Church Aid sponsored Platform. The incentives for this approach could include: the pressure to generate “new” in-house interventions to sustain donor support; desire to be part of a functional network and not to be associated with a failing one; the feeling of lack of belonging to an existing network (direct or indirect exclusion of other NGOs).

### ***Summarised PEA Analysis of the issue of fragmented role of CSOs***

<b>The specific institutional change required to address the problems or challenges identified</b>
An effective and functional CSO Natural Resources Network, so that CSOs have a single, multi- dimensional, and credible body that can add value to policy processes and analysis.
<b>Summary of key interventions:</b>
<p>The following activities are a summary of interventions that could support capacity building for collective action of CSOs to enhance their engagement with the mining sector (elaborated further in the next section)</p> <ul style="list-style-type: none"> <li>• Development of a national CSO strategy in the extractive industries.</li> <li>• Conducting human rights and gender impact assessments of mining agreements and projects. Reviewing environmental impact assessment reports to ensure that they meet the basic minimum standards.</li> <li>• Conducting independent environmental audits.</li> <li>• Monitoring the implementation of mining agreements and activities.</li> <li>• Conducting advocacy on various relevant aspects of the mining sector that have a bearing on the overall integrity of the mining regime.</li> </ul>
<p>The issue of capacity building is wide, but could be strategically coordinated towards strengthening the CSO network in the following areas:</p> <p><i>Development of a national CSO strategy in the extractive industries:</i> In order to organize CSOs to ensure national and systematic coverage of mining related responses.</p> <p><i>Conducting human rights and gender impact assessments:</i> CSOs need capacity to conduct these type of assessments so that they can be produced to “shadow” the environmental impact assessment reports that mining companies submit to government. Such capacity would ensure that CSOs are producing credible researches that can help government to be better informed in mining decisions.</p> <p><i>Reviewing environmental impact assessment reports:</i> Because EIA reports are often highly technical and bulky documents, CSOs need to gain the capacity to digest and analyse these documents, and preferably translate them into simplified documents. This would help to inform the communities and government on the exact contents of EIAs, and critique them better.</p> <p><i>Conducting independent environmental audits:</i> In order to monitor environmental impacts, CSOs require the capacity to periodically conduct environmental audits, which currently seem not to be done either by the government or the mining companies.</p> <p><i>Monitoring the implementation of mining agreements and activities:</i> Government may not have capacity to be on the ground, but a knowledgeable CSO mining movement can build the capacity of local communities to monitor mining activities in their localities.</p> <p><i>Challenging license monopoly:</i> CSOs could play an important role in monitoring the many licensees who are monopolising minerals, sometimes ‘sitting on licenses’ for years. For example, in Ntcheu, a license for ruby exploration is held by one investor, who has been exporting ‘samples’ for years and does not have a mining license yet. Though organisations like Malawi Women in Mining Association have followed up on this,</p>

Government has ignored their concerns. It was felt that either the government does not have the capacity to monitor and enforce terms of licenses. Or some officials were financially benefiting from rendering a blind eye to the situation. In Mchinji and Ilomba, a few individuals are sitting on permits and no one is able to explore granite resources, thereby stalling prospects of economic development. Therefore, instead of only targeting the Foreign Direct Investors, CSOs need to have a systematic approach to hold accountable all licensees that are not playing by the rules, regardless of size. This role of CSOs could also be in direct support of the government's agenda to inspect those wishing to renew mining licenses.

**Key stakeholders who are able to influence and could potentially make up an informal coalition**

- Department of Mining: It has been suggested that the Ministry responsible for Mining could facilitate the exercise of ensuring that CSO actors are systematically mapped, and their responsibilities shared in a collaborated manner through the development of a national CSO strategy on the extractive industry. Letting the Ministry take a leading role could curb competition, because there would be official mandate on the distribution of focus areas.
- Existing members of the CSO Natural Resources Network
- All CSO players (including INGOs) in the extractive industry
- CSO groups representing vulnerable groups, i.e. women and people with disabilities

**Key stakeholders who may be against change or elements thereof**

- CSOs who regard themselves as mining pioneers
- INGOs that are supporting other parallel CSO networks in the extractive industry
- Investors, who may see a strong CSO network as a threat to their object to maximize profits
- Senior government officials and politicians, who may be benefiting financially from investors

**Ideas for possible activities that could be carried out to achieve the desired change**

- Setting up functional secretariat that can coordinate the membership and its activities
- Organizational development training
- Mapping of network members and potential members in terms of their capacities, gaps
- Country wide mapping of the extractive industry in order to gauge what mining ventures are happening where
- Developing CSO advocacy and communication strategies

**6.2.3 Key Issue Three: Lack of framework for stakeholder engagement at community level**

Transparency relating to community participation is also yet to be fully achieved, because for now, the consultations that occur are largely exclusionary—either of community members as a whole, or of the interests of women. An independent human rights impact assessment of the Kayelekera project established that though the project was in many ways striving to respect human rights, project transparency and communication, nationally and in Kayelekera, are extremely weak, thereby threatening the rights to public participation (anti-Corruption) and freedom from fear. It was concluded that taking six days to explain the implications of a sulfur spill, taking two years to produce environmental monitoring reports, and failing to field questions about environmental impacts are all actions that, lumped together, added up to a systemic failure to respect human rights by Paladin.<sup>32</sup> This is a reflection of the lack of strict adherence to the Guidelines on public consultation.

The main problem contributing to lack of transparency when mining companies are dealing with communities is the lack of a binding legal framework to mandate fair consultation with well mapped stakeholders. From the findings, the challenges related to community consultations can be broken into three—partial consultation that focuses on traditional leadership; briefing sessions that are packaged as consultations; and male dominated voices.

*Partial consultation that focuses on traditional leadership*

The research explored the extent to which communities are involved in adequate consultations by both mining companies and government. The findings revealed that in instances where consultations have allegedly been made, those consulted have been traditional leaders ‘as the voice of the people.’ However, most Chiefs have lost credibility because there has usually been a big gap between the interests of traditional leaders and communities. For them, they usually support the investments without taking time

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<sup>32</sup> NomoGaia Foundation, the Paladin Energy Human Rights Impact Assessment - Kayelekera Uranium Project, 2010.

to understand and address concerns from communities. Corruption of traditional leaders by mining companies has widely been suspected.

The irony is that in many cases, even key District Council officials have been sidelined from consultations. As one officer disclosed:

*We just saw the investor coming with documents from the Department of Mining authorising them to conduct an exploration of rare earth on Mulanje Mountain. This is a challenge when benefits and impacts of the exercise are not thoroughly analysed first with community input.*

In this case, the fact that the Forestry Department, which has a mandate to conserve Mulanje Mountain, was also not consulted in the granting of the license exposes conflicting provisions that have to be reconciled in the laws related to mining and forestry.

*Briefing sessions that are packaged as consultations*

In many instances where consultation claims are made, these have only been for purposes of informing the community of the intentions of investors. At this point, decisions have already been taken, and the community is expected to be compliant. This approach has backfired in Mulanje district, where the community, through Concerned Citizens, have obtained a court injunction stopping Springstone Malawi Ltd from continuing with explorations on rare earth. The tensions in Mulanje highlighted in **Box 4** positively show that this time, chiefs and community members are on the same side, since some of them are also part of the Concerned Citizens in the court action. This is because of the shared conviction that Mulanje Mountain has to be protected at all costs for reasons provided in Box 4.

**Box 4: Voices recounting dynamics of the case against Springstone Mining Ltd in Mulanje district**

The affected area borders Mulanje and Phalombe districts. When Springstone came into the area, they said they had come to ‘explore’ rare earth. They did not come to the community to seek permission, but they came for a briefing—having already obtained an exploration license. The terms of the license were that they would prospect by drilling a 1 metre hole into the ground (mountain), with 100 metres spacing between each hole. However, we later discovered that they had been drilling up to 40 metres into the ground. Every fortnight for the past two and a half years, Springstone has been bringing down from the mountain not less than 50 bags of ‘samples’ weighing over 70 kgs each. They were even visiting our graves, and investigating how deep we bury our dead.

Our main problems are two. Firstly, it was historically established that Mulanje Mountain is constituted of 75 percent water. There is therefore a serious danger that the sort of drilling that has been done by Springstone, or indeed any mining activities on the mountain could result in a catastrophic water burst that could wash away the villages below the mountain. Our second issue is that besides being a national heritage, Mulanje Mountain is a great source of pride for those of us who originate from Mulanje district. In 2010, Mulanje Mountain was even designated a protected area. We are therefore very concerned that Government could be considering mining activities in a protected area; and are protecting our heritage. We are saying NO to any mining activities.

We suspect that Springstone has been conniving with Mulanje Mountain Conservation Trust (MMCT), so we obtained the injunction against these two institutions in November 2012. But before the injunction, we submitted a petition to Springstone on 29 October 2012 that was signed by Traditional Authorities (TAs), Group Village Headmen and citizens. The company responded by informing the District Commissioner that it was immediately suspending its exploration. We proceeded to obtain the injunction in order to pre-empt Springstone, which had started mobilising a community revolt, and we feared that they may obtain an injunction against us first.

Our problem with MMCT is that they cleared away 870 hectares of pine trees under the pretext that they were removing alien plants that could disturb the ecosystem. They undertook to plant cedar instead, but no single tree has been planted up to date. Incidentally, Springstone came, and started its exploration on this same site. Years back, MMCT had protested against moves by a Zimbabwean company to explore bauxite

on Mulanje Mountain. This time around, they were quiet, which was highly suspect.<sup>33</sup> If they want to continue operations, they should replace the trees they destroyed.

As we speak, people in Chambe area have already started experiencing the negative effects of the exploration, because they are getting dirty and unsafe tap water as a result of pollution of the water table. If the government or any of the institutions use other mechanisms to defy us, we will take the war to individuals and kill them through magic. Our ancestors are there [on the Mountain], and this is our tourist destination, and we will not stop at anything.

The case in Mulanje exposes that taking shortcuts in the issue of mining is a volatile approach, particularly when the community members are bold and empowered. Though it was felt that the shortcuts help investors because they do not have to confront the political and social issues on the ground, they can also work to their detriment because their investment becomes a risk.

#### *Male dominated voices*

In instances where there has been some sort of interaction between investors and the community, some investors have noted that patriarchy dominates in Malawi, particularly in the north, and women's voices are greatly stifled. An example was provided on the gravity of this situation:

*A community in Mzimba was invited to discuss two options for compensation upon relocation —either to be given money for building their own houses, or to have houses built by them. It had been rumoured that women preferred houses to be built for relocated households, as they were afraid that men would receive the cash and misuse it on unrelated acquisitions like buying cell phones, bicycles, spending on other women etc. So during a meeting, one woman stood up and confirmed that the female position was that the company should just build them new houses at the area of resettlement. However, the Traditional Authority immediately commanded her to sit down and declared that “no woman would speak in front of men as women had no cultural standing to give an opinion on the matter.”*

The investor seemed to be torn between differing to discriminatory customary law, and respecting gender equality standards that are set in the guidelines on “Social Responsibility in the Mining and Metals Sector in Developing Countries” that have been prescribed by the Australian Government. On the one hand, there was the feeling that “*it is not in our place to interfere with cultural norms and laws of the country.*” However, there was also sensitivity against being seen as colluding to gender discriminatory practices that would give women a raw deal when it came to compensation. Since the issue is still under discussion, the investor disclosed its intention to work behind the scenes to push for a gender sensitive compensation procedure, including negotiating with even the Paramount chief.

It is therefore clear that the mainstreaming of gender into consultation processes is one issue requiring persistent CSO advocacy. To be effective, such advocacy also has to appreciate the incentives of the investors, government officials, traditional leaders, as well as men. Otherwise, the disadvantage of not being sensitive to such incentives may not uncover why some efforts are not being successful. For example CRS shared that though they [together with Mzuzu Diocese CCJP] had initially managed to convince the investor that is interested in mining niobium at Kanyika that the best option for compensation may be to build houses for people, they were later taken by surprise when the investor backtracked and was proposing to offer cash for compensation. For CRS, this was because they had not consistently followed up on the commitment. They suspected that they investor reversed its commitment upon advice from government officials, who may derive direct benefits from managing the cash. However, this conclusion ignores the motivations of the other players involved. This serves to underlie the power of the PEA.

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<sup>33</sup> MMCT's side of the story is that they equally view mining on Mulanje Mountain as a threat, because UNESCO is currently considering conferring a World Heritage Site Status to Mulanje Mountain. However, this status cannot be considered if there is evidenced that the mountain is linked to mining activities.

**Summarised PEA Analysis of the issue lack of framework for stakeholder engagement**

<b>The specific institutional change required to address the problems or challenges identified</b>
Development of a framework for stakeholder engagement at community level in the mining sector
<b>Key stakeholders who are able to influence and could potentially make up an informal coalition</b>
Women’s groups, NGOs implementing mining activities, CSO Natural Resources Network, Anti- Corruption Bureau, District Councils, Parliamentary committees on natural resources, budget and the women’s caucus.
<b>Key stakeholders who may be against change or elements thereof</b>
<ul style="list-style-type: none"> <li>• Government/Ministry responsible for mining, which may lack capacity to ensure thorough consultations before licensing</li> <li>• Investors, whose interest may be to save costs that could arise from community demands if comprehensive and objective consultations were done</li> <li>• Chiefs, who may lose personal financial benefits from investors</li> <li>• Men, who may resist gender sensitive consultations that prevent their monopoly over mining benefits or compensation.</li> </ul>
<b>Ideas for possible activities that could be carried out to achieve the desired change</b>
<ul style="list-style-type: none"> <li>• A comprehensive audit and documentation of experiences at community and district level to fully understand the nature of the problem.</li> <li>• Learning from those countries within the region that reportedly have best practices in as far as gender sensitive engagement between community level structures and investors in the mining sector.</li> <li>• Development of a comprehensive gender sensitive model framework for engagement between local level structures and mining investors which could then be adaptable to the specificities of particular context and nature of investment.</li> <li>• Development and implementation of a focused capacity building programme for key stakeholders for the model framework to work. This would, inter alia, include community exchange visits. The idea would be to empower community level structures to engage meaningfully not only with the mining investors but also government officials. Development of an advocacy programme that would popularize the model framework of engagement both in mining and non-mining areas.</li> </ul>

**6.2.4 Key Issue Four: Absence of robust transparency and accountability mechanisms**

The issue of transparency and accountability is evident in two areas—revenue collection and management; and negotiations, content, and implementation of Development Agreements. Transparency has not been attained in the issue of revenue collection and management, though Government is taking active steps to achieve this. There is also no transparency in the negotiation of Development Agreements, though there are signs that there may be reduced secrecy on the content of such agreements, once signed.

***Revenue related transparency***

The absence of a mechanism for declaring to Malawians the revenue that the Government is generating from mining companies led to a lot of suspicion and speculation about underhand dealings between mining companies and investors. The Government seems to now realise the need for transparency. Mainly, this realisation has come about because of wide criticisms about government’s failure to disclose the Kayelekera Development Agreement, including the exact figures that the government is realising from the FDI. Currently, Government, which is working in a taskforce together with NGOs and mining companies, is seriously considering adopting and signing up to one important mechanism for institutionalising revenue related transparency in the mining sector—the Extractive Industries Transparency Initiative (EITI).<sup>34</sup> The Ministry of Finance and some development partners<sup>35</sup> led to the formation of the EITI taskforce (chaired by the Ministry of Finance, Revenue Policy Division) which was then mandated to lead discussions on EITI.

<sup>34</sup> The EITI was launched at the 2002 World Summit for Sustainable Development by the then Prime Minister of United Kingdom, Tony Blair.

<sup>35</sup> GIZ Malawi, Royal Norwegian Embassy, and the African Development Bank.

The EITI is a global standard that promotes the transparency of government revenue from the extractive industries (oil, gas, and mining) active in a country. Its primary instrument is the reconciliation of payment and revenue accounts between companies and government so that citizens are aware of what is accruing from the natural resources that their countries have. In doing so, both the national governments and the private companies would promote the spirit of maximising national revenues for poverty reduction and development of their countries as EITI helps to curb corrupt tendencies in the sector. Since its establishment a decade ago, the EITI has established principles and criteria, and a secretariat based in Oslo, Norway. About 35 countries are members, of which 22 are in Africa.<sup>36</sup>

The EITI taskforce in Malawi organised a first National Stakeholders' Conference in November 2010 in Lilongwe. One of the outcomes of this conference was the commissioning of a study by the Ministry of Finance on impact analysis of implementing EITI in Malawi, whose findings would help inform further deliberations on the EITI in Malawi. The study was concluded in June 2011, and its findings were also complemented by an August 2011 learning tour was made to Ghana as one of the countries that is implementing EITI. Part of the high level delegation included CSO members of the EITI taskforce. The study recommended that it was in Malawi's interest to adopt and join the EITI since the extractives industry sector was growing both in the number on investors and its contribution to the national GDP (see specific reasons under **Annexure 4**).

Signing up for EITI does not attract any fee or annual subscription payable to international structures of the EITI. The only costs relate to in-country costs of EITI implementation, which have to be covered by the respective candidate country. For Malawi, and much of this can be raised from the Multi Donor Trust Fund (MDTF), which is earmarked for EITI implementation and administered by the World Bank, as well as from the African Development Bank and bilateral donors. However, adopting and joining EITI would also have to be supported by legislative action to allow transparent reporting on revenues. Laws that may need to be reviewed or enacted would include the Official Secrets Act (1913); and the Taxation Act (2005); and the Access to Public Information (2000 Bill).

Following the publication of the study, there has not been urgency on the part of Government, through Cabinet, to deliberate on the issue of Malawi's joining of the EITI. A draft Cabinet Paper that was developed in December 2011 on the topic is yet to be finalised, discussed and adopted by Cabinet. In its current state, the Paper (to be co-submitted by Ministers responsible for Mining and Finance) invites the Cabinet to discuss possibilities of adopting the Extractive Industries Transparency Initiative (EITI) as a way to promote transparency and tracing of revenues from Malawi's extractive sector. Particularly, it requests Cabinet to consider joining the initiative and proceed to an official launch to publicly express the country's willingness be part of the EITI process.<sup>37</sup>

Though EITI is a relevant mechanism, it is recognized that it has to be complemented by other accountability and transparency measures that respond to other diverse concerns in the mining sector. For instance, EITI does not support government to negotiate transparent and better deals; does not track how government actually spends mining revenue; and does not require an investigation to resolve unexplained discrepancies between the revenue that a company made and the revenue that was actually paid to government. Rather EITI relies on public dialogue, advocacy, and pressure to narrow the gap in subsequent years.

However, EITI as an instrument is a good starting point that could also help civil society advocate for, and policymakers improve their negotiations on contracts, licensing, fees, environmental management, and corporate social responsibilities (CSR).<sup>38</sup> But when it comes to the issue of CSR, Malawi should be prepared for tough negotiations with mining companies, because there is a view that responsibilities of companies should be limited to the mining site itself, the payment of royalties, payment of compensation, and mitigation of any social effects of relocation. It is then up to the Malawi Government to responsibly apply the royalties in discharging the rest of its usual duties towards its citizens, including those living in areas near mining sites.

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<sup>36</sup> Ministry of Finance, note 5 supra.

<sup>37</sup> Malawi Government, Draft Cabinet Paper, Consideration to implement the Extractive Industries Transparency Initiative (EITI) In Malawi.

<sup>38</sup> Ministry of Finance, note 5 supra.

### ***Transparency related to content, negotiations, and implementation of Development Agreements***

The Malawi Government got the reputation of being non transparent about mining agreements when it failed to make public the Kayelekera Development Agreements due to a non- disclosure clause that was contained in the agreement. This was widely viewed as evidence of dubious dealings. The Government however readily admitted that with the Kayelekera Agreement, it put itself in an awkward position because despite public pressure to reveal the agreement, it was bound by the non-disclosure clause. In retrospect, the Government felt that it had no incentive to hide this information because it ended looking bad to the public for an agreement was readily available from internet sources. However when entering into the agreement, the Government's incentive (which Paladin views as being sound at that time) was that it felt that future mining investors should negotiate their own concessions without being influenced by concessions that had been granted to Paladin in respect of duty waivers on capital items.

With the second Development Agreement (Global Metals) on the table, it remains to be seen how transparently the document will be handled. But if observations from the PEA are anything to go by, the fact that the agreement is presently being classified as "confidential" indicates that if public disclosure is an option, this could only occur after the document is negotiated. The issue is therefore whether this may not be too late, unlike where disclosure was to be made at the negotiation stages. However, NGOs and government seem to be at cross purposes when it comes to their views on Development Agreements negotiations. NGOs regard the government as grossly lacking the capacity to negotiate Development Agreements with powerful multinationals on its own without the benefit of technical and objective support from the NGOs. One NGO respondent decried that:

*Imagine that when the Kayelekera agreement was being negotiated, the Government of Malawi only had three lawyers, one of whom seeing a Development Agreement for the first time. This team faced about 12 lawyers from Paladin with different areas of expertise.*

On the other hand, the Malawi Government seems to hold the view that the negotiations table is a private territory where NGOs have no business unless they [NGOs] prove otherwise. One government official had a forceful opinion that: "*we are yet to appreciate the technical skills that NGOs claim to be capable of bringing to the negotiations table. Until they convince us of these skills, we [government] are satisfied with our own skills.*" Another NGO respondent sided with this view by noting that NGOs should first recognise that the government is the primary duty bearer. When NGOs show that they have credible evidence and they approach the government in an unantagonistic manner, government has tended to be cooperative. Therefore, the burden is on NGOs to understand the power dynamics around politicians and senior civil servants and prove themselves as worthy experts.

The concern of lack of transparency related to the implementation of Development Agreements arises due to the partial implementation of some clauses in the agreement, both on the part of the government and the investors. For instance, in the case of Paladin, NGOs hold the belief that the company has not been able to fulfil its commitments, particularly those related to social responsibilities. However, during the research, Paladin was able to demonstrate that it had fulfilled all the social responsibility terms of both the Development Agreement, as well as Deed of Settlement (that was signed with NGOs as an out of court settlement for a legal claim that the NGOs had instituted against the company in 2009). However, Paladin's allegation was that NGOs are introducing other commitments which cannot be validated by the two documents.

Paladin also claimed that though it had spent money by sending two Malawian doctors to Australia for radiation related training in compliance with the Development Agreement, the Malawi Government did not adhere to its part of the agreement. Therefore, instead of posting these doctors to Karonga or Kayelekera upon their return, the doctors were absorbed in the government system and Paladin does not know where they serving. It is suspected that this could either be due to lack of sharing of information, because the Ministry of Health may not be aware of the linkage between the terms of the Development Agreement and the training of the specialised doctors; or lack of appreciation by the authorities within the Ministry of Health of the relevance of specialised medical doctors in Kayelekera. The fact that the Paladin has not pressed the Malawi Government on this issue also demonstrates the low interest by Paladin to follow up or enforce commitments made by the Government that do not directly affect its operations. However, this could be an unstrategic approach because not only does Paladin have to be seen that it have taken some measures to mitigate radiation, but the measures have to be in fact functional. The

likelihood that Paladin’s inaction could backfire is already evident in media reports that one political party (PETRA) has started agitating for Paladin to provide explanations on its response towards people who have been exposed to radiation.<sup>39</sup>

***Summarised PEA Analysis of the issue of absence of robust transparency and accountability mechanisms***

<b>The specific institutional change required to address the problems or challenges identified</b>
Entrenchment of systems and procedures that facilitate transparency and accountability in the collection and management of revenue and in the negotiation of Development Agreements.
<b>The tractability of the issue:</b> <i>The issue could be manageable if the two results are sought after separately:</i>
<p><b>a) Improving transparency and accountability in revenue collection and management</b></p> <p><i>Key stakeholders who are able to influence and could potentially make up an informal coalition</i> EITI taskforce, CSO Natural Resources Network, Episcopal Conference of Malawi, Royal Norwegian Embassy, Parliamentary committees on natural resources, budget and the women’s caucus</p> <p><i>Key stakeholders who may be against change or elements thereof</i></p> <ul style="list-style-type: none"> <li>• Investors, who may be benefiting from the non-adoption of EITI</li> <li>• Senior government officials and politicians, who may be benefiting financially from investors</li> <li>• Cabinet, which may be influenced by senior government officials or politicians that are against change</li> </ul> <p><i>Ideas for possible activities that could be carried out to achieve the desired change</i></p> <ul style="list-style-type: none"> <li>• Advocacy campaigns for Cabinet to approve Malawi’s adoption and launch EITI</li> <li>• Supporting the establishment of EITI secretariat</li> <li>• Strengthening CSOs involvement in operations of the EITI secretariat</li> </ul>
<p><b>b) Enhancing transparency over Development Agreements</b></p> <p><i>Key stakeholders who are able to influence and could potentially make up an informal coalition</i> CSO Natural Resources Network, CCJP National Secretariat, the ACT Alliance sponsored network (international church organisations), MCCI, Donors- World Bank, GIZ, African Development Bank, and Norwegian Embassy</p> <p>*Mining companies like Paladin could be an ally for advocating with government to implement terms of Development Agreement (i.e. placing medical doctors with radiation expertise in Karonga)</p> <p><i>Key stakeholders who may be against change or elements thereof</i></p> <ul style="list-style-type: none"> <li>• Government (i.e. Ministry of Finance/Revenue Policy Department), i.e. which may not want NGOs to ‘intrude’ in negotiations. On the other hand, government may want to look transparent by only releasing the agreements after deals are sealed.</li> <li>• Investors, who may not want terms of agreement to be made public, if exploitative; or who may fear that they will not get the best deal if NGOs are at the negotiations table.</li> <li>• Chiefs, who may intimidate NGO activists that are vocally pushing for transparency, especially if the activists are coming from the mining areas.</li> <li>• Senior government officials and politicians, who may be benefiting financially from investors</li> </ul> <p><i>Ideas for possible activities that could be carried out to achieve the desired change</i></p> <ul style="list-style-type: none"> <li>• Researches for NGOs to generate information that government may find valuable in negotiation processes</li> <li>• Document concrete evidence on where both government and investors are diverting from Development Agreements and the impacts, and use this as a basis for action</li> <li>• Building capacities of government and NGOs in negotiating or renegotiating Development Agreements</li> <li>• Co-opting high profile moral leaders in advocacy meetings with chiefs, investors and government</li> <li>• Lobbying for a separate parliamentary committee on natural resources that is detached from agriculture issues as is currently the case.</li> </ul>
<p><b>c) Conducting transparent and inclusive community consultations</b></p> <p><i>Key stakeholders who are able to influence and could potentially make up an informal coalition</i></p>

<sup>39</sup> The Daily Times, “Petra gives 14 days of Kayelekera deal,” Wednesday 16 January 2013.

Women's groups, NGOs implementing mining activities, CSO Natural Resources Network, Anti- Corruption Bureau, District Councils, Parliamentary committees on natural resources, budget and the women's caucus

*Key stakeholders who may be against change or elements thereof*

- Government/Ministry responsible for mining, which may lack capacity to ensure thorough consultations before licensing
- Investors, whose interest may be to save costs that could arise from community demands if comprehensive and objective consultations were done
- Chiefs, who may lose personal financial benefits from investors
- Men, who may resist gender sensitive consultations that prevent their monopoly over mining benefits or compensation

*Ideas for possible activities that could be carried out to achieve the desired change*

- Advocating for clear gender sensitive community consultation guidelines according to international guidelines
- Advocating for clear gender sensitive corporate social responsibility guidelines or legal provisions.
- Advocating for cultural mechanisms that respond to interests women relating to relocation, compensation and corporate social responsibility measures.

## 7. CONCLUSION

This PEA has confirmed that the mining sector, which is increasingly contributing to the country's GDP, is a priority policy area for government. However, the sector is chocked by many political economy issues that expose the need for: the strengthening of the policy, legal and institutional frameworks; the creation of a vibrant and well-coordinated CSO response; and the reinforcement of transparency mechanisms when collecting and managing revenue, negotiating Development Agreements, and when dealing with communities. For the sector to be efficient and result in sustainable socio-economic development, the Government, CSOs and mining companies all need to engage each other in collaborative approach despite their different understandings of context and priorities. Evidence based advocacy is the strongest mechanisms that CSOs can use in order to maintain a productive interaction with both mining companies and the Government.

The PEA has identified several issues that could be pursued as programmatic interventions in order to achieve the desired institutional and policy change. However, the major question is how exactly can this be done in a practical setting? For each of the issue identified, it will be important to ensure that the following are done over and above mapping out the relevant stakeholders, their incentives and interests:

- Map out extensively opportunities for as well as barriers to change for each of the stakeholders identified in each issue but also as a collective.
- Think about the changes to be made in terms of institutional set ups, policies, practices, activities and outcomes among many other parameters with opportunities for and barriers to change in the background.
- Make the desired changes as modest and as realistic as possible so as to ensure the buy in of a diverse range of stakeholders who may choose to opt out if the proposed changes are quite radical to their liking. If the modest changes are achieved they can then serve as a springboard for further action.
- Focus primarily on changes that draw from shared interests of the key stakeholders in each of the issues identified since shared interests are more likely to stimulate change. Once shared interests have been identified they should be written into a common agenda that will guide action.
- Attempt to systematically figure out the key informal dynamics at play between and among different stakeholders in an issue area. It is a challenge but informal rules must somehow be identified in order to get into the world behind the facade whose dynamics would be critical to achieving sustainable change and transformation.

- Promote stronger and continuous dialogue among the key stakeholders. This would help to have a clear and deeper sense of the underlying incentives, interests, power, influence and authority of different stakeholders which may be impossible to accurately and fully discern in the absence of dialogue based on mutual respect and partnership.

The main advice is that while these steps are critical in operationalizing PEA issues, they should not necessarily be followed in the sequence outlined above since by its very nature PEA is chaotic and highly fluid. Furthermore, it is important for practitioners to always be aware of the fact that PEA issues are highly dynamic. It is therefore imperative for them to continuously track developments and make necessary adjustments and modifications. In operationalizing these steps, the following questions will always be important:

- Who sets the policy agenda? Whose ideas and values dominate policy?
- Who gets what, when and how and how do formal and informal institutions shape the distribution of benefits and costs?
- Who knows whom, why and where? How do informal social networks shape the policy process?

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**ANNEXURE 1: LIST OF RESPONDENTS**

<b>Institution</b>	<b>Respondent &amp; Position</b>
Ministry of Finance, Revenue Policy Department	Mr George Harawa, Deputy Director. Also practical chairperson of the EITI taskforce
Department of Mining	Mr Peter Chilumanga, Deputy Director (EITI taskforce member)
Royal Norwegian Embassy	Mr Micheal Nyirenda, Programme Officer
Citizen for Justice and Peace	Mr Reinford Mwangonde, Executive Director (EITI taskforce member)
Centre for Human Rights and Rehabilitation	Mr Undule Mwakasungula, Executive Director (EITI taskforce member) & Mr Timothy Mtambo, Programme Manager
Institute for Policy Interaction	Mr Rafiq Hajat, Executive Director
Action Aid International	Mr Chandiwira Chisi, Advocacy and Campaigns Coordinator
Catholic Relief Services	Edfas Mkandawire, Senior Project Manager - Justice and Peace Building
Catholic Commission for Justice and Peace, National Secretariat	Mr Chris Chisoni, National Secretary
Dan Church Aid	Ms Lugede Chiumia, Active Citizenship Programme Officer
Global Metals Mining (Africa) Ltd	Mr Neville Hauxham, Consultant (ex- Paladin Country Manager)
Paladin Energy Malawi Ltd	Mr Greg Walker, General Manager - International Affairs
Malawi Women in Mining Association	Ms Emma Eunice Adam, President
Renaissance Solutions	Mr John Chawinga (ex-Programme Officer CCJP Mzuzu Diocese's mining projects/pioneer)
District Council, Mulanje	District Commissioner, Mr Jack Nguluwe
District Council, Phalombe	District Forestry Officer, Mr Mtambo
Mulanje Mountain Conservation Trust	Monitoring and Evaluation Officer, Mr Henry Chinthuli
Concerned Citizens of Mulanje	

**ANNEXURE 2: SUMMARY OF THE REVIEW OF THE EIA REPORT FOR THE KANYIKA NIOBIUM MINING PROJECT**

- The EIA shows that close to 700 people would be relocated; but the mine site which would extend over 597 square kilometers is expected to affect many more people and livelihoods, biodiversity more especially agriculture since this is an arable land. GMMA does not provide detailed information on the magnitude of the impact of the mining venture.
- Compensation and relocation procedures are not stipulated in the EIA, a thing that should accompany or should be part of any EIA report. Bearing in mind that compensation procedure in Malawi are archaic, the likelihood that displaced people would get a raw deal is very possible if better mechanisms are not put in place to protect those to be affected.
- Although GMMA has provided a number of mitigation measures to possible environmental challenges to be created for instance, dust, radiation, health, noise, seepage of hazardous waste, some of the proposed strategies are generic and in some cases double standards are played when compared to requirements at the international scene.
- Much as GMMA has tried to follow international and domestic legal frameworks, in some cases GMMA has failed to demonstrate commitment that they would address all environmental challenges they will have created by the 40th year, one of which is the admission that they would not be able to rehabilitate the open pit which would stretch between 300 meters to 2.2 kilometers wide and up to 180 meters deep. This is a clear violation of the law and regulatory framework both local and international.
- In comparison to the experience with Paladin Africa Kayelekera Uranium Mining EIA, GMMA has made some improvements but more could have been done especially by the Malawi government to exhibit their commitment to regulate the sector as per section 13 of the Republic of Malawi and the Environmental Management act. The Malawi government should not make another mistake to award a Mining License to GMMA unless all salient issues related to the safe and sustainable extraction of natural resources at Kanyika are met.

*Source: Action Aid International Malawi, 2012*

### ANNEXURE 3: MINING RELATED PROJECTS BEING SUPPORTED BY INGOs

#### *Dan Church Aid*

Dan Church Aid (DCA) has a programme on economic justice and governance that aims at improving access to resources by vulnerable groups. The programme is implemented in partnership with the CCJP Mzuzu Diocese. The major issue for the programme is why mining is not translating into economic gains and inclusion of the poor. Dan Church Aid is also supporting the Church and Society Programme of the Livingstonia Synod's project focusing on extractive mining. The project is implemented in one of the mining sites, Kanyika. This project has been linked to a women's economic empowerment project because of the potential for the extractive industry to affect sustainability of village savings and loan schemes that are being implemented by women. It is further accepted that relocation due to the construction of a mine greatly disturbs women's livelihoods (i.e. if they have to be transplanted from land where they had grown perennial plants like fruits or cassava for generating capital). Even the problem of pollution of water resources by mining activities tends to compromise involvement of women in economic activities as they are compelled to spend more time in accessing remote water sources.

#### *Catholic Relief Services*

The Catholic Relief Services (CRS) is funding extractive industry related projects of the Mzuzu and Karonga Dioceses under a programme called Transparency Initiatives With Our Natural Extractives (TIWONE). The interest of the programme is to build the capacity of partners to implement their projects that are aimed at building knowledgeable communities that can be able to demand and defend their rights if at risk of violation by mining companies. CRS itself has been involved in discussions with mining companies on issues of resettlement, compensation, pollution, loss of land, trespass to land without consultation, and corporate social responsibility. CRS has mainly been involved where implementing agencies have been in need of technical support in negotiating with the companies. A recent evaluation of the programme disclosed that there has been awareness within communities on the dangers and benefits of extractive industries. However, though the communities have awareness, they are not yet at a level where they can demand their rights. This is because they are facing multinational companies that are highly sophisticated and powerful, and communities have not yet reached a level of standing up to the companies. The evaluation also established that the CCJPs do not yet have adequate advocacy skills to see through their advocacy interests in a systematic way. As a result, because they usually rely on technical backstopping support from CRS, time may lapse before they are able to follow up on commitments made by a company.

### ANNEXURE 4: ADVANTAGES OF ADOPTING AND SIGNING UP TO EITI

#### **Key recommendation: It is in Malawi's interest to sign up to EITI**

There are several reasons why Malawi should strongly consider signing up to EITI:

- i) It presents a potentially significant revenue enhancement opportunity;
- ii) The mining sector is expected to expand rapidly;
- iii) If more information were publicly available, Government could talk openly about what revenue it is getting from mine companies, thereby quashing rumours and speculation;
- iv) If more information were publicly available, mine companies could not make unsubstantiated or vague claims that could not be disproven because of non-disclosure agreements, while on the other hand, EITI enables companies to showcase their contribution;
- v) Costs are very low to government (mostly covered by MDTF and other donors) while benefits are potentially very high (US\$ millions);
- vi) May enhance Malawi's investment climate by signalling its interest in good governance;
- vii) Resonates with Government policy and strategy (e.g. MGDS, development of the mining sector) and anti-corruption focus.