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## KAYELEKERA BLUES

● Uranium price hike ignites calls to reopen mine



The Kayelekera mine is still not producing despite uranium price rise

By Wahard BETHA

Stakeholders in the extractive sector have urged the Malawi Government to finalize the Mine Development Agreement (MDA) for Kayerekera Uranium Mine with tenement holder ASX-listed Lotus Resources following soaring of uranium prices on the global market.

Trading Economics reports that uranium prices were at \$91 per pound in early January, holding the surge from late 2023 that took

prices to 16-year highs amid strong demand and risks to supply. Volatile fossil fuel prices and ambitious de-carbonization goals drove the US and 20 other countries to announce that their nuclear power will be tripled by 2050.

The large bets on nuclear energy are led by China, which is building 22 of 58 global reactors, while Japan restarted projects to increase nuclear power output, and a new reactor in Finland marked Europe's first new facility in 16 years.

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# Council raises alarm over unsustainable mining practices within Lilongwe City

By Chrissy Fereciah NKUMBA

The Lilongwe City Council has expressed concern over illegal sand and quarry mining within the city, which is leading to environmental degradation.

The Council's Director of Parks, Recreation, and Environment Allan Kwanjana in an interview advised construction companies and individuals working on building projects to desist from sourcing the materials from illegal miners.

"The public is hereby informed that carrying out of sand and stone mining activities within the City boundaries is a serious offence punishable by law," Kwanjana said citing relevant sections in Environmental Management Act and Mines and Minerals Act.

Kwanjana warned the miners to stop the operations immediately saying failure to comply will result in prosecution and heavy penalties.

"The government, through the Council, is dedicated to safeguarding the environment and the well-being of its citizens," he said.

Kwanjana said the Council is undertaking proactive measures against the situation including identifying mining sites, issuing prohibition notices, deploying enforcement teams, and continuous monitoring to ensure compliance.

He said: "However, challenges persist, with resistance from miners leading to confrontations and confiscation of tools. The City Council has designated areas where mining is permissible, but some operators defy regulations, prompting forceful eviction."

"Currently we are doing this in a number of sites along Lingadzi and Lilongwe rivers. We end up confiscating their working tools and where possible apprehend the culprits and take them to Police for prosecution," he said.

Kwanjana lamented that small-scale miners involved in the malpractice operate without oversight leading to uncontrolled sand and rock mining along riverbanks, streams, and dambo land, causing land degradation and posing threats to infrastructure such as roads and bridges.

He said attempts to form committees for a coordinated solution have faced setbacks, as key stakeholders like the Ministry of Lands and the Ministry of Mining have been hesitant to address the issue.

"The environmental impact is evident, with land rendered undevelopable, mosquito breeding grounds formed, river courses diverted, and public infrastructure endangered. Current efforts targeting miners have proven ineffective due to their widespread presence in the city," he said.

Kwanjana, therefore, said the Council is contemplating a shift in strategy to target buyers and customers in restricted areas.



Mining & Trade Review journalist interviewing the quarry miners

"The impounding of trucks transporting materials from these zones and leveraging existing legislation to impose penalties and fees are suggested measures to cover enforcement expenses," Kwanjana said, adding that the situation calls for urgent collaborative efforts to curb unsustainable mining practices and preserve Lilongwe's environment for sustainable development.

However, small scale quarry miners plying their trade in the City told *Mining & Trade Review* that Government needs to organise them into cooperatives and identify appropriate areas where they should be licensed to carry out mining activities other than forcing them out of the business which is their own source of income.

"We need to be empowered with capital to procure machines as cooperatives and compete with mechanised miners. It is sad that foreigners who obtain loans in their countries such as Chinese have dominated the quarry mining business because they are using advanced equipment while we continue to toil without gain," said a female miner.

## Uranium price hike ignites calls to reopen Kayelekera

From page 1

"The developments were met with increasing threats to supply. Western utilities continued to voluntarily shun Russian uranium imports due to its invasion of Ukraine, while US officials moved closer to outright banning imports from the world's top producer of nuclear fuel. Additionally, supply was also pressured by the military coup in Niger and troubles in Canadian mines."

Commenting on the development, Mining expert John Nkhoma asked both the Malawi Government and Lotus Resources to allow the project to resume with preliminary works including refurbishing the plant though the MDA is yet to be finalized.

Nkhoma, a seasoned geologist and MD for a leading consultancy group Chiwandama GeoConsultants, said he is optimistic that what have remained in the agreement are just few steps that can be finalized in few days.

He said: "To tell you something, the prices are very succulent. From my perspective, I think preparatory works for mining resumption should commence even though discussions for the MDA are in progress."

"After all I do not think there are many issues to look into. Maybe they can start warming up the equipment and hiring the company that will be doing mining like Paladin did last time."

Lotus Resources reported recently that if the MDA is signed by December 2023 as promised by the Ministry of Mining, the company will be able to identify off-takers, secure finances, commence plant refurbishment this year and resume production in 2025.

In a separate interview, Coordinator for Chamber of Mines and Energy in Malawi Grain Malunga said the uranium price hike is advantageous to both Government and Lotus, hence the call to respond to few issues remained in the MDA.

"It is to the advantage of both Lotus and Government. There are few issues for Government to respond to and move on with MDA conclusion," said Malunga.

Programs Coordinator for Natural Resources Justice Network (NRJN) Joy Chabwera concurred with Malunga but asked Lotus to ensure that they negotiate a fair deal with the Malawi Government to avoid mistakes made with the previous company.

"It is to the advantage of the government to conclude the MDA for Lotus but it is also important for the company to negotiate a fair deal for Malawi since the Paladin background," Chabwera said.

The Ministry of Mining indicated recently that the outstanding issues for Lotus's MDA include; loss carry forward from Paladin; waiver on interest on loans, non-resident tax and dividends; application on resource rent tax about to be concluded and; Lotus's request of equity share to be at 10% and not at 15% as it was the case with Paladin.

In August 2022, Lotus Resources Limited released a Re-start Definitive Feasibility Study (DFS) that revealed that Kayelekera ranks as one of the lowest capital costs uranium projects globally whilst also having the ability to quickly recommence production once a Final Investment Decision (FID) has been made.

The Kayelekera Uranium Project is the fourth largest uranium asset globally by historical annual production.

The mine, currently on care and maintenance, produced ~11Mlbs U<sub>3</sub>O<sub>8</sub> equivalent over five-years between 2009-2014 before the asset was shutdown to preserve its longevity due to a sustained low uranium prices in the aftermath of the Fukushima Nuclear Disaster which resulted in the closure of several nuclear power plants in Asia.

The Kayelekera deposit hosted a total mineral endowment of approximately 60Mlbs U<sub>3</sub>O<sub>8</sub> equivalent when historical production (11Mlbs) and the current resource (46.3Mt at 500ppm U<sub>3</sub>O<sub>8</sub> for 46.3Mlbs U<sub>3</sub>O<sub>8</sub>) are accounted for.

The Company also owns the Livingstonia Uranium deposit (6.9Mt at 320 ppm U<sub>3</sub>O<sub>8</sub> in Malawi. Combined Kayelekera and Livingstonia account for a total global Mineral Resource Estimate for the Company in Malawi to 49.4Mt at 475ppm U<sub>3</sub>O<sub>8</sub> for 51.1Mlbs U<sub>3</sub>O<sub>8</sub>.

Kayelekera is a sandstone-hosted uranium deposit associated with the Permian Karoo sediments and is hosted by the Kayelekera member of the North Rukuru sediments of the Karoo. The mineralisation is associated with seven variably oxidised coarse-grained arkose units, separated by shales and chocolate-coloured mudstones.

Uranium mineralisation occurs as lenses primarily within the arkose units and, to a lesser extent, in the mudstone units. The lowest level of known mineralisation currently is at a depth of approximately 160m below surface.



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MINING

EDITORIAL



## Mining works need to start at Kayelekera

The uranium market looks promising for Malawi which hosts the Kayelekera Uranium Mine in Karonga currently on care and maintenance.

The former tenement holder Paladin Africa put the mine on care and maintenance following a drop in market prices for uranium due to the Fukushima Nuclear Disaster in Japan which resulted in the closure of many nuclear power plants in Asia reducing demand for the yellow cake.

But as reported in our lead article, Trading Economics indicates that uranium prices were at \$91 per pound in early January, holding the surge from late 2023 that took prices to 16-year highs amid strong demand and risks to supply.

Volatile fossil fuel prices and ambitious de-carbonization goals drove the US and 20 other countries to announce that their nuclear power will be tripled by 2050.

The large bets on nuclear energy are led by China, which is building 22 out of 58 global reactors, while Japan restarted projects to increase nuclear power output, and a new reactor in Finland marked Europe's first new facility in 16 years.

But currently the Malawi Government is negotiating a Mine Development Agreement (MDA) with the present tenement holder Lotus Africa to reopen the mine.

We agree with a mining expert and MD for Chiwandama Geo-Consultants John Nkhoma that with these positive developments on the uranium market, there is need for the Government and Lotus to agree that work to refurbish the plant at Kayelekera starts in readiness for production while the MDA is being finalised.

With such high prices, chances are very high that Lotus will make an investment decision to mine uranium at the site.

Just as Coordinator for Chamber of Mines and Energy Grain Malunga says in the article, the high uranium price is advantageous to both Government and Lotus implying both parties would like to see production resuming at the mine to rake in revenue.

It is sad that Malawi is currently struggling with foreign exchange shortages while it hosts this asset which can rake in millions of dollars through uranium sales.

By delaying production at Kayelekera, Malawi is also denying prospective employees an opportunity to work at the mine.

Besides, reopening the mine will have plenty of other benefits including offering business opportunities to locals including farmers who will be selling their produce to employees at the mine.

As a large scale miner, Lotus will also sign a Community Development Agreement which will ensure that it executes development projects proposed by the community.

# Malawi women in mining associations merge

By Christopher JIMU

Malawi Women in Mining (MAWIMA) and Women in Energy Extractives and Mining (WEEM) have merged to form the Malawi Federation of Women and Youth in Mining (MFWYM), Mining & Trade Review has learnt.

Vice President of MAFWYM Ashley Simbeye Maleta said in an interview that the newly formed federation commences its operations this month.

Maleta said the Federation has been formed to fulfill the conditions set by the Southern African Development Community (Sadc) Women in Mining that require women in mining in a country to speak with one voice.

"MAFWYM has been formed so that MAWIMA and WEEMA should speak with one voice regarding issues of mining in Malawi. Though we have different strategic plans, we are all Malawian women and secondly we are in the same sector and it was just imperative that we have one body representing the country at any SADC fora or event," she said.

Maleta, who was speaking on behalf of MAFWYM President Annie Kamanga, disclosed that the leadership of the new body comes from the merged associations and that there is balance of power though the new body is being treated as an independent registered institution.

"For its smooth growth, MAFWYM will incorporate co-operatives in the mining sector apart from individuals. Those looking for broader markets are free to join but there will be a fee. This will help in easy monitoring of the association and we are encouraging people who are self-driven and result oriented to join us," said Maleta.

The vision for the new body is to create a platform for its members to achieve professional development and economic empowerment for accomplishments of entrepreneurial exploits, initiatives and development endeavours.

The new body also wants to forge a partnership with relevant stakeholders for women to achieve their optimal participation in the mining sector as well as increase women and youth representation in the mining industry as they help in the contribution of the SADC economic growth agenda.



MAWIMA members at Matapira ASM site in Lilongwe

"MAFWYM will help us speak with one voice in terms of identifying opportunities in a coordinated manner and facilitate integration, empowerment and success of African labourers and women and youth entrepreneurs in and around the mining sector," reads a statement from MAFWYM.

It explains that the objectives of the new body include: provision of support, care and healing interventions to women and youth infected and affected by HIV/AIDS and to victims of gender based violence around mines through capacity building.

The body will also take a leading role in promoting and supporting the advancement of women in the mining sector, enhancing the entrepreneurial development of women and youth owned enterprises in mining as well as increasing members' awareness of the legislative process and legislation relating to the mining industry.

The new body will also be involved in raising empowerment funds and funding for women and youth in the mining sector.

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## MINING

# Key service providers to Malawi's Mineral Sector in 2024

Compiled by Marcel CHIMWALA



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The Ministry is responsible for the overall administration of the mining sector in Malawi. It has two departments; the Department of Mines and Geological Survey. The Department of Mines' duties include issuance of licenses, inspection of mining activities to ensure that they are being carried out in accordance with relevant laws and regulations, and sensitisation of the general public on mining issues.

The duties of the Geological Survey Department include grass-root exploration and provision of exploration data to interested mining investors. Malawi has carried out a number of surveys over the past years to obtain data that investors can use to follow up on mineral occurrences and the latest surveys include the Geophysical Survey dubbed Kauri, which was conducted under the auspices of Mining Governance and Growth Support Project and its follow up the Geological Mapping and Mineral Assessment Project (GEMMAP). The data that can be accessed at the Geological Survey Department head office in Zomba include geological, mineral occurrence, mineral potential and geohazard maps

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Based in Prepa Complex in Biwi Triangle Industrial Area in Lilongwe, Mining Review Publications is specialised in providing Media and Public Relations Consulting Services to the mining industry in Malawi. It publishes a monthly newspaper called Mining & Trade Review in print, which has been circulating on the Malawi market since 2009. The publication also appears online on [www.miningtradenews.net](http://www.miningtradenews.net) and social media platforms.

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# Malawi's mining expert bemoans scrap metal exports

By Christopher JIMU

**M**ining expert and former Minister of Natural Resources, Energy and Environment Grain Malunga has called on government to promote recycling of scrap metals locally other than allowing people to export the metal.

Malunga observed in an interview that the exported scrap metals are the ones used to make iron bars and other metal components which the country imports at a very high price.

"We need to put things in order and see where we can generate more money and even jobs. By exporting the metals we are killing ourselves twice. You sell the metals cheaply and buy iron bars at a very exorbitant price. I think we can do better on this since we are not producers of iron materials," said Malunga.

When put to him that government has been trying its best to put in place a ban on scrap metal exports, Malunga said the bans do not yield anything because they are always temporary.

"The authorities must treat this issue with the utmost seriousness it deserves. We do not need temporary bans because they lead to the buyers circumventing the system and continuing trading in metals for copper, iron and aluminium production," said Malunga.

When contacted for comment, Trade and Industry Minister Sosten Gwengwe disclosed that there are new procedures on the issue which government put in place but he could not divulge a lot as he was not in the office.

"Let us talk after the holidays, but there are new procedures in place," said Gwengwe.

Meanwhile, the emergence of scrap metal buyers on the local market is said to be one of the reasons some car breakers are now leaving the business as they are unable to compete with scrap metal exporters on the market.

The scrap metal buyers are targeting old or accident damaged vehicles for breaking and then exporting the parts for recycling in China.

When car breakers purchase an old or accident damaged vehicle they dismantle the car and sell each part separately while scrap metal buyers just sell the whole car as one piece for chiseling before exporting.

*Mining and Trade Review* investigations indicate that the trade is now even being done by foreigners with adequate capital which has automatically lead to soaring prices.

Lilongwe based veteran car breaker John Nkisi of MJ Multitraders claimed that the growing demand for scrap metal in countries such as China, has distorted car breaking business.

"We used to buy old or accident damaged vehicles at low prices but the story is different. If we identify a vehicle to buy we are outbid by scrap metal buyers. In the end many car breakers are closing shop due to stiff competition," said Nkisi.



A heap of scrap metal in Lilongwe

As a way of survival Nkisi is now diversifying his business by investing in agriculture because he claims that the future of car breaking is gloomy.

"It could have been good if more investors were allowed into mining of minerals used to make aluminium and steel. By doing this the country could be getting enough forex while creating sustainable jobs instead of exporting metals bought on the market cheaply," Nkisi said.

Nkisi also urged his fellow car breakers to look into the issue of forming an association seriously so that they can be speaking with one voice.

He said: "An association for car breakers will help us speak with one voice and easily lobby with authorities on how they can protect us. We are of the view that businesses which can be done by Malawians must be left in the hands of Malawians.

"If we sell car components bit by bit, we can make a lot of money and survive. However, these scrap metal buyers get the stuff cheaply. Imagine a kilogramme going at K200, and when processed into bars that we import we pay as high as K6000 per kilogramme, this is sad," said Nkisi.

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Rukuru Mining Limited which owns Chombe Coal Mine in Chiweta in Eastern Rumpfi is the largest producer and supplier of coal in Malawi.

The miner supplies coal in form of nuts (20-45mm), which is ideal for manually fed boilers; peas (6-25mm) which is predominantly used in chain-fed boilers for steam production to power industrial processes; and grain/duff mix (0-6mm), which is used in pulverized coal fired boilers.

Production at Chombe Mine stands at an average of 15 thousand tonnes per year with the mine life pegged at over 25 years.

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## MINING

# ASMs lament bumpy route to mechanized mining



Gold miners captured in Kasungu

By Christopher JIMU

Artisanal and small scale miners (ASMs) have urged authorities to put in place measures that will facilitate that they develop their businesses in order to graduate into mechanized medium or large scale mining.

*Mining & Trade Review* established in random interviews with ASMs that despite continued discovery of minerals in many parts of the country, local miners are not substantially benefiting because of lack of expertise, proper equipment and start-up capital.

Mylord Jere, a gold miner at Chimbiya Village in Traditional Authority Wimbe's area in Kasungu, laments that despite that the area has potential for gold mining, he is failing to expand his business due to limited capital.

Jere, who runs a firm called Angoni Mining Company, also urged the Ministry of Mining to expedite processing of mineral licenses so that ASMs are able to easily acquire licences.

Said Jere: "It is through empowerment of local miners that Malawi can develop other

than only relying on foreign investors."

"If we, small scale miners, access capital and develop our operations, we will employ more Malawians hence contribute significantly to the government's job creation agenda besides generating foreign exchange through the sale of minerals."

"With the potential that the mineral sector has, it is sad that we are complaining of lack of forex. What is needed is to empower locals through provision of training opportunities and start-up capital to develop their businesses."

Jere said with adequate capital, gold miners can benefit by procuring gold detectors which can help in identifying the minerals and mine other than just panning ignorantly as is the current scenario where by the process is labour intensive with minimal gains.

He said: "If Malawians can get machines and adequate start-up capital, they can go deeper in search of minerals rather than waiting for the stones to be washed to the surface by water. We are losing a lot because we do not go deep enough. To make matters worse we are not even aware of the real origins of the gold so it is like we are just groping in the dark."

Administration and Marketing Manager at Maleta Gems and Jewels Ashley Simbeye commented in a separate interview that there is need for government to lobby cooperating partners and the financial sector to support small scale mining activities like it is doing in other economic sectors such as agriculture where by government is implementing the Agricultural Commercialization project to facilitate that small scale subsistence farmers graduate into commercial farmers.

"Many ASMs live a hand to mouth life. This needs to change if the country is to develop with mining as one of the key economic drivers as stipulated in Malawi 2063. If ASMs can get proper financing and expertise, I believe mining can compete with agriculture in raking in forex," said Simbeye.

Simbeye also advised the ASMs to acquire relevant training on the trade from her institution in order to understand the true value of gemstones so that they are able to sell at a profit.

"At Maleta Gems, we train artisanal miners on how to cut, polish, grade and know the value of each gemstone just by looking at it. Minerals come in different forms and colours and if you are not careful you can lose precious resources through wrong identification," she said.

Minister of Mining Monica Changa'namuno said during the opening of the ASM Indaba in Lilongwe in December last year that government is doing all it can to empower ASMs as one way of taking many Malawians out of the poverty.

"The fact that we have minerals all over the country should be good news to all because we cannot just be relying on agriculture to bring in forex. We will continue engaging all stakeholders involved in the mining sector including banks to see how ASMs can get financing easily," said Changa'namuno.

Malawian banks shy away from lending money to ASMs because they consider the mining sector as risky.

## NCIC to host international construction conference and exhibition

By Christopher JIMU

The National Construction Industry Council (NCIC) has announced plans to host the 7th International Construction Conference and Exhibition this year, as one way of enhancing skills development and capacity building in the industry.

Acting Regulatory and Enforcement Director at NCIC, Dorothy Nyongonyanya told *Mining and Trade Review* in an interview that they expect more international participants this time around compared to previous conferences.

"The conference is indeed on. This time around we hope to have more international participants even those from outside Africa. We have put fliers at our airports and we are using various platforms to share information regarding this event," said Nyongonyanya.

She disclosed that previous conferences have attracted mainly participants from Southern Africa Development Community (SADC) countries but there is hope that the situation will be different this time around.

According to a statement in circulation, the conference which will take place from 7th to 8th August 2024 in Mangochi, will provide a platform for stakeholders to share experiences, develop solutions to challenges while positioning the construction industry in its rightful role of attaining the Sustainable Development Goals (SDGs) and Malawi 2063.

"The conference shall provide a platform for dissemination of research results from researchers, practitioners, developers and persons engaged in the construction industry," reads the statement.

Objectives to be achieved during the conference include: sharing and taking stock of current best practices for construction excellence, adopting resilient and inclusive strategies in infrastructure development as well as fostering dissemination of practical research results.

During the conference, delegates will also consider harnessing the formal and informal sectors in the construction industry, share and take stock of current best practices for construction excellence and consider issues of quality and standardization for the industry.

Conference sub themes will also include among others; innovation in the construction industry to promote efficiency and import substitution, adaptation of the construction industry to changing environment, climatic and social conditions as well as collaboration for sustainability and adaptation for accelerated infrastructure development.



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# MINING & SOCIAL ISSUES

with Ignatius Kamwanje



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## Transfer Pricing of Minerals in the Mining Sector

Transfer pricing is the general term for the pricing of cross-border, intra-firm transactions between related parties. "Transfer pricing" therefore refers to the setting of prices at which transactions occur involving the transfer of property or services between associated enterprises. Transfer pricing occurs when one company sells a product or service to another related company. Because these transactions are internal, they are not subject to market pricing and can be used by multinationals to shift profits to low-tax jurisdictions.

### 1. Objectives of Transfer Pricing

Companies use transfer pricing to reduce the overall tax burden of the parent company. Companies charge a higher price to divisions in high-tax countries (reducing profit) while charging a lower price (increasing profits) for divisions in low-tax countries.

### 2. Transfer Pricing and Tax avoidance issues identified

Like other sectors of the economy, profit shifting pose risks in the mining sector. The IGF (Intergovernmental Forum on Mining) and OECD (Organization for Economic Co-operation and Development) has released guidance for source countries on transfer pricing in the mining sector. The transfer pricing and tax avoidance issues identified in the sector are:

#### (a) Abusive Transfer pricing

May occur during the sale of minerals and/or mineral rights to related parties. Under such circumstances, developing countries may require expertise to detect and mitigate transfer mispricing in the mining sector.

#### (b) Undervaluation of Mineral Exports

Profit shifting through the pricing of mineral products sold to related parties is a major concern for many mineral exporting countries. For developing countries, these risks are elevated where government agencies lack the mineral-testing facilities required to verify the grade and quality of mineral exports, as well as technical knowledge of the mining and mineral product pricing.

#### (c) International Tax Treaties

Most developing countries consistently raise concerns about tax treaty abuses. It is envisaged that countries with abundant mineral resources may be assisted in this area, considering how treaty provisions might have a significant impact on taxes imposed in the mining sector.

#### (d) Debt shifting

This is particularly significant for mining projects that require high levels of capital investment not directly obtainable from third parties and this makes substantial related-party borrowing a frequent practice. This creates excessive interest deductions thereby causing profits shifted to offshore via excessive interest payments.

#### (e) Tax Stabilisation Clauses and harmful tax incentives.

Fiscal stabilization clauses create problems in terms of taxes because they can freeze the fiscal terms in the contract such that changes in tax law may not be applicable to existing mines. While tax incentives could encourage expansion of the sector, they may also lead to excess transfers of the gains from countries. It is on record that developing countries expect that that they will forego incentives entirely due to the pressures of attracting investment. However, it is important that countries should proposition themselves to understand how mining companies are likely to respond to those incentives.

#### (i) Malawi Scenario-Kayelekera Uranium Mine.

In the Development Agreement, one of the tax incentive clauses was 10 year tax holi-

day. Though the mine life was beyond 10 years, it was unexpectedly put to a halt just after a 5 year production due to uranium price downturn.

The danger here was that the mine could even exhaust its mineral before the life of mine. In this regard it means the company could have mined for 10 years with a tax holiday. In the unforeseen circumstances, the mine could have been at liberty to transfer the profits to overseas so easily which means a 10 year tax holiday was likely able to make huge profits.

#### (f) Offshore Indirect Transfers of Mining Assets

Transfers of ownership of company assets can generate significant income, which many countries seek to tax as capital gains. Transactions may be structured to fall outside the mining country's tax base by selling shares in an offshore company holding the asset, without notifying tax authorities in the country where the asset/company is located.

#### (g). Abusive Hedging Arrangements

Hedging is a legitimate business practice in many commodity markets. It consists of locking in a future-selling price in order for both parties to the transaction to plan their commercial operations with predictability. A problem arises when companies engage in abusive hedging with related parties. They use hedging contracts to set an artificially low sale price for production and therefore record systematic hedging losses, reducing their taxable income.

#### (i). Zambia vs Mopani Copper Mines Plc., May 2020, Supreme Court of Zambia, Case No 2017/24

Following an audit of Mopani Copper Mines Plc. the Zambian Revenue Authority found that the price of copper sold to related party Glencore International AG had been significantly lower than the price of copper sold to third parties.

A tax assessment was issued where the ZRA concluded that the internal pricing had not been determined in accordance with the arm's length principle, and further that one of the main purposes for the mis-pricing had been to reduce tax liabilities.

This form of transfer pricing between multinational corporations and their African subsidiaries is typical of the tax avoidance practices employed by corporate taxpayers primarily to reduce their tax liabilities, as Zambia's Supreme Court made clear in the opening paragraph of its judgement:

The ruling ordered that Mopani pay a total of 240 million Zambian Kwacha in taxes assessed for the 2006/07, 2007/08 and 2009/10 tax years within 30 days, bringing to an end a dispute that has been running since 2010.

Mopani Copper Mines Plc. first appealed the decision to Zambia's Tax Appeal Tribunal, and after a decision was handed down by the Tribunal in favor of the ZRA, a new appeal was filed with the Supreme Court.

The Supreme Court dismissed Mopani's appeal and ruled in favor of the Zambia Revenue Authority.

#### (h). Inadequate Ring-Fencing

It is possible that mining companies will have multiple activities within a country, creating opportunities to use losses incurred in one project (e.g., during exploration for a new mine), to offset profits earned in another project, thereby delaying payment of corporate income tax. Ring-fencing is one way of limiting income consolidation for tax purposes; however, getting the design right is critical to securing tax revenues while attracting further investment



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# TECHNICAL FILE

by Dr. Grain Wyson Phillip Malunga *FIMMM*  
Minerals, Geology, Environment & Corporate Affairs Consultant

## SUSTAINABILITY IN THE MINING SECTOR

### Abstract

*Sustainable reporting in mining promotes trust and confidence that create peaceful coexistence between resource companies and other stakeholders including government and mining communities. Sustainable mining meets society's requirements for resources today while ensuring the future needs of generations to come. Sustainability issues revolve around addressing negative impacts arising from Environment, Social, and Governance. These key issues promote project acceptability, reputation and market competitiveness.*

### 1. Sustainable Mining context

Sustainable mining is the extraction of mineral resources with minimal reduction of negative environmental, social and governance impacts. These minimal impacts call for responsible mining practice that meets society's requirements for resources today while ensuring the future needs of generations to come. Sustainable reporting in mining helps companies to make responsible decisions thereby enhancing their reputation and market competitiveness.

Other common language usage of sustainable mining are enshrined in Environment, Social, and Governance (ESG) or Global Reporting Initiative (GRI). The common model for sustainability is in the three pillars that incorporate the need to address a mining impact: Social, Environmental, and Economic.

Figure 1: Mining Sustainability Wheel (Source:



<https://www.miningtowards2030.philippineminingclub.com>)

### 1. Issues that promote sustainable mining

#### 2.1 Social

Mining activities just like any other business need to respect and put remedy on all aspects of human rights. Human rights violation comes in when there is lack of economic empowerment to mining communities and short falls in social development. At work place gender, labour practices, and worker health and safety risks are always common. Companies need to be more explicit about the scope of human rights they commit to respect and remedy. This can be through a process of consensus through Free, Prior, and Informed Consent (FPIC) with the affected mining communities.

Legal compliance with host country laws and permits reduces conflicts that come with communal perception of abuse in resource extraction and environmental compliance. Mining communities need assurance on land ownership, priority access to work, food and water. This assurance and the following business ethics are of paramount importance:

- The right to equal pay for equal work
- The right to associate for collective bargaining
- Gender equality and
- The right to non-discrimination

#### 2.2 Environment

Mining operations affect biodiversity, ecosystem services, water management, mine waste/ tailings, air, noise, energy, climate change (carbon footprint, greenhouse gas), hazardous substances and post mining restoration.

Deforestation and forest degradation affect biodiversity through forest clearing for extraction of natural resources and cutting down of trees for domestic and industrial energy generation. This also affects ecosystem balance.

Intensive use of water for mine processes and water pollution due to chemical additives affect water quality and water availability for mining communities and the environment.

Water pollution destroys natural habitats and leads to a loss of biodiversity. This in turn brings climate change effects. Non-products created in the mining industry pollute the environment and affect social aspect within the mining community through people's health. It is important to treat water to minimum required standard before releasing it to the environment.

#### 2.3 Economic

The mining industry promotes local and national economy. The growth of the mining industry contributes to an increase in the share of the gross domestic product (GDP) of a country. At local level, mining leads to the growth of local small and micro-enterprise activity, economic linkages develop to provide supplies and related services to mining; and the local economy diversifies. The economic contribution of mining needs to be included in sustainability reporting.

#### 2.4 Governance

Governance reflects the quality and integrity of the company's leadership, decision-making, and accountability. This is important part of sustainability because it guides the conduct and accountability of companies in promoting stakeholder participation, transparency and accountability in management of mining projects.

The Company's leadership must be effective and in a position to perform an oversight role and guidance that puts a Company loved and admired by all stakeholders including government and mining communities. The Board of Directors and management should be aligned to the corporate mandate and comply with governance laws of the host country.

Code and values of the Company must provide ethical standards and principles that uphold the culture, conduct and compliance required to bring trust and transparency for maintaining harmony with all stakeholders.

The Company's reporting initiative should demonstrate transparency and accountability that is acceptable by all stakeholders.

The Company's integrity should extend to its clients through responsible sourcing with minimal rent seeking behaviours to safeguard its assets, reputation, and operations, as well as ensure the privacy and security of all its stakeholders.

#### 2.5 Mine closure

Mine closure is effected when mine production and mineral resources are depleted. Final decommissioning and mine reclamation become the activities of the day. Different financial sureties are agreed between government and resource company in order to fund mine closure. .

The following approaches can be used to calculate the level of financial surety:

- Use of a formula based on the project type
- Use of legislation guide as is stipulated in Mines and Minerals Act and the Environmental Management Act of a particular country.
- A percentage of capital costs
- Negotiated in Mining Agreements
- Negotiated on a per tonne mined basis

These financial sureties for mine closure should cover costs of facilitating new post mining land uses, social and economic sustenance that maintains reasonable employment levels.

#### 2. Conclusion

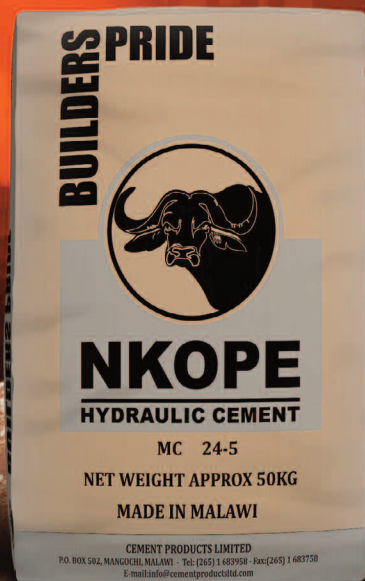
Sustainability reporting has become an effective tool in promoting good business ethics in mineral resource development. The regulatory regime needs to be strong and effective to win the hearts of all stakeholders in order to promote sustainable mining. Good public relation and community engagement is key to foster project acceptability.





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# Minister pledges support to local small scale miners

By Wahard BETHA

The Ministry of Mining has pledged to continue supporting the Artisanal and Small scale Mining (ASM) sub-sector in the country to ensure that it adequately contributes to social economic development.

In her speech during the ASM Annual Mining Indaba in Lilongwe, Minister of Mining Monica Chang'anamuno said ASMs in the country play a major role of exploiting resources that would otherwise not have been commercially exploited by the medium and large scale mining investors.

She said Government wants to address the challenges that the ASMs are facing including; low meaningful participation, illegal mining operations and inadequate financial support.

"As part of the efforts of promoting local participation in the ASM sub sector, my Ministry has and is implementing a number of initiatives including formalisation of the ASMs into cooperatives. This financial year alone, the target is to train six groups and currently we have managed to train four groups out of six in good mining practices."

"We worked hand in hand with Export Development Fund (EDF) to establish the structured market for buying gold and gemstones from small-scale miners, thereby providing readily available market."

"We are also facilitating the construction of a salt producing facility in Ngabu, Chikwawa district, however, inadequate financing and the recent tropical Cyclone Freddy are the main challenges to this initiative."

Chang'anamuno said her Ministry is also working with the Technical Entrepreneurial and Vocational Training Authority (TEVETA) to develop a curriculum which will be used to train the ASMs in the country's technical colleges; and sought technical assistance from the Canadian Government, for development of the ASM policy.

She said the Ministry has also taken a stand in ensuring that there is transparency and accountability in the process of issuing licences.

Chang'anamuno said the Ministry is giving equal opportunities to all Malawians who are interested in investing in the mining sector including the women and youth and also ensuring that the system employs a first come- first serve policy.

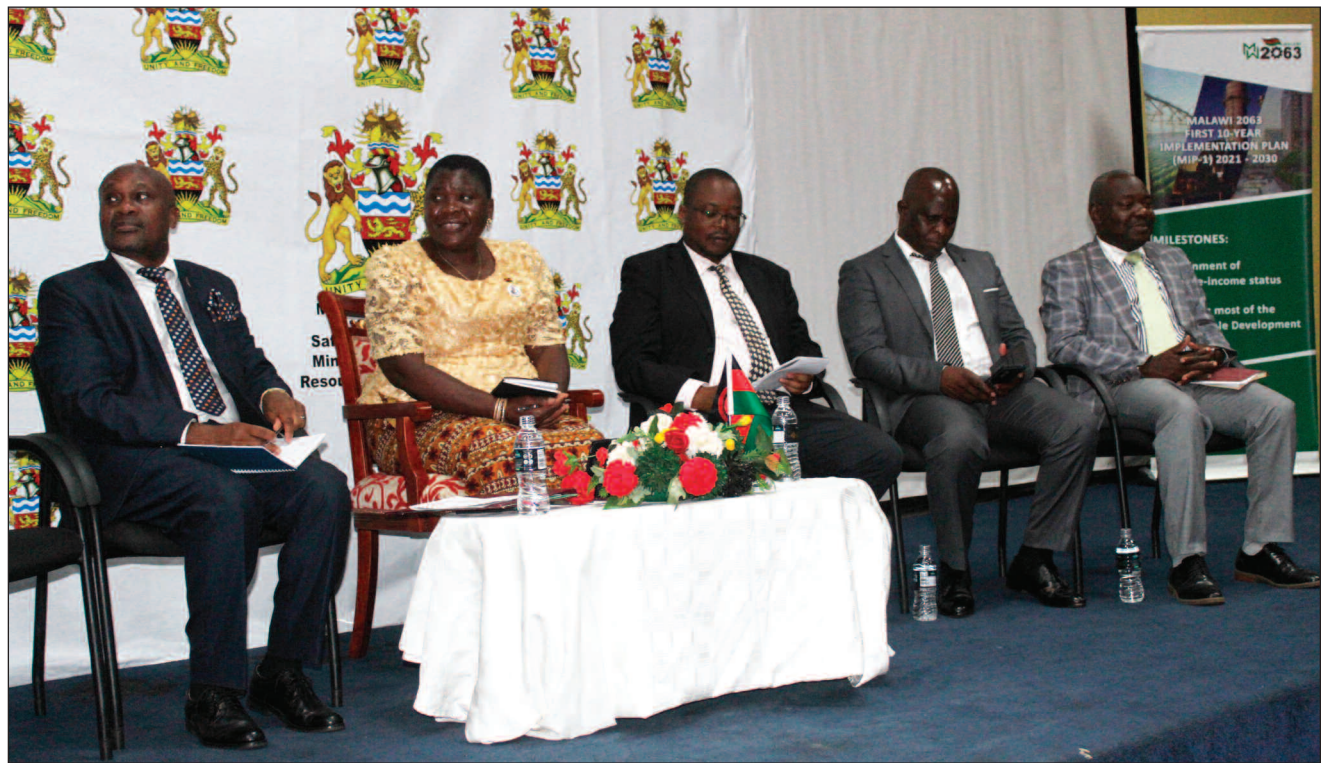
She said: "All Malawians are eligible to apply for a licence for mining, exploration or buying and selling of minerals and all the applications for licences are scrutinized by a committee which recommends either to grant or not."

"My Ministry has a web-portal, known as mining cadastral portal, where everyone including all applicants or holders of licences are able to see the category of application, type of mineral(s) being applied for, location of the licence, size of the area of the licence, date of grant and expiry of a licence. This web-portal is accessible by everyone, for free, at any time and any place."

"You may also wish to know that my Ministry is ascribed to Extractive Industries Transparency Initiative (EITI) standard through the Malawi EITI as a key reporting entity in the extractive sector, and I am proud to indicate that compliance by mining companies in terms of data disclosure on production and revenue has increased."

"Additionally, the validation score for 2022 for the extractive sector reporting was at 80%. This achievement is an indication that the Ministry of mining is now being recognized as one of the most transparent and accountable Ministries."

Meanwhile, ASM licences can be accessed at an application fee ranging from K10,000



Chang'anamuno listening to a presentation at the Indaba

to K50,000 for Malawians and as one way of easing long distance traveling, all clients seeking to access payable services can pay their fees for various services through direct bank deposits at their location of convenience.

However, the Minister expressed concern over the spreading of false information about mining in the country and asked the masses to consult the Ministry for verification of information before dissemination.

She said: "My Ministry has noted with great concern that some people spread only bad news about mining activities in the country."

"I am not disputing the fact that there are instances where some people are involved in illegal mining operations. However, our concern is that many people do not take their time to ask for and obtain correct information from my Ministry on issues concerning mining operations."

"Instead they spread false information through various communication platforms especially social media."

"There have been instances where by my Ministry has come across a lot of information on the media and used public resources to carry out investigations based on what has been circulating in the social media only to find out that it is not true."

"Surprisingly, many people take pleasure in spreading such false information but do not take an initiative to find out the truth of the matter from my Ministry."

In his address, Coordinator for Chamber of Mines and Energy, Grain Malunga said the efforts to promote and develop the ASM sub-sector do not only depend on the Ministry but require multi-stakeholder approach.

Malunga said to put to an end to some challenges being faced in the sub-sector, there is a need for proper coordination between Ministry of Mining, Ministry of Trade, Chamber of Mines and Energy and financial institutions.

The ASMs Mining Indaba was organized under the theme of 'Promoting Local Participation and Investment in Mining.'



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