



HUMAN
RIGHTS
WATCH

“They Destroyed Everything”

Mining and Human Rights in Malawi



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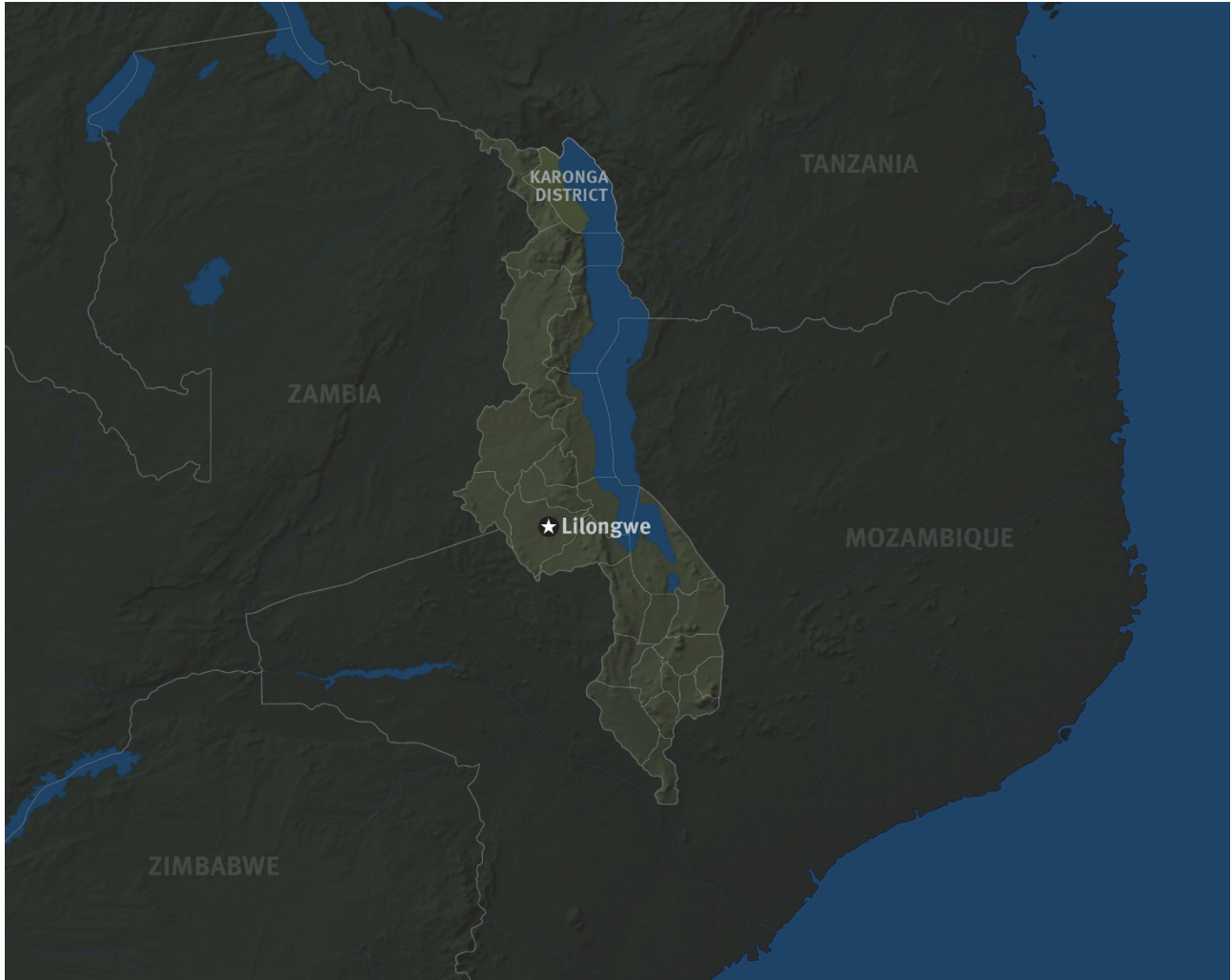
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Mining and Human Rights in Malawi

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Map



SUMMARY AND RECOMMENDATIONS



Whenever they want to do mining again, they should do it far from the people and not the way they did it this time. They should explain to everyone what the advantages and disadvantages are. People need to know what to expect.

NAGOMBA E., MWABULAMBO, MARCH 8, 2016

Mining machinery left behind at Eland coal mine at Mwabulambo after closure in 2015. Locals said that before the mine was closed, they were not informed about the closure or how the company intended to mitigate risks stemming from the abandoned mining site.



Nagomba E., 75, has lived all her life in Mwabulambo, a small rural community in northern Malawi. Like most women in the area, she works as a farmer to support her family—her husband and three grandchildren who survived their own parents—growing rice, maize, and cassava close to her home.

In 2008, she was surprised to find strangers driving big trucks and carrying heavy machinery near her crop fields. They were workers of Eland, a coal mining company. While the government had already given the company a license to operate a mine right by her village, Nagomba and her neighbors first heard about the mine when they saw the trucks.

When she eventually learned that they were digging coal, she hoped it would bring development to the village and some benefits such as job opportunities and healthcare infrastructure for her and her family. Instead, the mining company cut the community's existing drinking water supply by destroying the water pipes running through the mining area. They left the community with a few boreholes and river water for drinking and domestic use. Nagomba used to have access to tap water near her house. Since the pipes were destroyed, she has had to make the strenuous hike down to the river about four times a day to fetch water. She worries that the river may be polluted from the mine, and she is uncertain if water from the river is safe to drink.

With little information from the company, Eland Coal Mining Company, or the government about the health and environmental impacts associated with mining or how to protect her family against them, Nagomba and other community members also face considerable health risks, especially in the absence of a community health center.

A few months after the trucks arrived, Eland, with the government's approval, told Nagomba's family and more than a dozen of their neighbors to move from the land the community had used as farms and upon which they had built their homes for several generations. They were told the company needed the land. The company gave Nagomba's family just 50,000 Malawian Kwachas (MWK) (about US\$150) as compensation: an amount that, she says, fell short of the basic material costs to buy new land and replace her house. As a result, her family was forced to sell two cows to cover the expenses needed to build a new



Rojaina N., under the tree that served as a shelter for her family and where they lived for a couple of weeks after their relocation due to coal mining operations in Mwabulambo, Karonga district.

home, and they lost some of their fields. Later on, the company started using coal to fill holes in the dust road leading from the main road to the mine. Nagomba believes that some of the coal floated into her remaining fields by the road and caused her harvest to decrease significantly.

Two years later, in 2010, the mining company asked Nagomba and her family to move again. This time they refused. “I really wish I had known before moving the first time that where we built our second house was a location that would be used for mining later on,” Nagomba said. In 2015, Eland closed operations in Mwabulambo, leaving

behind piles of coal and several open pits filled with water next to Nagomba’s house.

Nagomba is worried about her family’s future. She thinks that children and animals could fall into the open pits and that the river water she and other villagers are using might be polluted because the company has not cleaned up the mining site. The local government officer in charge of environmental inspections at the mine left in 2015, and Nagomba has not seen any government or company official in more than a year.



Stories like that of Nagomba are all too common in Malawi's mining communities. Over the past 10 years, Malawi's government has promoted private investment in mining and resource extraction as a way to diversify its economy, which previously was mostly comprised of agricultural production. Malawi possesses considerable mineral deposits, including large uranium and coal reserves in the north as well as gemstones and rare earths in the south. The government has issued a high number of prospecting licenses for many parts of the country, allowing exploration for oil and gas extraction in areas including those around Lake Malawi that are protected United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage sites.

Karonga, where Nagomba lives, is located on the northwestern shores of Lake Malawi and on the border with Tanzania. Karonga has been the country's test case for coal and uranium mining. It is the district where the first uranium mine opened in 2009, and where two out of the four biggest coal mines in the country are now located.

Beatrice N., processing cassava in front of her house in Mwalumbambo near an abandoned coal mine. Beatrice and her family were relocated to this place in 2008 and lost most of their farm land.

The government hopes that private sector investment from Malawian and international companies will transform the country, creating jobs and improving residents' livelihoods as well as their access to water, health care, education, and other infrastructure.

But this development strategy poses significant risks to local communities. As multinational extractive companies—including from Australia and Cyprus—have started to explore and mine in Karonga district and neighboring districts around the lake, communities have voiced serious concerns about potential environmental damage, which in turn threatens people's rights to health, water, food, and

Young girl washing dishes at a borehole near Eland coal mine in Mwalumbambo, Karonga district. Women and girls who are largely responsible for fetching water often have to walk longer distances—as a result of mining activity that has affected usual water sources—to fetch water from what they believe are less contaminated sources, farther away from the mines, risking danger and losing time to attend school, earn money, and rest.



housing. More than 10 existing and potential future extraction sites are located on the shores and tributaries of Lake Malawi, a fragile ecosystem and a key source of livelihood for over 1.5 million Malawians. Where mining activities require land acquisitions, communities are worried

they might lose their lands and homes without due process, adequate compensation, or suitable alternatives.

Based on more than 150 interviews with community members, government officials, civil society groups, and company representatives, this report examines the human



rights impacts of Malawi's nascent mining industry on communities living in and around the country's mining areas and assesses the nature and extent of the information about mining to which local residents have access. Using Karonga district in northern Malawi as a case study, the report

documents how Malawi currently lacks adequate legal standards and safeguards to ensure the necessary balance between developing the mining industry and protecting the rights of local communities. It examines how weak government oversight and lack of information leave local communities unprotected and uninformed about the risks and opportunities associated with mining.

While Malawi has some laws and policies that protect the rights of communities potentially affected by mining—some of which mention the need to monitor impacts of mining licenses and to compensate them for certain losses—they are poorly implemented and enforced. The result is that key government watchdogs stand by as spectators while mining operations are allowed to progress, regardless of the negative impact they may have on local communities or the environment.

A new draft law, the Mines and Minerals Bill (MM Bill), while relatively progressive in many respects, fails to address one of the core problems described in this report: a lack of transparency about the risks related to mining.

This report makes recommendations to strengthen existing laws, to improve the proposed MM Bill and Access to Information Bill (ATI Bill), and to enforce existing regulatory protection standards.

Malawi's extractive industries are still in their infancy and there are opportunities for the government and investors to respect rights and minimize the risks faced by communities and natural ecosystems, even as they push for economic development. These include ensuring that the draft mining bill protects the rights of local communities, including their right of access to information; that the social and environmental impact of new mining projects is comprehensively and credibly assessed and addressed; that resettlements are implemented with full respect for rights; and that there are enough regulators to evaluate new proposals and follow up with onsite visits. It is important that the government assesses how much damage has already been done due to mining projects, and that it ensure that communities are properly informed about the potential benefits and risks of existing and future projects.





Malcoal mine in Kayelekera. The open-pit coal mine is among the four largest coal mines in the country and is located on the back of a mountain, close to a river. Malcoal was reported to have closed down operations at the end of 2015, but the mine was still operational as of July 2016.

Mining Practice and Promises

Global industry standards have evolved to recognize that unless mine operators exercise caution and vigilance, it is likely that mining will harm surrounding communities. In Malawi and globally, there is evidence that without effective government regulation, not all companies behave responsibly. Even companies that make serious efforts to do so often fall short without proper government oversight. The United Nations Guiding Principles on Business and Human Rights provide basic steps companies should take to respect human rights, including conducting due diligence to avoid causing or contributing to human rights abuses through their operations; avoiding complicity in abuses; and taking steps to mitigate them if they occur.

Several extractive companies have come to Karonga district in the past 10 years seeking to exploit natural resources, particularly uranium and coal. As in Nagomba's case, communities do not often have prior knowledge of proposed mining operations since consultation is either insufficient or nonexistent. This is especially worrying as mining operations have had a major impact on the daily functioning of these communities, often complicating access to water, health, cropland, and food, and forcing relocations of community members. At the same time, companies operating in the district, including Paladin Africa Limited (Paladin), Eland Coal Mining Company, and Malcoal, have largely failed to deliver on promises to build schools, health centers or clinics, and boreholes, and to create employment opportunities for community members.

None of the communities in Karonga or civil society organizations interviewed by Human Rights Watch indicated they opposed, in principle, exploration or mining activities on their lands. However, community members repeatedly stressed inadequate information about mining-related health risks; inadequate participation in decision-making about the relocation process; a lack of proper notification before resettlement; inadequate compensation for losses from mining; a lack of government oversight to help mitigate current and future risks to health, water, food security, land and livelihoods; and a lack of awareness of their rights or companies' responsibilities under national laws and international standards.

For example, in the coal and uranium mining areas in Karonga district that Human Rights Watch visited, residents said that they face health and livelihood risks due to the mining and suffer from increasing rates of illnesses that could be mining-related. Some complained that trucks pass along narrow village roads, coating homes and local schoolhouses in dust, and worried about the potential for serious respiratory diseases and other health impacts that scientific studies have associated with exposure to mining-



Dry rice fields by the road to Eland coal mine, Mwabulambo. Residents said that the heavy mining trucks destroyed culverts that were part of the water irrigation, decreasing their harvest.

related pollution. Several villagers also claimed that mining had destroyed water pipes or contaminated other water sources such as boreholes they depend on for drinking and irrigation. Farmers complained that dust in the air, coal on the road, and poor water quality impacted their crops and decreased the harvest of their fields, threatening economic ruin. Mining in Karonga district has also resulted in some families being resettled, often without adequate warning, decent resettlement conditions, or compensation

In some cases, the harm that communities have suffered due to nearby mining operations is reported by the media or documented in studies conducted by international and civil society organizations. But in many other instances, the data

simply does not exist to confirm or refute alleged negative impacts or their links to mining operations. Some community activists may wrongly attribute health or environmental problems to nearby mining operations. Others may fail to perceive a link that does in fact exist. The lack of healthcare infrastructure in these communities makes monitoring and addressing the health impacts of mining operations nearly impossible. This uncertainty is part of the problem. Government regulators repeatedly fail to determine whether companies are complying with their legal responsibilities, or whether they are causing harm to nearby communities.

Out of three companies featured in this report and contacted by Human Rights Watch, only one company, Paladin, said that they are monitoring the environmental impact of their mining activities in Malawi and are sharing these reports with the government. But they have never published their results, leaving communities unable to properly assess the risks associated with mining or mitigate the impacts that it



can have on livelihoods. None of the companies contacted made any monitoring results available to Human Rights Watch.

Impact on Women

Human Rights Watch found that when mining has negative consequences for communities, women are disproportionately impacted. Malawi's Constitution and policies recognize women's right to full and equal protection in the law as well as their right to non-discrimination on the basis of their gender or marital status. However, in practice, their rights are largely curtailed by socio-cultural gender norms and patriarchal beliefs and attitudes.

It has often been particularly difficult for women to access information about mining and its risks—important to them as family caregivers—because their participation in meetings with companies or the government was limited. Women could be directly or indirectly excluded from such

Dirt road leading to Eland coal mine passing by the rice fields of Mwalambo community. Eland used coal to patch up potholes on the roads. Some villagers noticed a significant decrease in the productivity of their fields. They believe this is a result of the coal that washes into their land during the rainy season.

meetings. For example, if and when meetings were called by companies or the government they were not typically announced ahead of time, and women would often be busy working on their fields or at home at the time of such meetings. As a result of the short notice, they would not have the time to make the necessary arrangements to be able to attend. Even when women were present, they were sometimes unable to engage due to gender norms that restrict women participation in public gatherings or because of language issues. That is, meetings were sometimes conducted in English or Chichewa, which rural women in Karonga district typically do not speak.



Open pit filled with water at Eland coal mine, Mwabulambo. After closure in 2015, the company left behind several open pits, piles of coal, and deep holes filled with water. According to the Ministry of Agriculture, Irrigation and Water, water testing results from 2015 indicated that the water in the open pits is acidic and therefore harmful to human health.

In Malawi, women, both young and old, are often the primary caregivers at home and are also largely responsible for growing crops on the fields that feed the family. Therefore, when mining and climate change impacted crop productivity and contributed to food shortages, women have had to work long hours to make up for the shortfall and sustain the family. Also, concerns about water pollution compelled many women and girls to walk longer distances to fetch water from what they believed was a less contaminated source, further away from the mines. This exposed them to dangers and left them with less time to attend school, earn money, and rest.

The communities in Karonga district follow largely patrilineal systems of land inheritance, and men tend to have more decision-making power concerning land transfers. As a result, women have little say in how compensation is spent.

Government Role

Many human rights abuses described in this report result from the government's failure to effectively monitor, let alone systematically address, the impacts of mining operations.

International and regional human rights law obliges Malawi's government to protect the rights of its citizens from potential harmful impacts of mining operations and to ensure that communities have access to information about these impacts and risks before, during, and after operations.

Malawi's current regulatory framework for mining and the environment is outdated. The laws were passed long before



current mining operations started and afford communities little protection from environmental pollution and harmful social impacts. While impact assessments should be mandatory for all projects that potentially affect the environment and community health, Malawi's regulatory framework regarding Environmental Impact Assessments (EIAs) for mining operations remains unclear and incomplete as it does not require the assessments of social impacts. Malawi's mining law also provides little guidance with regard to environmental impacts of mining, leaving the scope and cycle of environmental monitoring at the discretion of government officials. It also largely fails to make information about mining and related risks available and accessible to affected communities. Land laws establish a variety of forms of land tenure and set out standards for land transfers or compulsory acquisitions. However, there is no national resettlement policy, and, in practice, land rights for individuals and communities near mining sites are highly insecure.

Fields near Eland coal mine, Mwabulambo. Most residents are subsistence farmers who grow rice, maize, cassava, and groundnuts.

The draft MM Bill the government is developing does not address the core problem described in this report: access to adequate information. Quite the contrary, one of its major weaknesses is a broad confidentiality provision that would essentially prevent communities from accessing information about the risks related to mining. This is happening at a time when Malawi has just joined the Extractive Industries Transparency Initiative (EITI)—a global network aimed at improving transparency in mining governance— as a candidate country and is preparing and negotiating an ATI Bill. Even though the draft ATI Bill from November 2015 appeared to be acceptable to most relevant stakeholders, the government revised the bill again in February 2016. Unlike the 2015 draft, the revised bill does not provide for

the establishment of an independent oversight body; it limits the principle of maximum disclosure to documents created after the adoption of the law; and it gives the minister of information the power to determine “fees payable for processing requests for information,” which can discourage poor people from requesting information.

The government should dramatically improve the process for considering mining project proposals to ensure that it assesses and addresses possible environmental and social impacts in a comprehensive and credible manner. This means mandating a greater and more explicit focus on environmental risks and human rights in the licensing and monitoring process in the proposed Mines and Minerals bill. Implementation will also require adequate numbers and capacity of regulators so new proposals can be evaluated properly, including through site visits wherever appropriate. The government should also ensure that communities are properly informed about the potential benefits and risks of mining and are involved in developing mitigation strategies to address any adverse impacts. Moreover, the government should require compensation for loss of land and other resources and ensure that effective and accessible grievance mechanisms provide redress to those who suffer harm.

Government and Company Responses

Several public officials interviewed by Human Rights Watch openly admitted that they do not know how prevalent or how serious the impacts of mining on communities are and that they are not proactively providing information about the risks to affected communities. In fact, some government officials said that the government essentially leaves companies to regulate themselves, a practice that is inconsistent with Malawi’s obligations under international human rights law and that has consistently proven disastrous in other countries, including neighboring countries in southern Africa.

Malawi’s government has also acknowledged the impact mining can have on the health and livelihoods of people living in nearby communities. Government officials are aware of the weaknesses of the regulatory system and admitted that authorities sometimes fail to adequately protect environmental health and monitor pollution due to capacity problems or lack of internal coordination among government agencies at the various levels of government.

In interviews with Human Rights Watch, the government committed to increasing the number of health facilities for residents in mining communities and to including a focus on social issues in guidelines for EIAs. The Ministry of Natural Resources, Energy and Mining promised to visit each mine once per month. In a meeting with Human Rights Watch, officials of the ministry said that they were working with

Eland to set up a closure plan to ensure the safety of the residents. However, at time of writing no updates about the implementation of these steps were communicated to Human Rights Watch.

The three companies examined in this report have a mixed track record on preventing, mitigating, and monitoring social and environmental harms from mining.

In a letter to Human Rights Watch, Paladin stated that the company maintains safety, health, radiation, and environmental management programs. Paladin also pointed to a Human Rights Policy, highlighting Paladin’s commitment to respecting human rights. However, it is not clear how these programs or the Human Rights Policy intend to assess and mitigate the environmental and social impacts of mining. In an interview with Human Rights Watch, Paladin Malawi said that the company does not publicly disclose monitoring results regarding water testing or other potential environmental impacts. Paladin did not reply to Human Rights Watch’s request for information about the monitoring results at their mine in Kayelekera.

Malcoal stated in an email to Human Rights Watch that they “strive to help the government to reduce rural poverty by providing employment while at the same time taking care of our communities and the environment.” Malcoal disputed that any resettlements had taken place in Kayelekera but did not comment on any of the other issues raised in this report.

Representatives of Eland Coal Mining Company informed Human Rights Watch in writing and by phone that their mine has suspended operations. At the time of writing, they had yet to reply to Human Rights Watch’s request for comment on the substantive issues raised in this report, including plans for rehabilitation of the mining site.

The Way Forward

The government of Malawi should take preventive measures to ensure that mining projects are planned and carried out in a way that does not violate the rights of local communities, and that minimizes displacement and disruption of livelihoods. This includes the addition of provisions to the draft MM Bill that require robust environmental and health monitoring at all stages of the mining process and ensure access to information as guaranteed under the constitution.

The government should also put in place effective mechanisms to oversee the activities and impacts of mining during and after operations. This involves robust reporting requirements for companies and regular, unannounced inspections by the government. The government needs to ensure that impact assessments and periodic inspections contain relevant details, including the potential impacts that exploration, active mining, and abandoned mines may have

on communities and their rights; steps the government and companies will take to continually inform and communicate with affected communities; and how adverse rights impacts will be mitigated or avoided. The government should also ensure effective coordination between different ministries and national, regional and district government bodies involved in mining governance and oversight.

Finally, the government needs to effectively disseminate information to communities that may be adversely affected by operations of extractive industries before, during, and after operations. Impact assessments, environmental monitoring reports, and resettlement plans should be easily and readily available and accessible to the public by providing short summaries in non-technical language; translating the summaries and the full reports into local languages; posting them on the Internet; providing copies in public buildings such as local schools; and holding information sessions in directly affected communities.

KEY RECOMMENDATIONS

TO THE GOVERNMENT OF MALAWI

- Include provisions in the draft Mines and Minerals Bill that require robust environmental and health monitoring at all stages of the mining process and ensure access to information as guaranteed under the constitution.
- Ensure coordination between different ministries and national, regional and district government bodies involved in mining governance and oversight.
- Revise the draft Access to Information Bill to ensure that minimum requirements for access to information follow international best practices and are in line with the model law by the African Union.

TO THE MINISTRY OF NATURAL RESOURCES, ENERGY AND MINING

- Ensure that impact assessments and periodic inspections contain relevant details, including the potential impacts that exploration, active mining, and abandoned mines may have on communities and their rights; steps the government and companies will take to continually inform and communicate with affected communities; and how adverse impacts will be mitigated or avoided.
- Ensure impacts on marginalized populations, such as women and children, are monitored and addressed. Such monitoring should cover the cumulative impacts on the environment and livelihoods, including impacts resulting from extractive industries, social changes, and climate change.
- Ensure that impact assessments, environmental monitoring reports, and resettlement plans are easily and readily available and accessible to the public, including by providing short summaries in non-technical language; translating the summaries and the full reports into local languages; posting them on the Internet; providing copies in public buildings such as local schools; and holding information sessions in directly affected communities.
- Promptly fill all vacancies for inspectors in the Ministry of Mining and at the district level including the vacant environmental officer position in Karonga district. Increase the number and capacity of staff and resources available to conduct more regular in-field assessments, including unannounced inspections.

TO THE MINISTRY OF LANDS, HOUSING AND URBAN DEVELOPMENT

- Provide a process for fair compensation and remedy negative human rights impacts of relocation in mining communities, including through compensation for losses that have already occurred. Pay special attention to the impacts on women and ensure they are appropriately compensated for their losses.

TO THE MINISTRY OF HEALTH

- Actively monitor health indicators and disease patterns in mining communities and ensure that results are easily available and accessible to the public.
- Develop a national strategy to improve health in mining communities and increase access to healthcare in mining areas, taking into account the increased health risks for marginalized populations. Include measures to support family caregivers, especially women.

TO THE MINISTRY OF AGRICULTURE, IRRIGATION AND WATER DEVELOPMENT

- **Map out the boundaries of watersheds potentially impacted by mining operations and actively monitor water throughout watersheds under the influence of mining to identify potential contamination, including monitoring waste water discharges, ground and surface water sources, and drinking water in mining communities on an ongoing basis. Ensure that results are easily available and accessible to the public.**

TO THE MZUZU REGIONAL OFFICE OF MINES AND TO THE KARONGA DISTRICT COMMISSIONER

- **Ensure that environmental monitoring reports are easily available and accessible to the public in northern region.**

TO COMPANIES EXTRACTING MINERALS IN MALAWI

- **Improve public access to information and transparency by strengthening communication with local and national civil society and with affected community members. Make the outcomes of environmental assessments, periodic environmental monitoring reports, resettlement action plans, and updates on implementation available in easily accessible formats and fora. Include short summaries of each document available in non-technical language. Summaries and full reports should be translated into local languages, made available online, and posted in public buildings.**
- **Provide a process for fair compensation and remedy negative human rights impacts of relocation in mining communities, including compensation for losses that have already occurred. Pay special attention to the impacts on women and ensure they are appropriately compensated for their losses.**

Methodology

This report is based on research conducted between July 2015 and July 2016, including six weeks of field research in Malawi. Human Rights Watch visited the capital city, Lilongwe; the regional capital Mzuzu; as well as mining sites in Karonga district and Rumphi district. Human Rights Watch undertook field work in two rural communities in Karonga district. The district was chosen for the research because large-scale and mid-scale mining activities in this area are most advanced. The first large-scale uranium mine was opened in Karonga in 2009, and two out of four major coal mines are located in the area.

Human Rights Watch interviewed more than 150 people for this report, including 78 people living in mining communities; 9 company representatives; and more than 45 people who currently work, or have worked, on mining issues in Malawi and neighboring countries, including: staff of international and nongovernmental organizations (NGOs), health administrators, and academic researchers. We also spoke to 24 government officials, including five from the Ministry of Natural Resources, Energy and Mining, two from the Ministry of Health, two from the Ministry of Information, two from the Ministry of Lands, Housing and Urban Development, one from the Ministry of Agriculture, Irrigation and Water Development and six local political representatives.

Of the 78 community members, 45 were adult women and 33 were adult men. Six were traditional leaders. Interviews were conducted in Chichewa, Tumbuka, and Nkhonde via an interpreter. All interviewees provided verbal informed consent and were assured that they could end the interview at any time or decline to answer any questions. Where requested or appropriate, this report uses pseudonyms to protect their privacy. Interviewees were not compensated for speaking to us.

Human Rights Watch reviewed secondary sources—including mining inspection reports, academic research, and media reports—to corroborate information from community members. We also reviewed Malawian laws and policies. In March and August 2016, Human Rights Watch met with government officials at the relevant ministries in Lilongwe. In July 2015, February 2016, and July 2016 Human Rights Watch wrote to the mining companies cited in this report to request information on the steps taken to address the lack of access to information and other human rights issues documented in this report. In

response to our request Human Rights Watch received a letter from Paladin in August 2015, an email from Eland in August 2015, and several emails from Malcoal in July 2016. Human Rights Watch also met with then-Paladin Malawi Manager Greg Walker in August 2015.

I. Background

Extractive Industries in Malawi

In this country, as I have said so many times before, we have no mines, no factories. The soil is our only mine, in fact. And all the money that we have here comes from the soil. It comes from the soil in the form of [m]aize, [g]roundnuts, [b]ananas, [b]eans, [p]eas, [t]obacco, [c]offee, [c]otton, [r]ice and so forth.¹

—Former President Hastings Kamuzu Banda, Lilongwe, 1964

Like many other countries in southern Africa, Malawi is rich in a range of natural resources. Among these are deposits of coal, gemstones, rare earths, cement, uranium, oil, and gas.² While the largest coal fields are located in northern Malawi (Karonga and Rumphi districts), most of the gemstones and rare earths can be found in the south. More significant considering Malawi's small size are the uranium reserves found in Karonga district, which amount to 0.5 percent of global deposits.³ Oil and gas deposits around Lake Malawi are currently under exploration.

During more than 30 years of dictatorship from 1961 to 1994, former President Hastings Banda promoted farming as the path to development and prosperity. He opposed the extraction of minerals, even denying their existence.⁴ In the absence of other industries, most Malawians lived as subsistence farmers in the countryside.

¹ "The Prime Minister's Speech at Chileka on the 8th July, 1964 before His Departure to England," Press Release No. 1049/64, appears in *Malawi Independence Celebrations 4th – 7th July 1964, Principal Speeches*, prepared by The Press Division, Ministry of Information, p. 2, on file at Human Rights Watch courtesy of H. K. Banda Archive, African Studies Collection, Herman B Wells Library, Indiana University, Bloomington, Indiana, USA; See also Hastings Kamuzu Banda, quoted in Peter Wellman, "Malawi Performs an African Miracle, Feeding Itself from Its 'Gold Mine': The Soil," Associated Press, July 6, 1986, http://articles.latimes.com/1986-07-06/news/mn-23061_1_malawi-miracle (accessed July 5, 2016).

² Coal reserves are estimated to amount up to 800 million tons. There is currently no estimate of the amount of precious stones in Malawi, but concentrations of ruby and sapphire have been identified in the south of Malawi. Several rare earths deposits have been identified in southern Malawi. For details, see Ministry of Natural Resources, Energy and Mining, "Strategic Environmental and Social Assessment of the Minerals Sector, Final Report," February 2016, pp. 22-25, on file with Human Rights Watch.

³ Ministry of Natural Resources, Energy and Mining, "Strategic Environmental and Social Assessment of the Minerals Sector, Final Report," pp. 22-25, on file with Human Rights Watch.

⁴ As far as Human Rights Watch is aware it is not clear why President Banda took this position.

Today, Malawi's extractive industries only make up a small portion of the Gross Domestic Product (GDP). This is in contrast to most neighboring countries, such as Zambia and Zimbabwe, where mining has long made substantial contributions to the national economy.⁵ The mining sector has grown since 2009, with growth rates of 14.9 percent in 2012 and 6.9 percent in 2013.⁶ Several mines stalled their operations with the collapse of global commodity prices in 2014, which explains the modest contribution of the mining sector to Malawi's GDP in recent years. The amount that the mining sector contributes to Malawi's GDP has fluctuated over the years and data on the matter varies across sources. One government report put the 2014 contribution at around 3 percent, while another one only attributes 0.9 percent of the GDP to mining for the same year.⁷ President Peter Mutharika suggested in 2015 that mining was contributing 6 percent to the country's GDP in that year.⁸

When market prices recover, the government expects substantial increases in Malawi's extractive output. For 2016, government analysts anticipated growth of 3.6 percent.⁹ The government has already approved an estimated total of 500 licenses for industrial and artisanal mining and has repeatedly affirmed its plans to diversify the economy. There are currently only 50 large-scale active mining licenses in Malawi. The number of prospecting licenses for future large scale industrial mining is at 74, which, if all came to production, would more than double the number of active mining operations.¹⁰

In 2011, the World Bank provided the government with US\$25 million in credit for its Mining Governance and Growth Support Project, which aims to increase efficiency and transparency within the mining sector. In 2015, the government published the results of a

⁵ Malawi Extractive Industries Transparency Initiative (MWEITI), "Scoping Study (Minerals, Oil, Gas, Forestry)," January 28, 2016, https://mininginmalawi.files.wordpress.com/2016/02/160208_mweiti_scoping_study_2016.pdf (accessed April 28, 2016), p. 16.

⁶ Ministry of Natural Resources, Energy and Mining, "Strategic Environmental and Social Assessment of the Minerals Sector, Final Report," p. 113, on file with Human Rights Watch; Ministry of Finance, Economic Planning and Development, "Annual Economic Report 2015," 2015, p. 9, on file with Human Rights Watch.

⁷ Ministry of Natural Resources, Energy and Mining, "Strategic Environmental and Social Assessment of the Minerals Sector, Final Report," p. 113, on file with Human Rights Watch.

⁸ Ministry of Finance, Economic Planning and Development, "Annual Economic Report 2015," on file with Human Rights Watch.

⁹ Ibid.

¹⁰ MWEITI, "Scoping Study (Minerals, Oil, Gas, Forestry)," https://mininginmalawi.files.wordpress.com/2016/02/160208_mweiti_scoping_study_2016.pdf, p. 16.

countrywide, geophysical airborne survey which showed geophysical data about mineral occurrences in Malawi. The extractive sector is likely to attract more investment.¹¹

Several existing and potential mining sites, including those for energy resources such as uranium and coal, are located along the shores and tributaries of Lake Malawi, a fragile ecosystem and key source of livelihood for lakeside communities of more than 1.5 million people. In 2009, Paladin (Africa) Limited, a Malawian-incorporated subsidiary of Australia-based Paladin Energy Ltd., started production in Malawi's first large-scale uranium mine, with around 10,000 tons of yellowcake uranium deposits and a projected capacity of 1,500 tons of yellow cake uranium a year.¹² While the mine is currently not in production because of declining uranium prices after the 2011 nuclear accident in Fukushima, Japan, Paladin remains on "care and maintenance," with the possibility of resuming activities in the near future. Exploration for uranium continues in other parts of Malawi such as Mzimba district.¹³

Malawi is also beginning to explore ways to further exploit its coal reserves totaling at least 22 million tons.¹⁴ Malawi's coal production declined from around 67,000 tons in 2013 to under 63,000 tons in 2014 due to fuel shortages.¹⁵ In 2015 the four largest coal mines had a combined capacity of 10,000 tons per month, with an average workforce in the coal sector of around 600 people between 2013 and 2015.¹⁶

According to the World Bank-funded 2016 Strategic Environmental and Social Assessment of the Minerals Sector, the Department of Mines has issued 10 mining licenses and 13 prospecting licenses for coal. Most of these licenses were issued for areas located in northern Malawi, including the Lufira coal field where the Eland coal mine is located and

¹¹ MWEITI, "Scoping Study (Minerals, Oil, Gas, Forestry),"

https://mininginmalawi.files.wordpress.com/2016/02/160208_mweiti_scoping_study_2016.pdf p. 16.

¹² The exact amount of yellowcake deposits varies across sources. On their website, Paladin puts them at 9,654 tons, see "Geology & Resources," Paladin Energy, accessed on July 7, 2016 <http://www.paladinenergy.com.au/paladin-africa-geology-resources>; A government report counts 11,600 tons, see Ministry of Natural Resources, Energy and Mining, "Strategic Environmental and Social Assessment of the Minerals Sector, Final Report," p. 22, on file with Human Rights Watch; For projected capacity, see Ministry of Finance, Economic Planning and Development, "Annual Economic Report 2015," p. 56, on file with Human Rights Watch; USGS, "2013 Minerals Yearbook, Malawi [Advance Release]," 2013, <http://minerals.usgs.gov/minerals/pubs/country/2013/myb3-2013-mi.pdf> (accessed September 14, 2016), p.29.2.

¹³ Ministry of Natural Resources, Energy and Mining, "Strategic Environmental and Social Assessment of the Minerals Sector, Final Report," p. 29, on file with Human Rights Watch.

¹⁴ Ministry of Finance, Economic Planning and Development, "Annual Economic Report 2015," p. 52, on file with Human Rights Watch.

¹⁵ *Ibid.*, p. 52.

¹⁶ *Ibid.*, pp. 52, 54.

the North Rukuru coal field where Malcoal Mining Limited (Malcoal) operates.¹⁷ The assessment also reports that several planned coal power plants are set to open in Malawi, which could increase coal mining and production.¹⁸ In 2015, Chinese companies announced intentions to invest in coal power plants in the Mwanza District of southern Malawi.¹⁹ The cost of a new plant is estimated at \$600 million, the bulk of which will be carried by a Chinese bank with contributions from the Malawi government.²⁰

Further exploration for oil and gas extraction are underway, including in areas around the lake that are protected UNESCO World Heritage sites. The government started to issue petroleum exploration licenses between 2011 and 2014, awarding prospecting licenses to four multinational companies.²¹ Criticism from civil society and allegations of corruption voiced by the attorney general slowed the licensing process down and the attorney general recommended a cancelation of the exploration licenses.²²

In 2014 UNESCO published a report warning of the risks to Lake Malawi's ecosystem and asking the government not to issue exploration licenses for areas within the national park.²³ With respect to threats originating outside the protected area, the report also recommended that the government "[p]revent[s] pollution of the lake and its inflowing

¹⁷ Ministry of Natural Resources, Energy and Mining, "Strategic Environmental and Social Assessment of the Minerals Sector, Final Report," p. 29, on file with Human Rights Watch.

¹⁸ *Ibid.*, pp. 29, 30. On file with Human Rights Watch.

¹⁹ "Chinese investors to establish coal plant in Malawi: Meet Mutharika," *Nyasa Times*, August 10, 2015, <http://www.nyasatimes.com/chinese-investors-to-establish-coal-plant-in-malawi-meet-mutharika/> (accessed April 26, 2016).

²⁰ Gospel Mwalwanda, "Malawi in coal-fired power plant MOU with China group: To boost economy," *Nyasa Times*, December 3, 2015 <http://www.nyasatimes.com/malawi-in-coal-fired-power-plant-mou-with-china-group-to-boost-economy/> (accessed July 1, 2016); Chinese involvement in Malawi is also likely to increase in the future. For example, the president received over 100 Chinese investors at the 2016 Malawi-China investment forum, encouraging them to contribute to Malawi's economic diversification, see Mapenzi Banda, "Mutharika advances industrialization drive for economic emancipation at Malawi-China Investment Forum," *Nyasa Times*, June 21, 2016 <http://www.nyasatimes.com/mutharika-advances-industrialization-drive-economic-emancipation-malawi-china-investment-forum/> (accessed July 7, 2016) and Christopher Jimu, "Mutharika lures Chinese investors," *The Nation*, June 22, 2016 <http://mwnation.com/mutharika-lures-chinese-investors/> (accessed July 7, 2016).

²¹ MWEITI, "Scoping Study (Minerals, Oil, Gas, Forestry)," https://mininginmalawi.files.wordpress.com/2016/02/160208_mweiti_scoping_study_2016.pdf p. 17.

²² See Citizens for Justice, "A Report about Oil Exploration and Production in Malawi," September 2014, <http://cfjmalawi.org/wp-content/uploads/2015/08/CFJ-September-2014-Oil-Policy-and-Legal-Audit-in-Malawi.pdf> (accessed April 26, 2016); see also Publish What You Pay, "Five Unanswered Questions on Exploration of Oil & Gas in Malawi's Lake and Land, February 18, 2016," <https://mininginmalawi.files.wordpress.com/2016/02/2016-02-pwyp-press-release-on-oil-and-gas.pdf> (accessed September 14, 2016).

²³ UNESCO and IUCN, "Reactive Monitoring Mission to Lake Malawi National Park (Malawi) - 30 March to 4 April 2014," May 2014, <http://whc.unesco.org/en/documents/129870> (accessed April 26, 2016).

rivers through effective regulation and control of mining effluents, other industrial and domestic pollution and agrochemicals.”²⁴ In the same year, the World Heritage Committee urged “the State Party to cancel the oil exploitation permit which overlaps with the property and reiterated its position that oil, gas and mineral exploration and exploitation are incompatible with World Heritage status.”²⁵ In July 2016, the committee reiterated its recommendations from 2014 and requested a progress report on their implementation in February 2017 and again in December 2017.²⁶

Poverty and Impacts of Climate Change

Today, Malawi remains one of the world’s poorest countries. A series of droughts and floods in 2015, followed by another long period of drought in 2016, adversely impacted Malawi's economy, which is heavily reliant on its agricultural sector.²⁷ The country's GDP growth slowed from 6.2 percent in 2014 to 3 percent in 2015, and inflation has been growing rapidly.²⁸ These droughts have caused numerous food shortages, especially of maize, leading to increased food insecurity in the country.²⁹ In April 2016, the government declared a state of national disaster after drought conditions continued on from the 2015 season. To help the country weather the economic storm caused by the droughts, the International Monetary Fund (IMF) recently released to Malawi \$76.8 million in extra loans, which is in addition to existing programs.³⁰

²⁴ Ibid.

²⁵ UNESCO World Heritage Committee, Lake Malawi National Park (Malawi) (N289), Decision 38, COM 7B.92, 2014, <http://whc.unesco.org/en/decisions/6078/> (accessed June 30, 2016);

²⁶ UNESCO, Decision: Lake Malawi National Park (Malawi) (N 289), 40 COM 7B.81, July 10-20, 2016, <http://whc.unesco.org/en/decisions/6746> (accessed September 14, 2016).

²⁷ Luke Bisani, “Hunger to hit hard Malawi economy – World Bank,” *Malawi24*, July 19, 2016, <https://malawi24.com/2016/07/19/hunger-hit-hard-malawi-economy-world-bank/> (accessed July 19, 2016); “World Bank Urges Malawi to Invest in Agricultural Resilience to Spur Economic Growth in 2017,” *The World Bank*, June 29, 2016, <http://www.worldbank.org/en/news/press-release/2016/06/29/world-bank-urges-malawi-to-invest-in-agricultural-resilience-to-spur-economic-growth-in-2017> (accessed July 19, 2016).

²⁸ “IMF Extends Malawi Loan Program, Adds \$80M for Drought,” Reuters, June 20, 2016, <http://www.voanews.com/content/imf-extends-malawi-loan-program-adds-80-million-dollars-for-drought/3384916.html> (accessed July 19, 2016); “IMF Survey: Malawi: Tackling Inflation Key to Sustainable Growth,” *International Monetary Fund*, January 6, 2016, <http://www.imf.org/external/pubs/ft/survey/so/2016/car010616a.htm> (accessed July 19, 2016).

²⁹ “Malawi declares state of emergency over drought,” *Al Jazeera*, April 14, 2016, <http://www.aljazeera.com/news/2016/04/malawi-declares-state-emergency-drought-160413144707560.html> (accessed July 19, 2016).

³⁰ “IMF extends Malawi loan program, adds \$80 million for drought measures,” Reuters, June 20, 2016, <http://www.businessinsider.com/r-imf-extends-malawi-loan-program-adds-80-million-for-drought-measures-2016-6> (accessed July 19, 2016).

According to the Intergovernmental Panel on Climate Change (IPCC) and other scientific studies, the African continent is already experiencing the effects of climate change in many regions.³¹ For example, a recent study characterized countries in southern Africa as “global hotspots” of climate change, noting a high likelihood of drought or flooding and declining crop yields or ecosystem damages in the future.³² The effects of climate change will put an additional strain on local economies, which already see increasing poverty and high population growth rates.

While Malawi’s current carbon emissions are among the lowest in the world—about 0.1 metric tons of carbon dioxide emission per capita—increasing fossil fuel extraction, including coal mining, contributes to global climate change, which in turn affects food security.³³

Human Rights Concerns

The extractive industries can be a highly destructive and dangerous industry if not managed and regulated responsibly.³⁴ Researchers and activists around the world also increasingly perceive it to be an industry that benefits foreign investors while the local economy sees little benefit, and, most importantly, local communities are left empty-handed.³⁵

Critics have long alleged that the push for industrialization and growth needs to be accompanied by a government-regulated “social license”—a legal and policy framework to ensure that local communities will not suffer harm—instead of leaving social

³¹ IPCC, “Africa,” in *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part B: Regional Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, ed. Barros et al. (Cambridge: Cambridge University Press, 2014), http://www.ipcc.ch/pdf/assessment-report/ar5/wg2/WGIIAR5-Chap22_FINAL.pdf (accessed May 13, 2016), pp. 1199-1265.

³² Christoph Müller et al., “Hotspots of climate change impacts in sub-Saharan Africa and implications for adaptation and development,” *Global Change Biology*, vol. 20(8) (2014), p. 2505–2517.

³³ “CO₂ emissions (metric tons per capita),” World Bank, last modified 2011, accessed June 28, 2016, http://data.worldbank.org/indicator/EN.ATM.CO2E.PC?year_high_desc=true.

³⁴ See, for example, Paul R. Epstein et al., “Full cost accounting for the life cycle of coal,” *Annals of the New York Academy of Sciences*, vol. 1219 (2011), pp. 73-98. See also Dejusticia and Business and Human Rights Resource Center, “Digging Deeper: The Human Rights Impacts of Coal in the Global South,” November 2015, http://media.wix.com/ugd/co4a21_55722707895847839433655205a851ff.pdf (accessed December 5, 2015).

³⁵ For other case studies on human rights impacts of coal in countries of the Global South see Dejusticia and Business and Human Rights Resource Center, “Digging Deeper: The Human Rights Impacts of Coal in the Global South,” http://media.wix.com/ugd/co4a21_55722707895847839433655205a851ff.pdf.

responsibility to the discretion of mines and other industrial projects.³⁶ Even the world's major mining firms generally acknowledge that mining can be dangerous when not carried out responsibly and that painstaking evaluation of possible negative impacts is imperative.³⁷ In particular, mining activities can impact several fundamental human rights, including the rights to health, water, food, and housing.

Negative health risks are common in mineral mining. The risks are especially high in uranium mining due to its radioactivity and toxicity.³⁸ Individuals who work in or live near uranium mining activities can face a broad array of health challenges associated with exposure to uranium, including cancers and kidney and respiratory diseases.³⁹ While most existing studies focus on the health impact of uranium mining on miners, several studies show that uranium can also lead to health problems in nearby communities.⁴⁰ Manifestations of negative health impacts are often delayed, however, because the initial cell damage is not lethal.⁴¹

Health outcomes are also worsening for individuals who work in or live near coal mining activities. Rates of illnesses such as lung and other types of cancers, respiratory and kidney diseases, heart attacks, and high blood pressure are increasing within these communities.⁴² Air contamination caused by mining activities affect the health of nearby

³⁶ Human Rights Watch interview with Malawi civil society groups, Lilongwe, March 17, 2016.

³⁷ For detailed discussion see Human Rights Watch, *Out of Control: Mining, Regulatory Failure, and Human Rights in India*, June 2012, <http://www.hrw.org/reports/2012/06/14/out-control>.

³⁸ Organization for Economic Co-Operation and Development and Nuclear Energy Agency (OECD), "Managing Environmental and Health Impacts of Uranium Mining," NEA No. 7062, 2014, <https://www.oecd-nea.org/ndd/pubs/2014/7062-mehium.pdf> (accessed September 14, 2016) p. 18; Sharon Paulka, "Introduction to Radiation: Regional Training Course RAF 3007-1," slides, International Atomic Energy Association, August 2009; See also OECD, "Managing Environmental and Health Impacts of Uranium Mining," <https://www.oecd-nea.org/ndd/pubs/2014/7062-mehium.pdf> pp. 36-37; and Bruno Chareyron, et al., "Uranium Mining: Unveiling the impacts of the nuclear industry," *EJOLT*, No. 15 (2014), pp. 15-17.

³⁹ Doug Brugge and Virginia Buchner, "Health Effects of Uranium: New Research Findings," *Reviews on Environmental Health*, vol. 26(4) (2011), pp. 235-8; WHO, "Uranium in Drinking-water: Background document for development of WHO Guidelines for Drinking-water Quality," WHO/SDE/WHS/03.04/118/Rev/1, 2004; "Uranium Health Effects," US Department of Energy, Depleted UF₆ Management Information Network, accessed September 14, 2016, <http://web.ead.anl.gov/uranium/guide/ucompound/health/index.cfm>.

⁴⁰ Brugge and Buchner, *Health Effects of Uranium: New Research Findings*, pp. 235-8.

⁴¹ Exposure to high doses of radioactive material can be lethal in a matter of days, but with regard to the dosages associated with mining activities, the effects can be delayed over a period of years. "Late (Delayed) Effects of Radiation," US Nuclear Regulatory Commission, October 25, 2010, <http://pbadupws.nrc.gov/docs/ML1122/ML11229A694.pdf> (accessed September 14, 2016), p. 9.

⁴² Kentucky Environmental Foundation, "Health Impact Assessment of Coal and Clean Energy Options in Kentucky," 2011, p. 5; Michael Hendryx and Melissa M. Ahern, "Relations Between Health Indicators and Residential Proximity to Coal Mining in West Virginia," *American Journal of Public Health*, (2008) pp. 670; Laura Kurth et al., "Atmospheric particulate matter in proximity to mountaintop coal mines: sources and potential environmental and human health impacts," *Environmental*

communities. For example, fugitive dust, small airborne particles generated by the blasting of heavy equipment used in surface coal mining, contains particulate matter that can be toxic to human health.⁴³ Also, the transport of coal releases dust and rocks, particularly when trucks are uncovered, which can cause respiratory symptoms in surrounding communities.⁴⁴ Children in these communities often suffer increased rates of asthma.⁴⁵

Finally, mining also significantly contributes to climate change, which in turn adversely impacts governments' ability to realize the rights to health, water, and food. Although disaggregated statistics covering the global mining sector are not available, mining has been recognized as a significant contributor to human-made climate change by emitting significant amounts of greenhouse gases during production and through the extraction of fossil fuels.⁴⁶

Minimizing Risks and Protecting Rights

International law requires governments to take effective steps to minimize or mitigate risks and harms stemming from mining operations and to monitor and respond to resulting impacts.⁴⁷ Human rights law also imposes procedural obligations with regard to access to information, participation in the formulation and implementation of government policy,

Geochemistry and Health, vol. 37 (2015), pp. 529-544; Michal Hendryx, "Mortality from Heart, Respiratory, and Kidney Disease in Coal Mining Areas of Appalachia," *International Archives of Occupational Environment and Health*, vol. 82 (2009), p. 247.

⁴³ Travis L. Knuckles, et al., "Air Pollution Particulate Matter Collected from an Appalachian Mountaintop Mining Site Induces Microvascular Dysfunction," *Microcirculation*, vol. 20 (2013), p. 159.

⁴⁴ Kentucky Environmental Foundation, "Health Impact Assessment of Coal and Clean Energy Options in Kentucky," p. 6; Physicians for Social Responsibility, "Coal's Assault on Human Health," November 2009, <http://www.psr.org/assets/pdfs/psr-coal-fullreport.pdf> (accessed September 14, 2016), p. vi.

⁴⁵ Bernard Brabin, et. al., "Respiratory Morbidity in Merseyside Schoolchildren Exposed to Coal Dust and Air Pollution," *Archives of Disease in Childhood*, vol. 70 (1994), pp. 305-12; JMF Temple and AM Sykes, "Asthma and Open Cast Mining," *British Medical Journal*, vol. 305(6858) (1992), pp. 396-7; Environmental Monitoring Group, "The Social and Environmental Consequences of Coal Mining in South Africa," 2010, p. 12.

⁴⁶ Tracy Lynn Hubby, "Mining and Climate Change," in *Climate Change Law and Governance in South Africa*, ed. T. Humby et al., (Juta: 2016), forthcoming.

⁴⁷ For a detailed analysis of legal standards see this report's section on Malawi's Regional and International Legal Obligations. The following discussion is adapted from United Nations Human Rights Council, Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Başkut Tuncak, A/HCR/30/40, July 8, 2015. See also Handbook by the Special Rapporteur on the right of safe drinking water and sanitation, Catarina de Albuquerque, "Realising the human rights to water and sanitation: Monitoring compliance with the human rights to water and sanitation," 2014, <http://www.righttowater.info/wp-content/uploads/BOOK-5-MONITORING-22FEB.pdf> (accessed February 20, 2016).

and access to a remedy. These obligations are meant to protect the rights of local communities before, during, and after mining operations.⁴⁸

On company responsibilities, the United Nations (UN) Guiding Principles on Business and Human Rights (Guiding Principles) detail basic steps companies should take to respect human rights, including conducting due diligence to avoid causing or contributing to human rights abuses through their operations; avoiding complicity in abuses; and taking steps to mitigate them if they occur. Several voluntary industry initiatives similarly emphasize the important role of risk assessments and regular and transparent monitoring.⁴⁹

First, governments and companies should take preventive measures to ensure that mining projects are planned and carried out in a way that does not violate the rights of local communities and that minimizes displacement and disruption of livelihoods. A central element of any efforts to minimize risks is to assess environmental and social impacts throughout the lifecycle of mining. Governments' obligations under international human rights law to protect and prevent mean they should investigate the actual and potential implications of mining operations, including generating and collecting information related to environmental and social impacts before mining starts. Data collection should include assessments of:

1. Hazardous properties and other potential risks from mining;
2. The likelihood of impacts on community members, including those at higher risk;
3. The risk of harm to people, communities and the environment; and
4. Options that are available to prevent harm.

⁴⁸ Principle 10 of the Rio Declaration on Environment and Development emphasizes that "each individual should have appropriate access to information concerning the environment...including information on hazardous materials and activities in their communities". See further discussion below under Malawi's Regional and International Legal Obligations.

⁴⁹ See, for example, the Standards for Responsible Mining that contain robust monitoring obligations, developed by the Initiative for Responsible Mining Assurance, "IRMA Standards Draft v.2.0," Initiative for Responsible Mining Assurance, accessed June 15, 2016, <http://www.responsiblemining.net/irma-standard/irma-standard-draft-v2.0/#StandardOnline>; The Global Reporting Initiative (GRI) provides a global standard for sustainability reporting on economic, social, and environmental impacts, see "Global Reporting Initiative," accessed June 15, 2016, <https://www.globalreporting.org/Pages/default.aspx>; The ICMM has also developed an overarching Sustainable Development Framework, consisting of 10 principles related to governance, sustainable development, human rights, environmental performance, and community engagement, see "ICMM 10 Principles," International Council on Mines & Metals (ICMM), accessed June 15, 2016, <http://www.icmm.com/en-gb/about-us/member-commitments/icmm-10-principles/the-principles>.

Impact assessments for mining operations should include baseline data for pollutants in water, food, and other natural resources and should evaluate how the project will affect marginalized groups and individuals. Land use also requires careful planning and robust monitoring to minimize the impacts of resettlement on the rights of affected communities.

Second, governments should establish effective mechanisms to oversee the activities and impacts of mining during and after operations and publish updates on the potential health and environmental risks. Such mechanisms involve robust reporting requirements for companies and regular unannounced inspections by the government. Affected groups and individuals should be given the opportunity to contribute to monitoring activities, and data should be disaggregated. Governments should also ensure that adequate healthcare infrastructure is in place to monitor the potential health impacts of the mining activity on communities.

Third, governments should effectively disseminate information to communities that may be adversely affected by operations of the extractive industries before, during, and after operations. Access to information is a prerequisite for communities to participate in discussions with the government and mining companies. Meaningful participation relies upon, and cannot be achieved without, information. Participation also helps to ensure that development projects involving land and natural resources adequately and equitably address the rights of affected communities. The availability and accessibility of information also enables affected communities—especially those vulnerable to mining’s potential impacts—to seek redress for harms suffered.

II. Gaps and Weaknesses in Malawi's Legal Framework

The 1981 Mines and Minerals Act (MMA) is the principal law currently governing mining in Malawi, and provides for the licensing and regulation of private mining companies. It also contains a section setting out some environmental protection standards throughout the lifecycle of mining.⁵⁰ General standards for protecting the environment, including Environmental Impact Assessments (EIAs), and monitoring are laid out in the 1996 Environment Management Act (EMA). The 1983 Petroleum (Exploration and Production) Act governs oil exploration and production. The 2013 Water Resources Act regulates the use of natural water sources for mining activities and the discharge of water from mining operations.

Discretionary Protection and Monitoring Standards

Malawi's legal and regulatory framework does not ensure proper assessment of the risks from environmental pollution before the mining starts and fails to effectively protect the rights of nearby communities by rigorous monitoring during and after operations. Environmental and social impact assessments and ongoing monitoring are intended to ensure scrutiny and rigor in evaluating the possible negative impacts of proposed new mines and in developing mitigation strategies. Unfortunately, weak regulations for impact assessments and monitoring have rendered this key safeguard largely ineffectual in Malawi.

First, legal standards for EIAs leave too much discretion to authorities. While impact assessments should be mandatory for all projects that potentially impact the environment and community health, Malawi's regulatory framework on EIAs for mining operations remains incomplete and unclear. Per the MMA it is at the minister's discretion to require an EIA to be carried out before a license for a mining project is approved.⁵¹ The EMA in conjunction with the 1997 Guidelines for Environmental Impact Assessments (EIA Guidelines) have been interpreted to impose mandatory EIAs for mining projects, but the EIA Guidelines are vague about the types of mining projects that require an EIA.⁵² In any

⁵⁰ Laws of Malawi, Mines and Minerals, Cap. 61:01 of 1981, part VII.

⁵¹ Section 37 (3)(h) does, however, require the applicant for a mining license to submit information about potential environmental risks and mitigation measures. *Ibid.*, sec. 37 (3)(h).

⁵² Section 24 EMA. In 1997 the government developed a set of general EIA Guidelines to strengthen environmental protection, see "Environmental Impact Assessment Guidelines," accessed May 6, 2016

event, the current environmental legislation entirely fails to require applicants to evaluate the social impacts of mining on nearby communities.

An additional problem is the weak provisions on public participation during the EIA process. According to Section 26 (1) of the EMA, the public will be invited to send written comments on the EIA, but the nature and structure of public hearings remain at the discretion of the director of environmental affairs (“where necessary”). Furthermore, consultation is not mandatory prior to the commission of the EIA. While the EIA Guidelines are slightly more emphatic about the role of public consultation in the EIA process, the government’s role in ensuring meaningful participation remains discretionary.⁵³

Second, Malawi’s mining law provides little guidance with regard to the environmental impacts of mining. In considering whether or not to approve a project, the director is required to “take into account” any likely environmental impact of the project.⁵⁴ This provision is weak and highly discretionary, as neither the EMA nor MMA specify the ways in which this impact should be measured or the criteria that need to be fulfilled for the project to go ahead.

Third, according to the EMA, the director of environmental affairs shall conduct “periodic environmental audits of any project” after a project has been approved and begun operating.⁵⁵ However, the current law does not specify how often these audits should be carried out and what they entail. As a result, regular monitoring and enforcement of environmental protection measures remain at the discretion of the director and the implementing entities such as the district environmental officers.

<http://www.sdn.org.mw/enviro/eia/foreword.html>; Ministry of Natural Resources, Energy and Mining, “Strategic Environmental and Social Assessment of the Minerals Sector, Final Report,” p. 102, on file with Human Rights Watch.

⁵³ The guidelines state that the principal requirements are:

2.4.1 Developers are required to conduct public consultation during the development of the project brief and the EIA Report;
2.4.2 the Director of Environmental Affairs may, on the advice of the Technical Committee on the Environment, conduct his or her own public consultation to verify or extend the work of a developer. “Environmental Impact Assessment Guidelines,” <http://www.sdn.org.mw/enviro/eia/foreword.htm>.

⁵⁴ Section 94 of the MMA requires the minister to “take into account” the need to conserve natural resources when deciding whether to grant a mineral right or issue a prospecting license.

⁵⁵ Environmental Management Act, *Parliament of Malawi*, No. 23 of 1996, sec. 27(1).

Integrating Human Rights Risks into Impact Assessments

Neighboring countries in southern Africa have found ways to incorporate social impacts, especially impact on human health, into the legal regime for environmental assessments with varying levels of implementation.⁵⁶

In Zambia, the 2015 Mines and Minerals Law requires authorities to consider environment and human health “in deciding whether or not to grant any mining right or mineral processing licence.”⁵⁷ According to Section 80 (1) b “the need to ensure that any mining or mineral processing activity prevents any adverse socio-economic impact or harm to human health, in or on the land over which the right or license is sought” shall be taken into account.⁵⁸

There are several tools that help governments develop specific guidelines to assess the impacts of mining on marginalized groups and individuals.⁵⁹ For example, the Social Water Assessment Protocol developed by Nina Collins and Alan Woodley at the Centre for Social Responsibility in Mining at the University of Queensland, Australia includes modules on gender, indigenous peoples, and health.⁶⁰ A pilot study in Ghana conducted an assessment on the basis of the water assessment tool, which was designed to capture the social context around mining operations and integrated human rights considerations.⁶¹ The Toolbox for Socio-Economic Assessment, developed by the International Council on Mining and Metals (ICMM) member and mining company AngloAmerican, covers a broad range of issues: stakeholder engagement, resettlement, indigenous peoples, planning for mine closure, and delivering benefits.⁶²

⁵⁶ Advice and guidance for the examples compiled in this section of the report was obtained from Hanri Mostert, professor at the University of Cape Town, and Boni Luhende, Bernard Kengni, and Godknows Mudimu, Ph.D. students at the University of Cape Town.

⁵⁷ The Mines and Minerals Development Act, 2015, *Parliament of Zambia*, No. 11 of 2015.

⁵⁸ *Ibid.*, sec. 80(1).

⁵⁹ Inga Winkler, “The Mining Industry and Water, Sanitation and Hygiene (WASH): Impacts, Roles, and Challenges in the Context of Water Quality, Availability and Service Provision,” forthcoming.

⁶⁰ Nina Collins and Alan Woodley, “Social water assessment protocol: a step towards connecting mining, water and human rights,” *Impact Assessment and Project Appraisal*, vol. 31(2) (2013).

⁶¹ Anastasia N Danoucaras et al., “A pilot study of the Social Water Assessment Protocol in a mining region of Ghana,” *Water International*, vol. 41(3) (2016).

⁶² AngloAmerican, *SEAT Toolbox: Socio-Economic Assessment Toolbox, Version 3*, (London: 2012).

Legal Barriers to Accessing Environmental Health Information

While Malawi's Constitution sets out various procedural rights that apply to environmental decision-making, such as the right of access to information, the current regulatory regime on mining does not promote access to environmental and health information.⁶³

The current MMA contains provisions that could render any information delivered to the government for mining-related activities confidential. In particular Section 7 of the MMA, the Prohibition Against Disclosure of Information, could be read as preventing the release of environmental monitoring and related information for the duration of the mining license's validity, unless both the director and the holder of the mineral right agree otherwise.⁶⁴

While Section 52 of the EMA appears to emphasize the importance of access to information for the general public, the limitations contained in the same provision act to significantly limit this content. Section 52 (3) of the EMA contains a confidentiality provision relating to the publication or disclosure of proprietary information relating to the environment.⁶⁵

⁶³ Section 37 of the Constitution of the Republic of Malawi sets out the right to information which stipulates that "subject to Any Act of Parliament, every person shall have the right of access to information held by the State or any of its organs at any level of the Government in so far as such information is required for the exercise of such rights". The constitution also provides for rights to freedom of assembly, freedom of opinion and expression and the right to political participation, see Constitution of the Republic of Malawi, sec. 34-38, ch. 4.

⁶⁴ Section 7 of the MMA reads as follows:

- (1) Subject to subsection (2), no information furnished, or information in a report submitted, pursuant to Section 66 by the holder of a Mineral Right, shall, for as long as the Mineral Right has effect, be disclosed, except with the consent of the holder of the Mineral Right.
- (2) Nothing in subsection (1) operates to prevent the disclosure of information where the disclosure is made—
 - (a) for or in connection with the administration of this Act;
 - (b) for the purpose of any legal proceedings;
 - (c) for the purpose of any investigation or inquiry conducted under this Act;
 - (d) to any consultant to the Government, or to any public officer, who is approved by the Commissioner as a proper person to receive the information.
- (3) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine of one thousand Kwacha or to imprisonment for a term of two years, or to both.

MMA, Cap. 61:01 of 1981, sec. 7.

⁶⁵ Section 52 of the EMA reads as follows:

- (1) Subject to subsection (3), every person shall have access to any information submitted to the Director or any lead agency /relating to the implementation of the provisions of this Act or any other law relating to the protection and management of the environment and to the conservation and sustainable utilization of natural resources.
- (2) Notwithstanding subsection (1), no person shall be entitled to have access to proprietary information (to which the Trade Mark Act or the Patents Act applies) submitted to or received by the Director under this Act unless with the prior written consent of the owner of the proprietary information.

Legal Provisions that Advance Access to Information

Neighboring countries have adopted and implemented laws that promote transparency and public access to environmental information.⁶⁶

In Zimbabwe, the 2003 Environmental Management Act contains a specific provision on the right of access to environmental information.⁶⁷ The Access to Information and Protection of Privacy Act also contains provisions that seek to protect public health and the environment in Section 28 (1) (b). The law requires that the head of a public body disclose to members of the public or interested or affected persons information concerning the risk of significant harm to the health or safety of members of the public or the risk of significant harm to the environment. Such information is to be provided whether or not a request has been made to the public body.⁶⁸

In Tanzania, the 2004 Environmental Management Act states that documents including those relating to environmental matters in any mining concession; environmental management plans; proposals for preventing pollution; plans for treating waste or reclaiming land and water resources; and environmental impact assessments for proposed mining operations are publicly accessible records.⁶⁹ Tanzania has also enacted the Extractive Industries (Transparency and Accountability) Act, which requires the minister of energy and minerals to publish—online or via widely accessible media—concessions, contracts, and licenses relating to the extractive industries and the implementation of environmental management plans.⁷⁰

(3) No person shall, without the consent of the Director, publish or disclose to any person, otherwise than in accordance with the provisions of this Act, the contents of any document, communication or information which relates to and which has come to his knowledge in the course of his duties under this Act.

(4) Any person who contravenes subsection (3) shall be guilty of an offence and shall be liable, upon conviction, to a fine of not less than K2,000 and not more than K100,000, and to imprisonment for twelve months.

EMA, No. 23 of 1996, sec. 52.

⁶⁶ Advice and guidance for the examples compiled in this section of the report was obtained from Hanri Mostert, professor at the University of Cape Town, and Boni Luhende, Bernard Kengni, and Godknows Mudimu, Ph.D. students at the University of Cape Town.

⁶⁷ See “Zimbabwe,” Environmental Democracy Index, accessed September 14, 2016, <http://www.environmentaldemocracyindex.org/country/ZWE>; Environmental Management Act, *Government of Zimbabwe*, Cap. 20:27 of 2003, sec. 62.

⁶⁸ Environmental Management Act, secs. 62, 67, and 108; Environment Management (Hazardous Waste Management) Regulations, Statutory Instrument 10 of 2007, sec. 10 (1) (b); Access to Information and Protection of Privacy Act, *Government of Zimbabwe*, Cap. 10:27 of 2002, sec. 28 (1) (b).

⁶⁹ Environmental Management Act, *Government of Tanzania*, No. 20 of 2004, secs. 171(1) and 171(3).

⁷⁰ Extractive Industries (Transparency and Accountability) Act, *Government of Tanzania*, 2015, secs. 16 (a-b) and 27 (1-2).

III. Karonga District: Malawi's Mining Experiment

Karonga is the northernmost district of Malawi, with Lake Malawi to the east, Tanzania to the north, and highlands to the west and south. The district was isolated until 1981, when the national highway was extended to the district from the south.

Still one of Malawi's poorest regions, the majority of the district's 250,000 residents depend on subsistence farming and international and governmental food aid. The terrain is flat and fertile along the lake and increasingly hilly toward the west. The main sources of income for most families are farming maize, rice, and cassava and fishing in the lake.

Momentum and national interest in Karonga's extractive industries was first ignited by the commissioning of Kayelekera's uranium mine in 2007. Kayelekera is a community consisting of nine villages and located 52 kilometers west of Karonga amid rolling hills covered with patchy forest. It is located about halfway between the district capital of Karonga town and Chitipa. The population in this area has grown significantly over the past decade—in part due to an influx of migrant laborers—with about 3,000 people living there at its peak in 2009.⁷¹

The uranium mine in Kayelekera is the largest mine in Malawi. In fact, it is the first and only large-scale mine defined by heavy equipment, sophisticated technology, and a workforce in the hundreds of employees.⁷² The mine, which became fully operational in 2009, is operated by Paladin—a company based in western Australia—while the Malawian government maintains a 15 percent stake. Between 2011 and 2014 the mine's output was near capacity, producing about 1,000 tons of yellowcake per year.⁷³ In 2014, operations

⁷¹ Kendyl Salcito et al., "Assessing Human Rights Impacts in Corporate Development Projects," *Environmental Impact Assessment Review*, vol. 42 (2013), p.7.

⁷² Ministry of Natural Resources, Energy and Mining, "Strategic Environmental and Social Assessment of the Minerals Sector, Final Report," pp. 25-26, 177, on file with Human Rights Watch.

⁷³ 0.946t in 2011 (Paladin, "Annual Report," 2011, p. 23), 1,124t in 2012 (Paladin, "Annual Report," 2012, p. 20), 1,344t in 2013 (Paladin, "Annual Report," 2013, p. 16) and 1,066t in 2014 (Paladin, "Annual Report," 2014, p. 15); For all annual reports, see "Financial Reports," Paladin Energy Ltd., Accessed July 5, 2016, <http://www.paladinenergy.com.au/financial-reports>.

were temporarily stopped due to low uranium prices globally, with the mine placed on so-called “care and maintenance,” but the company continues to employ over 200 workers.⁷⁴

Several other mining ventures followed Paladin’s example. These include Karonga-based Malcoal and Eland Coal Mining that are two of the country’s four biggest coal mines, along with Mchenga and Kaziwiziwi in Rumphi district. Together, these mines make up 95 percent of the total coal production with a combined capacity of 10,000 tons per month.⁷⁵

Mine	Ownership	Sector	Location	Start of operations	Status in August 2016
Malcoal (coal mine)	Malcoal (Malawi), subsidiary of IntraEnergy (Australia)	Coal	Kayelekera, Karonga	2006	Active
Eland (coal mine)	Eland Coal Mining Company (Malawi), subsidiary of Independent Oil Resources (Cyprus)	Coal	Mwambulambo, Karonga	2009	Closed
Kayelekera (uranium mine)	Paladin Africa Limited (Malawi), subsidiary of Paladin Energy Ltd (Australia)	Uranium	Kayelekera, Karonga	2009	On Hold

The Malcoal open pit coal mine is based on the back of a mountain close to a river, about 3 kilometers from the Paladin mine. Formerly known as Nkhachira, the mine was taken over

⁷⁴ Paladin, “Annual Report,” 2015, <http://ir.paladinenergy.com.au/FormBuilder/DocumentDownload.ashx?item=5p5qNNi2gUGFbRIQxVN-pg> (accessed July 5, 2016), pp. 43-44. The last population and housing census was conducted in 2008, see “2008 Population and Housing Census,” National Statistical Office, accessed August 25, 2016, <http://www.nsomalawi.mw/2008-population-and-housing-census.html>.

⁷⁵ Ministry of Finance, Economic Planning and Development, “Annual Economic Report 2015,” pp. 52, 54, on file with Human Rights Watch.

by Malcoal in 2013.⁷⁶ As of June 2015, Malcoal was a joint venture with 90 percent owned by Australian Intra Energy Corporation (through its subsidiary East Africa Mining Limited) and 10 percent owned by Consolidated Mining Industries Limited, a private Malawian entity.⁷⁷ Malcoal was reported to have closed down operations because of a shrinking local market at the end of 2015, but the mine was operational as of July 2016.⁷⁸ Intra Energy has also announced plans to construct a coal-fired power station at Chipoka, Salima, with coal supplies coming from the mining site in Kayelekera.⁷⁹

Mwabulambo coal mine, an open pit mine located 30 kilometers north of the district capital, is operated by Eland Coal Mining Company, a Malawian company. Eland is a subsidiary of the Isle of Man based Heavy Mineral Limited, which is in turn owned by Independent Oil & Resources PLC, a company based in Cyprus.⁸⁰ Over 70 percent of Independent Oil & Resources PLC is owned by the Norwegian oil magnate Berge Gerdt Larsen and members of his family.⁸¹ The coal mine is located on a flat and fertile area near Lake Malawi where residents have traditionally relied on subsistence farming, especially rice farming. It is unclear when and if operations will resume after they stopped in 2015. According to information given by Jan Egil Moe, chairman of the board of Independent Oil & Resources PLC, in July 2015, “Eland Coal Mine has suspended operations as the operations were not sustainable, and is in the process of being liquidated.”⁸² However, site visits in August 2015 and March 2016 suggested that the company still employs a local watchman and has not started rehabilitating the area.

⁷⁶ “Australian firm acquires more coal mining licenses in Malawi,” *Nyasa Times*, March 19, 2013, <http://www.nyasatimes.com/2013/03/19/australian-firm-acquires-more-coal-mining-licenses-in-malawi/> (accessed September 14, 2016); see also “Projects Overview,” Intra Energy, accessed July 7, 2016, <http://www.intraenergycorp.com.au/irm/content/projects-overview.aspx?RID=217>.

⁷⁷ Intra Energy Corporation Limited, “30 June 2015 Annual Report,” 2015, <http://www.intraenergycorp.com.au/IRM/Company/ShowPage.aspx/PDFs/1882-10000000/2015AnnualReport> (accessed July 27, 2016), p. 57.

⁷⁸ See reporting in Mining and Trade Review, March 2016, <https://mininginmalawi.files.wordpress.com/2016/03/mining-trade-review-march-2016-edition-electronic-copy.pdf> (accessed July 4, 2016); Human Rights Watch visit on site in March 2016.

⁷⁹ Ministry of Natural Resources, Energy and Mining, “Strategic Environmental and Social Assessment of the Minerals Sector, Final Report,” pp. 29/30, on file with Human Rights Watch.

⁸⁰ Independent Oil & Resources PLC, “Financial Statements, December 31, 2015,” 2015, <http://independentresources.eu/source/wp-content/uploads/2014/02/FS-31.12.2015.pdf> (accessed July 5, 2016), p. 19.

⁸¹ Independent Oil & Resources PLC, “Consolidated financial statement,” December 31, 2015, p. 24; At least 75 percent are held by Berge Gerdt Larsen or his son, Brede Bjo vad Larsen. See Arne Thommessen, “Kontrolløren,” *Kapital*, nr. 22/2008, <http://www.stocktalk.no/Upload/%7B63199%7D-2208%20-%20Kontroll%C3%B8ren%20BGL.pdf> (accessed July 4, 2016), p. 12-13.

⁸² Email to Human Rights Watch, June 30, 2015.

Before Mining Starts

In Malawi's Karonga district the government and companies have failed to comprehensively assess environmental and social risks and impacts before mining operations begin and have not communicated potential risks with affected communities.

Insufficient Consultation about Risks of Mining

Silence reigns in this country over the mining issue, especially uranium.... When ignorance reigns, it's the poor that suffer. Nobody, whether mine or government officials, takes responsibility to educate people on the hazards of mining. People lack basic education about uranium and coal mining.⁸³

—Archibald Mwakasunglo, chairman of Uraha Foundation, Karonga, August 2015⁸⁴

Many residents of mining communities, especially women, interviewed by Human Rights Watch said that they did not receive sufficient information about mining and its potential risks before the operations started.

One woman at Mwabulambo, where Eland started operating in 2007, said that she “didn't know anything about the mining before the machines came in.”⁸⁵ “They didn't give us any information, they just started digging,” she said. Another female resident of Mwabulambo “just saw vehicles coming through.... No government official came to tell us what was going on.”⁸⁶

A 46-year-old woman in Mwabulambo recalled:

The first thing I remember was that a white man came into the village and asked children about the rocks in this area. The people found out that there is coal. They started talking to the government, but they didn't discuss their plans with us. They only told us that we would all become very rich once

⁸³ Human Rights Watch interview with Archibald Mwakasunglo, Karonga, August 19, 2015.

⁸⁴ The Uraha Foundation funds research and cultural exchange projects in Africa. In Malawi, the foundation set up a cultural center and museum in Karonga. For more information about the foundation, see “Uraha Foundation Germany E.V.,” accessed August 23, 2016, <http://uraha.de/de/?lang=en>.

⁸⁵ Human Rights Watch interview with Esnala N., Mwabulambo, March 7, 2016.

⁸⁶ Human Rights Watch interview with Beatrice N., Mwabulambo, March 8, 2016.

they start with the mining. We didn't know anything about mining and we believed them.⁸⁷

EIAs are supposed to be carried out before mining starts production, and according to EIAs reviewed by Human Rights Watch, companies held community meetings in Mwabulambo and Kayelekera before the mining started or at an early stage of exploration. However, it is not clear how inclusive and comprehensive these consultations were. The EIA for Eland coal mine explicitly states that “[a]lthough a lot of effort was made to ensure gender balance ..., women, especially at village levels, were not keen to provide their comments and inputs.”⁸⁸ The EIA for Nkhachira Coal Mine, Malcoal's predecessor, reports that the managing director informed the people that there is a “requirement for establishment or improvements of some infrastructures including health center, Police Unit, potable water, maize mills, roads and many more,” but does not mention any potential risks posed by coal mining.⁸⁹

Villagers interviewed by Human Rights Watch in fact emphasized that the community meetings, if they happened at all, often did not include information about how the project would impact the environment and their livelihoods, including planned use of land, water, and other natural resources.⁹⁰

The minister of mining pointed out that the Mwabulambo and Kayelekera communities' knowledge about the health centers and schools promised by the companies can be seen as a “sign that they [the communities] have been consulted, otherwise they wouldn't know that there is a promise.”⁹¹ However, even if this type of information was given prior to the

⁸⁷ Human Rights Watch interview with Frola N., Mwabulambo, March 6, 2016.

⁸⁸ Eland Coal Mine Company Limited, “Environmental Impact Assessment for Eland Coal Mine Company Limited,” October 2007, p. 14, on file with Human Rights Watch.

⁸⁹ H.W. Investment Ltd and Consolidated Mining Industries Ltd., “The Nkhachira Coal Mine, Environmental Impact Assessment Report, 2006,” June 2006, pp. 31-46, on file with Human Rights Watch. The report states that “no perennial watercourse will be effected during the mining,” but runoff of “fines and suspended solids” may occur during rainy seasons. However, mitigation for surface water is aimed only at avoiding oil spills related to the use of mining equipment. The mitigation proposal does not include strategies on how to prevent runoff of “fines and suspended solids” into watercourses.

⁹⁰ Human Rights Watch interview with Nagomba E., March 7, 2016; Human Rights Watch interview with Frola N., Mwabulambo, March 6, 2016; Human Rights Watch interview with Esnala N., Mwabulambo, March 7, 2016; Human Rights Watch interview with Beatrice N., Mwabulambo, March 8, 2016.

⁹¹ Human Rights Watch interview with Bright Msaka, minister of natural resources, energy and mining, Lilongwe, March 16, 2016.

start of mining operations, promising benefits to the community cannot be a replacement for providing adequate information about the associated risks and mitigation strategies.⁹²

Government officials confirmed that the current legal framework does not require companies to include and communicate social impacts and health risks of mining, such as threats to water sources or specific impacts on marginalized populations, and does not provide for avenues through which communities may access environmental health information.⁹³

Environmental Impact Assessments

The 2006 EIA for the Nkhachira coal mine in Kayelekera, which was taken over by Malcoal in 2013, stated that the environmental risk of the mine was “minimal.” However, a Human Rights Watch review found that it failed to comprehensively address the potential impact of mining activity on ground water or surface water, including the risk of acid mine drainage.⁹⁴ While the EIA indicated that the nearby community would experience greater levels of dust, noise, and traffic that would negatively impact their quality of life, it contained no recommendation for regular monitoring of the local water and air during or after the mine’s operation.⁹⁵

The EIA for the Eland coal project, which Human Rights Watch also reviewed, stated that there was “minimal environmental risk.”⁹⁶ The only step it identified to minimize health risks to the community was to prohibit access to the mine site, stating that “any trespassers to be disciplined by the village committee.”⁹⁷ The report made no mention of any potential impacts on women or children or how the risks were to be communicated to them.

Australian experts on the environmental impact of mining criticized Paladin’s EIA, conducted in

⁹² See generally, UN Human Rights Council, Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Baştık Tuncak, July, 8 2015, para. 20.

⁹³ Human Rights Watch meeting with government officials at the Ministry of Natural Resources, Energy and Mining, Lilongwe, March 15, 2016.

⁹⁴ H.W. Investment Ltd and Consolidated Mining Industries Ltd., “The Nkhachira Coal Mine, Environmental Impact Assessment Report, 2006,” pp. 31-46, on file with Human Rights Watch. The report states that “no perennial watercourse will be effected during the mining,” but runoff of “fines and suspended solids” may occur during rainy seasons. However, mitigation for surface water is aimed only at avoiding oil spills related to the use of mining equipment. The mitigation proposal does not include strategies on how to prevent runoff of “fines and suspended solids” into watercourses.

⁹⁵ H.W. Investment Ltd and Consolidated Mining Industries Ltd., “The Nkhachira Coal Mine, Environmental Impact Assessment Report, 2006,” p. 47, on file with Human Rights Watch.

⁹⁶ Eland Coal Mine Company Limited, “Environmental Impact Assessment for Eland Coal Mine Company Limited,” p.58, on file with Human Rights Watch.

⁹⁷ Eland Coal Mine Company Limited, “Environmental Impact Assessment for Eland Coal Mine Company Limited,” p. 67 on file with Human Rights Watch.

2006 by Knight Piésold Ltd consulting firm, because it lacked adequate, high quality environmental and radiological baseline data; an appropriate long-term tailings management plan; adequate characterization and discussion of potential acid mine drainage issues; and it provided an inappropriate rehabilitation plan.⁹⁸ Human Rights Watch's review found that the EIA also failed to discuss gender specific risks of mining and that it was unclear if and how the results of their monitoring programs would be made available to the general public, especially to women.⁹⁹

Relocations

The company put white crosses on all the houses that should be relocated. They also put such a cross on our house.... They first came in March 2012 and said that we need to move in April. But they only waited one week and then came back to say that now is the time to move. We didn't know where to go. We had to sleep outside for a couple of days. It was difficult to move as this was in the rainy season and we ended up putting up at someone's verandah and under the tree.¹⁰⁰

—Resident, Mwabulambo, March 2016.

Mining in Karonga district has resulted in the resettlement of some families often without adequate warning, decent resettlement conditions, or compensation.

Malawi's laws and policies do not adequately regulate resettlement or land transfers for commercial investment. Although Malawi's Constitution, the Land Act, and the Mines and Minerals Act (MMA) offer some standards for compulsory land acquisition through the government, they do not provide adequate safeguards or sufficient guidance on this process or related compensation.¹⁰¹

⁹⁸ Gavin M. Mudd and Howard D. Smith, "Comments on the Proposed Kayelekera Uranium Project Environmental Impact Assessment Report," November 2006, <http://users.monash.edu.au/~gmudd/files/Comments-Kayelekera-EIS-Draft-v3.pdf> (accessed May 10, 2016).

⁹⁹ Knight Piésold Consulting, "Paladin (Africa) Limited: Kayelekera Uranium Project, Final Environmental Impact Assessment," 2006, on file with Human Rights Watch.

¹⁰⁰ Human Rights Watch interview with Sinya M., Mwabulambo, March 8, 2016.

¹⁰¹ Section 27(1) of the Land Act states: "Wherever it appears to the Minister that any customary land is needed for a public purpose, that is to say a purpose which is for the benefit, of the community, he may declare such land public." Laws of

Government officials from the Ministry of Lands, Housing and Urban Development told Human Rights Watch that the land acquired by mining companies in Karonga district was customary land. Community members and NGO representatives also mostly suggested that this was previously customary land.

When the government claims customary land, they bear the responsibility of resettling and compensating those using such land. According to the constitution, “[f]air and adequate compensation must be given in the event of compulsory acquisition.”¹⁰² The Land Act also stipulates that “any person who ... suffers any disturbance ... loss or damage to any interest which he ... may have ... in such land, shall be paid such compensation for such disturbance, loss or damage as shall be reasonable.”¹⁰³ With regard to mining, the MMA also provides for fair and reasonable compensation for disturbance of land rights and damage to any crops, trees, buildings, stock, etc.¹⁰⁴

However, the principal secretary at the Ministry of Lands, Housing and Urban Development told Human Rights Watch that people who have been using customary land in mining communities will not be compensated for the land as such because they do not possess a land title.¹⁰⁵

Neither of the existing laws defines what “reasonable” compensation is and, to date, Malawi does not have a national resettlement policy that guides the process of resettlements and compensation.¹⁰⁶ This exacerbates a broader problem of insecure land tenure, especially for customary land that is communally owned.¹⁰⁷

Malawi, Land, Cap. 57:01 of 1965, sec. 27(1), <http://faolex.fao.org/docs/pdf/mlw41845.pdf> (accessed July 19, 2016). Section 44(4) of Malawi’s Constitution reads: “Expropriation of property shall be permissible only when done for public utility and only when there has been adequate notification and appropriate compensation,” Constitution of the Republic of Malawi, sec. 44(4). According to the Mines and Minerals Act, “where the president considers that any land is required to secure the development or utilization of mineral resources, he may direct that land to be compulsorily acquired,” Laws of Malawi, Mines and Minerals, Cap. 61:01 of 1981, sec. 120. <http://archive.resourcegovernance.org/sites/default/files/The%20Mines%20and%20Minerals%20Act%201981.pdf> (accessed September 14, 2016)..

¹⁰² Constitution of the Republic of Malawi

¹⁰³ Laws of Malawi, Land, sec. 28.

¹⁰⁴ Laws of Malawi, Mines and Minerals, sec. 105.

¹⁰⁵ Human Rights Watch interview with Ivy Jullie Luhanga, principal secretary, Ministry of Lands, Housing and Urban Development, Lilongwe, August 2, 2016.

¹⁰⁶ Catholic Commission on Justice and Peace, “Land Displacement, Involuntary Settlement and Compensation Practice in the Mining Sector. A Comparative Analysis of Legal and Policy Frameworks in Southern Africa,” August 2014.

¹⁰⁷ *Ibid.*

Land Tenure in Malawi

There are a variety of land laws in Malawi which establish various types of tenure. The 1965 Land Act categorizes land as public (government or unallocated customary land) or private (freehold, leasehold, or customary estate).¹⁰⁸ The 2016 Land Bill comprises more than 10 land-related bills, including bills on customary law, land acquisitions, physical planning, and the role of local government role.¹⁰⁹ A new customary law was adopted by parliament in July 2016 and was assented into law by the president in September 2016.

Very few people in rural Malawi have private land titles.¹¹⁰ Approximately 80 percent of all land in Malawi is considered customary land under Malawi's 1965 Land Act. Customary land is defined as land falling within the jurisdiction of a recognized traditional authority.¹¹¹ In the northern region of Malawi, 83 percent of all land is held as customary land.¹¹² In the district of Karonga, the share of customary land amounts to 98 percent.¹¹³ Although a preponderance of communities in Malawi pass customary land down from mother to daughter (matrilineal), in the northern region most villages use a patrilineal system, passing land down among male heirs. In Karonga, 99 percent of land is patrilineal.¹¹⁴

Under the Land Acquisitions Act, compensation is determined by the lands commissioner or by agreement between parties.¹¹⁵ According to Section 9, if compensation is not agreed upon by the parties, it will be assessed by the government. Criteria to be considered when

¹⁰⁸ According to Section 2 of the Land Act "customary land means all land which is held, occupied or used under customary law, but does not include any public land ...private land means all land which is owned, held or occupied under a freehold title, or a leasehold title, or a Certificate of Claim or which is registered as private land under the Registered Land Act...public land means all land which is occupied, used or acquired by the Government and any other land, not being customary land or private land," Laws of Malawi, Land, sec. 2.

¹⁰⁹ Various newspapers have reported on the Land Bill. See, for example, Lloyd Mbwana, "Petitions to govt. from Chiefs and tea estate owners may delay passing of land bill says Landnet Malawi," *the Maravi Post*, May 18, 2016, <http://www.maravipost.com/2016/05/18/petitions-govt-chiefs-tea-estate-owners-may-delay-passing-land-bill-says-landnet-malawi> (accessed July 8, 2016); Suzgo Khunga, "14 reform bills ready," *the Nation*, June 20, 2016, <http://mwnation.com/14-reform-bills-ready/> (accessed July 8, 2016).

¹¹⁰ Under Malawian law, public land is owned by the president. According to Section 2 of the Mines and Minerals Act, ownership of all mineral resources and the land lies with the president on behalf of the Malawian people.

¹¹¹ Ministry of Natural Resources, Energy and Mining, "Strategic Environmental and Social Assessment of the Minerals Sector, Final Report," p. 72, on file with Human Rights Watch.

¹¹² Government of Malawi National Statistical Office, *National Census of Agriculture and Livestock 2006/07*, April 2010, http://www.nsomalawi.mw/images/stories/data_on_line/agriculture/NACAL/Nacal%20Report.pdf (accessed July 19, 2016), p. 12.

¹¹³ *Ibid.*, p. 12.

¹¹⁴ *Ibid.*, p. 129.

¹¹⁵ *Ibid.*, p. 34.

calculating compensation are the value of the land, the value of the improvements made to the land, and how much the land has appreciated in value since the land was originally acquired.

According to the Ministry of Lands, Housing and Urban Development, the process of assessing compensation is carried out by the regional offices of the ministry.¹¹⁶ The results will be shared with the affected people and district commissioner who will be responsible for implementation.

Further guidance for resettlement in the case of government seizure of customary land can be found in the 2013 Mines and Minerals Policy and the 2002 National Land Policy. According to the Mines and Minerals Policy, “[c]ompensation and resettlement of land owners and communities affected by mining” is identified as a social issue that “the government will adequately address.”¹¹⁷ According to the National Land Policy, “all land acquisition, including the acquisition of customary land, by the government requires negotiations and payment of compensation at fair market prices.”¹¹⁸

While these policies state that it is the responsibility of the government to compensate and resettle those displaced in mining activities, the National Land Policy indicates the mining companies also bear some responsibility. Specifically, the policy states that “mining rights will include conditions for practicing conservation methods including setting aside funds for compensation to those adversely affected by the activity and mining and quarrying operators will be required to meet the costs of reclaiming land.”¹¹⁹

With no national guidelines or regulations on resettlement, the mining companies operating in Karonga district have been inconsistent in how they go about this process.¹²⁰

¹¹⁶ Human Rights Watch interview with Ivy Jullie Luhanga, August 2, 2016.

¹¹⁷ Mines & Minerals Policy of Malawi, *Ministry of Energy and Mines*, 2007, sec. 6.1.1(vii), <http://www.resourcegovernance.org/sites/default/files/Mines%20&%20Minerals%20Policy%20of%20Malawi.pdf> (accessed September 14, 2016).

¹¹⁸ Malawi National Land Policy, *Ministry of Lands, Housing and Surveys*, 2002, sec. 9.11, http://www.lands.gov.mw/phocadownload/land_policies_plans/national%20land%20policy%20january%202002.pdf (accessed September 14, 2016).

¹¹⁹ *Ibid.*, sec. 4.16.1.

¹²⁰ As far as Human Rights Watch is aware, none of the companies described in this report have financing from international financial institutions with policies on involuntary resettlement.

Although the Karonga district commissioner told Human Rights Watch that relocation processes fall under her authority, they said they were unaware of the current situation of relocated families at the Eland or Malcoal mines.¹²¹ The principal secretary at the Ministry of Lands, Housing and Urban Development said that they were not aware of any irregularities in the relocation processes in Karonga district.¹²²

Complicating the relocation process is the role of local chiefs in negotiating deals for resettled families when customary lands are involved. Both Malawi's 1967 Land Act and the 2016 Customary Land Bill reaffirm the notion that customary land is administered by the chiefs for the community.¹²³ In recent years, however, numerous conflicts over land have arisen because chiefs appear to have participated in land deals without fully consulting local residents or gaining their consent.¹²⁴ In an interview with Human Rights Watch, Karonga District Commissioner Rosemary Moyo said that, in some cases, chiefs may have taken some of the money meant for the resettled families.¹²⁵ Several villagers in Kayelekera and Mwabulambo said that they believed the chiefs had received money from the companies in exchange for agreeing to the relocations.¹²⁶ Asked about the allegations of corruption levied against him, Chief Kayelekera told Human Rights Watch: "Whenever I answer questions people will say I am saying the wrong thing."¹²⁷

In Kayelekera, community members said that Malcoal resettled at least 12 households about 5 kilometers away from the actual mining site in September 2013.¹²⁸ A school teacher confirmed to Human Rights Watch that the 12 families who were moved lived next to the Malcoal offices, across the street from the primary school.¹²⁹ Even though some of the families had already heard about the planned relocation, three families told Human Rights Watch that they did not know when the move was going to happen. In the process,

¹²¹ Human Rights Watch interview with Rosemary Moyo, Karonga district commissioner, Karonga, August 2, 2016.

¹²² Human Rights Watch interview with Ivy Jullie Luhanga, August 2, 2016.

¹²³ Laws of Malawi, Land, sec. 26.

¹²⁴ See most recently Lloyd Mbwana, "Chiefs and DC's perpetuating land grabbing in rural Malawi," *the Maravi Post*, May 31, 2016, <http://www.maravipost.com/2016/05/31/chiefs-dcs-perpetuating-land-grabbing-rural-malawi/> (accessed July 20, 2016); George Bulombola, "Malawi: Local Govt Ministry Concerned With Chiefs' Corrupt Practices," *AllAfrica*, December 20, 2014, <http://allafrica.com/stories/201412200303.html> (accessed July 20, 2016).

¹²⁵ Human Rights Watch interview with Rosemary Moyo, August 2, 2016.

¹²⁶ Human Rights Watch group interview with women, Mwabulambo, March 6, 2015; Human Rights Watch group interview with women, Kayelekera, March 9, 2016.

¹²⁷ Interview with Chief Kayelekera, Kayelekera, August 20, 2015.

¹²⁸ Human Rights Watch group interview with women, Kayelekera, March 9, 2016.

¹²⁹ Human Rights Watch interview with Ana Gondwe, Kayelekera, March 10, 2016.

furniture was destroyed and several animals were killed. A 20-year-old woman at Kayelekera recalled:

The people from the company came to us and said they wanted to build a police station where our house was.... They didn't give us any notice and just chased us away. Two of our goats died because of a bulldozer. They were in a cage and couldn't escape while we were busy protecting our furniture.... We couldn't say anything because the machines were already there. We didn't manage to save all our belongings. We lost some pots, bags and many other things.¹³⁰

Another woman, whose family was contacted by Malcoal's workers in June 2013, said that the company had told her family that they "could come any time to make us move."¹³¹ Three months later, company workers came back to tell them that they have to leave. "They came with bulldozers and told us to pack our stuff immediately," she said.¹³²

Malcoal disputes the assertion that Malcoal has resettled community members. Mr. Hastings Jere, director of Malcoal, said in an email to Human Rights Watch that there was "not even a single villager or village ... to be relocated to pave way for mining."¹³³ The company did not specifically respond to our request for further information about any resettlements at a later stage, or to the accounts provided by families who reported that they were relocated from their homes, which were near the Malcoal offices.

In Mwabulambo, community members said that more than 30 households were relocated from customary land at different stages of Eland's operations between 2008 and 2015. Human Rights Watch interviewed individuals from four of these households.¹³⁴ They complained that the company did not notify them sufficiently in advance of the resettlement, and they criticized the company and the government more generally about a

¹³⁰ Human Rights Watch interview with O. N., Kayelekera, March 10, 2016.

¹³¹ Human Rights Watch interview with N. L., Kayelekera, March 9, 2016.

¹³² Human Rights Watch interview with N. L., Kayelekera, March 9, 2016.

¹³³ Email from Hastings Jere, director of Malcoal, to Human Rights Watch, July 21, 2016.

¹³⁴ Human Rights Watch interview with Rojaina N., Mwabulambo, March 7, 2016; Human Rights Watch interview with Nagomba E., March 7, 2016; Human Rights Watch interview with Sinya M., Mwabulambo, March 8, 2016; Human Rights Watch interview with Beatrice N., Mwabulambo, March 8, 2016.

lack of transparency regarding the terms of the relocation and compensation.¹³⁵ They reported that, while they had heard about the relocations before, the actual timing of the resettlement came as a surprise, and they had to leave their homes before they managed to build new ones. One family even had to stay under a tree for about a month because they had to move so quickly.¹³⁶

Eland Coal Mining Company did not respond to our request for information about the resettlement process in Mwabulambo.

In Kayelekera, none of the relocated families Human Rights Watch interviewed said they had received compensation for any of their losses when they were resettled by Malcoal. “We had to ask the chief for new land and had to pay 30,000 MWK (about \$90) for it. We had also lost our fields and needed to buy new ones,” one woman said. “The company didn’t pay us any compensation.”¹³⁷

Another family in Kayelekera said that Malcoal’s manager had initially promised to compensate them. “In June 2013 [Malcoal] workers came and wrote down our name and assessed the value of our house. They said that they could come any time to make us move and that we may receive compensation,” the woman remembered. But when the company workers came back three months later, “they came with bulldozers and told us to pack our stuff immediately. They didn’t say anything about compensation anymore.”¹³⁸

In Mwabulambo, each family received some form of compensation from Eland when it relocated them, ranging from 50,000 to 200,000 MWK (about \$150 to \$600), but the basis for individual payments remains unclear.¹³⁹ A community representative interviewed by Human Rights Watch suggested that these were standard amounts that the company paid to each relocated family—independent of the actual value of their belongings—and that they had increased payments over time in response to mounting pressure from the

¹³⁵ Human Rights Watch interview with Rojaina N., March 7, 2016; Human Rights Watch interview with Nagomba E., March 7, 2016; Human Rights Watch interview with Sinya M., Mwabulambo, March 8, 2016; Human Rights Watch interview with Beatrice N., Mwabulambo, March 8, 2016.

¹³⁶ Human Rights Watch interview with Rojaina N., March 7, 2016.

¹³⁷ Human Rights Watch interview with O. N., Kayelekera, March 10, 2016.

¹³⁸ Human Rights Watch interview with N. L., Kayelekera, March 9, 2016.

¹³⁹ Human Rights Watch interview with V.H. Messiah, Mwabulambo, August 21, 2015.

community.¹⁴⁰ A representative of a local NGO who worked with the community for many years said “no one knows” the formula used to determine compensation.¹⁴¹ A 58-year-old widow and mother of 12 said: “We were never told why we received 50,000 MWK (about \$150). They just told us this is the amount you get.”¹⁴² Another family who had also been paid 50,000 MWK (about \$150) had to sell two cows to be able to build a new house.¹⁴³

Several families said they could not maintain the same standard of living after resettlement due to the minimal compensation they received. A woman from Mwabulambo said:

Even though they offered us very little money, we had no choice but to move. They said that they own the land and put us under pressure. We didn’t have the power to resist and we were afraid of the risks of coal. 50,000 MWK (about \$150) is too little money. We had a brick house in the old location. But the money wasn’t enough to build a new one, so now we only have a mud house.... The area where we had our fields was also taken away by the miners. There is only a small part that we can still use.¹⁴⁴

In addition to the lack of adequate compensation for the house and other property, several families told Human Rights Watch that the relocation had reduced their income because the new land they acquired after the move was not as fertile. A woman in Kayelekera told Human Rights Watch that her family was relocated to “a really bad piece of land” by Malcoal in 2013. She explained that the land from where they were moved had good soil; she was able to grow maize, cassava, sweet potato, and groundnuts. She used to harvest 30 to 50 bags of maize per season, but now she only has 10 bags or less.¹⁴⁵ Another woman from Mwabulambo who was relocated by Eland said:

Our harvest in these existing fields is also reduced because the coal is flowing into the fields during the rainy season. We used to have 3 bags (50

¹⁴⁰ Human Rights Watch interview with Justice M., Mwabulambo, March 8, 2015.

¹⁴¹ Human Rights Watch interview with Sydney Mwakaswaya, CCJP, Karonga, August 18, 2015.

¹⁴² Human Rights Watch interview with Rojaina N., March 7, 2016.

¹⁴³ Human Rights Watch interview with Nagomba E., March 7, 2016.

¹⁴⁴ Human Rights Watch interview with Sinya M., Mwabulambo, March 8, 2016.

¹⁴⁵ Human Rights Watch interview with N. N., Kayelekera, March 10, 2016.

kg per bag) of maize, now we are left with less than one bag. The maize doesn't grow well any more.¹⁴⁶

According to community members, Eland company officials claimed that they had bought the land from the government and would not compensate the families for all their land because they did not have a legal title. One woman said: "Our fields are gone; we can't use them anymore.... We weren't compensated for the fields, they just gave us money for the house."¹⁴⁷

When asked about plans for how to address these challenges, the principal secretary in the Ministry of Lands, Housing and Urban Development said that residents should not have moved out of their homes before receiving compensation.¹⁴⁸ The principal secretary also said that people would usually be assigned new land by the chief. The government has also been working on a draft resettlement policy. However, none of these initiatives include steps that the government will take to investigate and remedy harm already caused by relocations in Karonga district.

The issue of land ownership and control is central to many women's concerns around mining in Malawi. Most women we interviewed did not possess a formal title or maintain significant control over customary land allocated to families, despite describing making significant improvements to and use of family plots. They said that in Karonga district, traditional leaders assigned customary lands to their husbands and considered them to be in charge.

Several women told Human Rights Watch that they felt excluded from participating in meetings with the company or chiefs.¹⁴⁹ Women from Mwalambo said that company officials or chiefs often organized meetings on very short notice, which makes it difficult

¹⁴⁶ Human Rights Watch interview with Sinya M., Mwalambo, March 8, 2016. Different toxic pollutants that typically emerge from coal mines can potentially harm crops. See, for example, Greenpeace, "Revealed: Coal Mine Polluting South Kalimantan's Water," December, 2014, http://www.greenpeace.org/seasia/id/PageFiles/645408/FULL%20REPORT%20Coal%20Mining%20Polluting%20South%20Kalimantan%20Water_Lowres.pdf (accessed August 24, 2016).

¹⁴⁷ Human Rights Watch interview with Rojaina N., March 7, 2016.

¹⁴⁸ Human Rights Watch interview with Ivy Jullie Luhanga, August 2, 2016.

¹⁴⁹ Human Rights Watch interview with Rosbelle K., Mwalambo, March 8, 2016; Human Rights Watch interview with Sinya M., Mwalambo, March 8, 2016; Human Rights Watch interview with Modester M., Mwalambo, March 7, 2016.

for women to attend, or they otherwise felt uncomfortable attending the meetings, which are traditionally dominated by men. As a result, they said they relied on their husbands as the main source of information about the planned relocation, including the amount of money the family received. Women also said they had little say, if any, in how the compensation was spent. A woman in Mwabulambo said: “The money for the new house was given to my husband. I was not happy with how he spent it. But he is the head of the household, he decides.”¹⁵⁰

Officials at the Ministry of Lands, Housing and Urban Development expressed hope that the new customary land law will increase women’s participation in relocation processes. They emphasized that of the seven members of the planned customary land committees managing the resettlement process at the local level, at least three will need to be women.¹⁵¹ Ministry officials also said that the new land laws will enable local communities to register their land. The ministry hopes to facilitate joint registration between husband and wife through the development of guidelines and trainings. The ministry also pointed out that the Land Acquisitions Bill will clarify the criteria and process for compensation. At time of writing the Land Acquisitions Bill has not yet been tabled by the parliament.

During Mining Operations

In Karonga District the government has largely failed to put in place effective mechanisms to oversee the activities and impacts of mining operations, and it has failed to effectively disseminate information to affected communities.

Deficient and Irregular Monitoring

It is obvious that mining affects health, but the companies oversee the impact. If there is a problem, we will react. But we are not proactive regarding health monitoring in mining areas.¹⁵²

—Minister of Health Peter Kawale, Lilongwe, March 2016

As described in the following sections, people in communities in Karonga district have

¹⁵⁰ Human Rights Watch interview with Sinya M., Mwabulambo, March 8, 2016.

¹⁵¹ Human Rights Watch interview with Ivy Jullie Luhanga, August 2, 2016.

¹⁵² Human Rights Watch interview with Peter Kawale, minister of health, Lilongwe, March 16, 2016.

numerous concerns about what they perceive to be the impacts of mining on their health, food, soil, and drinking water. For some of their concerns, it is easy to determine that they are linked to mining activity. For others, a link can only be established through regular monitoring and scientific research.

Although Malawi's government has a duty to monitor the health impacts under the national environmental regulations, Human Rights Watch found that it has often failed to do so in Karonga district. Indeed, weak government oversight and inadequate reporting practices lie at the core of many challenges experienced by mining-affected communities in Karonga district.

During mining operations, the government has failed to regularly and comprehensively carry out environmental and social inspections and monitoring. Government monitoring is not of sufficient frequency and scope to assess the potential community health risks associated with mining. A particular concern in Malawi has been the lack of baseline information about the presence of hazardous substances in air, water, and soil that would allow community members to understand the effects of the extractive industries and to make informed decisions.

While government officials at the Ministry of Natural Resources, Energy and Mining said that they are planning to visit each mine at least quarterly, the government acknowledged that mining inspections often happen only about once per year.¹⁵³ A review by Human Rights Watch of a total of 27 inspection reports by the Regional Mining Office from 2004 to 2014 suggested that inspections at most mining sites are conducted less than once per year.¹⁵⁴

In an interview with Human Rights Watch, chief mining engineer at the Regional Mining Office in Mzuzu also said that they are planning “quarterly inspections at the mines.”

¹⁵³ Human Rights Watch meetings with government officials at the Ministry of Natural Resources, Energy and Mining, Lilongwe, March 15, 2016 and August 2, 2016.

¹⁵⁴ Inspection dates: January 30 – February 2, 2004, August 15-20, 2004, June 15-16, 2006, November 27 – December 2, 2006, November 13-16, 2007, February 19-21, 2008, August 17-19, 2009, October 4-5, 2010, September 12-14, 2012, February 17, 2014 (only two sites), August 19-21, 2014. The introduction of the “Report on the Brief Inspection to Some Coal Mines in Rumphi District held on 17th February, 2014,” dated February 25, 2015 states: “[I]t was planned to visit all coal mines in Rumphi and Karonga. It was however changed due to: the poor performance of the vehicle which could not pull well in muddy road conditions; and inadequate fuel that could not to cover the whole field programme-to distances such as Karonga.” Copies of inspection reports on file with Human Rights Watch.

However, he admitted that the current equipment and staff is not sufficient to do this.¹⁵⁵ He also indicated that inspections are focused on workers' health and safety, rather than on community impacts.

An August 2014 inspection report from the northern region states that the government “should seriously consider (without fail) carrying out quarterly inspections in order to enforce mining regulations which have been abandoned by mining companies as noted in the previous financial year.”¹⁵⁶ The same report indicates that no inspections were conducted in 2013 due to insufficient funds.¹⁵⁷

At the local level, government officials in Karonga district told Human Rights Watch that they often fail to do regular monitoring visits. The director of the Water Department in Karonga, Aaron Chabonda, said that his office only takes water samples from the Paladin uranium mine, but does not perform any testing at Eland or Malcoal mines.¹⁵⁸ In Karonga district, where Paladin, Malcoal, and Eland are based, there is an additional challenge for monitoring and access to information. The district environmental officer, who oversees environmental monitoring at the district level, was moved to Lilongwe after a conflict with the community in 2015. According to ministry officials, the communities in Karonga had accused the officer of not telling them the truth about the water quality, but government officials denied the allegation.¹⁵⁹ At time of writing, the position has not been filled and District Commissioner Rosemary Moyo told Human Rights Watch that she had not visited the communities since the departure of the district environmental officer.¹⁶⁰ As a result, no testing may have been undertaken by a qualified government official for more than a year.

The scope of the inspections of the Regional Mining Office is often limited to qualitative observations made by the inspection team, including observations of working conditions and safety equipment for mine workers. None of the reports Human Rights Watch

¹⁵⁵ Human Rights Watch interview with George Maneya, chief mining engineer at the Regional Mining Office, Mzuzu, August 26, 2015.

¹⁵⁶ Regional Mines Office, Mzuzu, Report of the First Quarter Coal Mines and Quarry Inspection Held in the Northern Region Held from 18-22 to 29 August, 2014, August, 31 2014, para. 5. The report goes on to state that “The proposed inspections should be properly organized and coordinated between Mines Department-Headoffice and the respective regional offices.”

¹⁵⁷ Ibid.

¹⁵⁸ Human Rights Watch interview with Aaron Chabonda, director of the Water Department, Karonga, July 29, 2016.

¹⁵⁹ Human Rights Watch meetings with officials of the Ministry of Natural Resources, Energy and Mining, Lilongwe, March 15, 2016.

¹⁶⁰ Human Rights Watch interview with Rosemary Moyo, March 11, 2016.

examined included results of water or soil testing or any indication that such testing had been conducted.¹⁶¹ Ministry officials also told Human Rights Watch that the scope of their monitoring is limited to occupational health and safety and does not include community impacts.¹⁶² A government official from the Ministry of Agriculture, Irrigation and Water also told Human Rights Watch that water testing is not performed more than once a year.¹⁶³

There are also indications that government decisions about which mines to prioritize for inspection or monitoring are taken on based on the reputation of the company, rather than the risks posed to the community. For example, one government official pointed out: “Paladin is very mindful and they have a reputation of protecting the environment and the community. We go there less often, because the smaller mines and underground mines are more concerning.”¹⁶⁴ Another government officer said that the costs for water testing will be shared between the company and the Water Department. As a result, the Water Department only carries out inspections for Paladin uranium mine.¹⁶⁵ Ministry officials told Human Rights Watch that they sometimes rely on company test results, which undermines the independence of the monitoring process. They also said that they sometimes receive financial or transportation support from the companies. For example, government officials may travel to the mines in vehicles owned by the company.¹⁶⁶ This can create additional mistrust and fear among communities that companies may be influencing monitoring results.

In interviews, government officials made conflicting statements about who bore the responsibility for monitoring the operations of mines and overseeing the follow up to inspections. For example, the district commissioner in Karonga told Human Rights Watch that they are not responsible for mining issues in the district because this is not an area of governance that falls under their responsibilities after the devolution of the government.¹⁶⁷

¹⁶¹ Copies of inspection reports on file with Human Rights Watch.

¹⁶² Human Rights Watch meetings with government officials at the Ministry of Natural Resources, Energy and Mining, March 15, 2016 and August 2, 2016.

¹⁶³ Human Rights Watch meetings with Peaches Phiri, deputy director for water quality, Ministry of Agriculture, Irrigation and Water, Lilongwe, August 3, 2016.

¹⁶⁴ Human Rights Watch interview with Charles Kaphwiyo, director of the Department of Mines, Lilongwe, March 17, 2016.

¹⁶⁵ Human Rights Watch interview with Aaron Chaponda, July 29, 2016.

¹⁶⁶ Human Rights Watch interview with James Namalima, deputy project coordinator, mining governance and growth support project, Ministry of Natural Resources, Energy and Mining, Lilongwe, March 15, 2016.

¹⁶⁷ Human Rights Watch interview with Rosemary Moyo, March 11, 2016. After the change to a multiparty system in 1994, the new government undertook a number of studies on decentralization, culminating in the implementation of the National

Harry Hardson Mwanyembe, chairman for health and environment on Karonga's District Council, also said that the local government is not responsible for the mines and that this would be one of the reasons why things were "not going right."¹⁶⁸ Local government representatives also told Human Rights Watch that they do not receive the environmental monitoring reports.¹⁶⁹ "The [central] government fears that the community will act on the reports if given access," said Patrick Kishombe, chair of the district council. "They don't want that."¹⁷⁰

Ministry of Mining officials claimed, however, that the district commissioner represents the government at the district level and should be the first point of contact for the communities, including for monitoring.¹⁷¹ At the same time, central government officials acknowledged that the ministry is not appropriately represented at the district level. "We have very few offices, only in Lilongwe and two additional ones in the regions, but not at the district level," said Charles Kaphwiyo, then-director of the Department of Mines.¹⁷² Company officials indicated that the government performs inspection visits at the mines, but did not specify the scope, frequency, or agencies involved.¹⁷³

At the core of many people's concern about the risks of mining is the fact that neither Mwabulambo nor Kayelekera have health facilities where they can be diagnosed and have their treated. Even the district hospital in Karonga town, serving more than 200,000 district residents, is not equipped to run the necessary tests to determine whether patients might have become ill from mining.

Dr. Ted Bandawe, medical officer at the District Hospital in Karonga, told Human Rights Watch that the hospital lacks "basic equipment to do proper diagnostic" procedures and,

Decentralisation Policy in 1996, giving local governments more power and emphasizing the role of District Assemblies. See National Decentralisation Policy, *Ministry of Local Government and Rural Development*, 1996, <http://www.300in6.org/wp-content/uploads/2014/07/1.-National-Decentralisation-Policy-by-GoM-1998.pdf> (accessed September 14, 2016).

¹⁶⁸ Human Rights Watch interview with Harry Hardson Mwanyembe, chairman for health and environment on Karonga's District Council, Karonga, August 22, 2016.

¹⁶⁹ Ibid.

¹⁷⁰ Human Rights Watch interview with Patrick Kishombe, chairman of the District Council, Karonga, August 22, 2016.

¹⁷¹ Human Rights Watch interview with James Ali, principal secretary for energy affairs, Lilongwe, March 17, 2016.

¹⁷² Human Rights Watch interview with Charles Kaphwiyo, March 17, 2016.

¹⁷³ Human Rights Watch interview with Greg Walker, managing director, Paladin Africa Limited, Lilongwe, August 17, 2015; Email from Hastings Jere, director of Malcoal, to Human Rights Watch, July 22, 2016.

consequently, “[they] are failing to undertake basic procedures.”¹⁷⁴ For example, blood testing equipment is so basic that it cannot test for the presence of toxic substances such as lead or arsenic in blood. Such substances can get into the water, or food sources that live in that water, through the mining process.

A woman told Human Rights Watch that her husband had worked at Paladin from 2006 to 2014, and she said that he has suffered from asthma since 2009. “We don’t know whether this is caused by uranium or coal,” she said. “We live very close by the road to Malcoal. Right now there are two [mining] vehicles passing by about seven times a day. My small son also has asthma.”¹⁷⁵

In Kayelekera, the closest health center is about 15 kilometers away from the village, and most families struggle with paying the costs for transportation to this location. “I can hardly afford [to get there],” said one 33-year-old woman, who lives with her husband and six children in Mwenelupembe village.”¹⁷⁶

In Mwabulambo, a traditional leader explained that community members often cannot access appropriate health care for themselves or their children because the health center is too far away.¹⁷⁷ The health worker, who is only trained to distribute vitamins, also observed that his patients sometimes do not go to the health center because they cannot afford the trip. “They just go to the grocery store instead and buy some of the simple medication that is sold there,” he said.¹⁷⁸

According to the community, Paladin and Eland committed to building a clinic or health center when they started mining several years ago, but this has not yet happened.¹⁷⁹ In fact, the commitment to “construct at Kayelekera ... a clinic to a typical standard for such facilities in Malawi” is part of the development agreement between the Government of Malawi and Paladin.¹⁸⁰ A community member in Kayelekera remembered: “By the time they

¹⁷⁴ Human Rights Watch interview with Dr. Ted Bandawe, Karonga, March 11, 2016.

¹⁷⁵ Human Rights Watch interview with J. L., Kayelekera, March 10, 2016.

¹⁷⁶ Human Rights Watch interview with Christina M., Kayelekera, March 10, 2016.

¹⁷⁷ Human Rights Watch interview with GVH Mwangomba, Mwabulambo, August 21, 2015.

¹⁷⁸ Human Rights Watch interview with Samson Mkwezalamba, Mwabulambo, March 7, 2016.

¹⁷⁹ Last confirmed during a visit by Human Rights Watch in March 2016.

¹⁸⁰ “Development Agreement Between the Government of the Republic of Malawi, Paladian (Africa) Limited, and Paladin Energy Minerals NL on the Kayelekera Uranium Project,” 2007, para 20.1 (b), on file with Human Rights Watch.

opened the Kayelekera [uranium mine] they promised the community a clinic, but until today they have not built it. We are poor, so they will never keep their promises.”¹⁸¹

“The situation for women is especially difficult,” said a 37-year-old woman who is the wife of a chief in Mwabulambo. “There is a law that says that women have to give birth at the hospital, otherwise they need to pay a fine. But the hospital is too far and the poor women can’t afford to go there.... People here are crying.”¹⁸²

When asked about implementation of these commitments, Minister of Health Peter Kawale indicated that his ministry was “not involved in the monitoring of company commitments for healthcare.”¹⁸³ Officials at the Ministry of Natural Resources, Energy and Mining acknowledged that health centers are urgently needed in mining communities, but admitted that the government has not yet managed to promote enforcement of company commitments.¹⁸⁴ None of the three companies responded to this issue when contacted by Human Rights Watch.

Lack of Access to Environmental and Health Information

Malcoal had promised us a health center, new taps, and bridges. They didn’t talk about any risks.¹⁸⁵

—41-year-old woman, Kayelekera, March 2016

Communities in Kayelekera and Mwabulambo told Human Rights Watch that they did not receive regularly updated information about ongoing risks associated with mining, nor did they receive monitoring results from the mining companies. People are concerned that the dearth of knowledge about mining makes it difficult to protect themselves from risks, properly diagnose diseases, and access treatment. “The government should come and talk to the community about mining. They should educate us, including about the risks of coal mining,” one woman said.¹⁸⁶

¹⁸¹ Human Rights Watch interview with Schubert M., Kayelekera, August 20, 2015.

¹⁸² Human Rights Watch interview with Collias M., Mwabulambo, August 21, 2015.

¹⁸³ Human Rights Watch interview with Peter Kawale, March 16, 2016.

¹⁸⁴ Human Rights Watch interview with Officials at the Ministry of Natural Resources, Energy and Mining, March 17, 2016.

¹⁸⁵ Human Rights Watch interview with Lucia K., Kayelekera, March 2016.

¹⁸⁶ Human Rights Watch interview with Rosbelle K., Mwabulambo, March 8, 2016.

A resident of Kayelekera, where Paladin and Malcoal are located, recalled that the community had asked Malcoal to do water quality testing for any harmful substances, but the company refused. She said: “Paladin does its own testing but they don’t tell us about the results.”¹⁸⁷

In 1992, the United Nations Conference on Environment and Development recognized access to environmental information, public participation in decision-making over natural resources, and access to justice as important pillars of sustainable development.

Chiefs, teachers, and health workers also confirmed the lack of access to the results of environmental testing done by both the government and the companies.¹⁸⁸ “The government was here last month to test the water. But they usually don’t report back,” a teacher at a public primary school in Kayelekera told Human Rights Watch. She said: “I told them that they should come back and explain to the people what they found, but they never did.”¹⁸⁹ Paramount Chief Kyungu, who is the traditional authority for the entire district, also expressed concern about the lack of access to environmental and health information for the communities affected by mining.¹⁹⁰

Malawian civil society organizations have voiced concern about the lack of access to information. Activists in Karonga said that they have contacted the companies several times to gain access to EIAs and monitoring reports but did not receive a response.¹⁹¹ Rachel Etter-Phoya, head of accountability and programs at Citizens for Justice, said: “The government keeps talking about win-win situation for the country and companies, and that's not going to happen when there is limited communication [with the communities] and poor access to information.”¹⁹²

Government officials at the Ministry of Mining acknowledged that they often fail to report back to communities after monitoring visits because they are afraid that this might create further tension.¹⁹³

¹⁸⁷ Human Rights Watch interview with R. H., Kayelekera, March 9, 2016.

¹⁸⁸ Human Rights Watch interview with Samson M., March 7, 2016.

¹⁸⁹ Human Rights Watch interview with Ana Gondwe, Kayelekera, March 10, 2016.

¹⁹⁰ Human Rights Watch interview with Paramount Chief Kyungu, Karonga, July 31, 2016.

¹⁹¹ Human Rights Watch interview with Danny Simbeye, Uraha Foundation, Karonga, July 31, 2016.

¹⁹² Human Rights Watch interview with Rachel Etter-Phoya, Lilongwe, July 27, 2016.

¹⁹³ Human Rights Watch meeting with government officials at the Ministry of Natural Resources, Energy and Mining, Lilongwe, March 15, 2016.

Mining ministry officials pointed to a communications strategy that they are developing for the mineral sector.¹⁹⁴ The draft of the strategy from November 2015 includes elements that could help improve communications with the communities. The strategy acknowledges that significant knowledge gaps exist on some key issues relating to the sector, including “the potential role of mining in local development, the legislative framework governing the sector; the appropriate roles and responsibilities of all stakeholders; and the typical steps of a mine lifecycle (including wrong perceptions that are widely held about the exploration phase, and the length of time required to develop a mine from exploration to full production).”¹⁹⁵ It seeks to improve and increase direct communication with community members about “health issues; protection of vulnerable groups, including women and children; ...relocation; resettlement; and land ownership.”¹⁹⁶ However, the strategy fails to ensure that mining-affected communities receive regular and updated information about the results of environmental monitoring.

Ministry of Mining officials also said that Malawi is in the process of developing a new online cadaster system, which could also serve as a portal to make inspection reports available to the public.¹⁹⁷ The Malawi Mining Cadastre Portal was launched in August 2016 and currently displays all large-scale mining licenses at the exploration and production stages.¹⁹⁸ According to the portal “additional datasets will be included as and when the data are validated and made available.”

The District Commissioner in Karonga said that they have never seen any monitoring reports.¹⁹⁹ Local and foreign NGOs have long argued that the lack of access to results of the monitoring in Karonga district fuels rumors of contamination.²⁰⁰

¹⁹⁴ Government of Malawi, “Communications Strategy for Malawi’s Mineral Sector, Final Draft,” November 2015, on file with Human Rights Watch.

¹⁹⁵ *Ibid.*, p. 6.

¹⁹⁶ *Ibid.*, p.11.

¹⁹⁷ Human Rights Watch meeting with government officials at the Ministry of Natural Resources, Energy and Mining, Lilongwe, August 2, 2016.

¹⁹⁸ See “Malawi Mining Cadastre Portal,” accessed August 24, 2016, <http://portals.flexicadastre.com/malawi/>.

¹⁹⁹ Human Rights Watch interview with Rosemary Moyo, March 11, 2016.

²⁰⁰ Kendyl Salcito et al., “Assessing corporate project impacts in changeable contexts: A human rights perspective,” *Environmental Impact Assessment Review*, vol. 47 (2014), p. 43.

When asked about their environmental testing results in Kayelekera, Paladin’s then-Malawi Manager Greg Walker said the company tests the discharged water every four hours and submits monthly, quarterly, and yearly reports to the government. However, Greg Walker admitted that the company doesn’t disclose monitoring results regarding water testing.²⁰¹ Mr. Walker said: “We don’t disclose our monitoring results regarding water testing because there might always be outliers that can be misinterpreted by the general public.”²⁰² Mr. Walker said Paladin would not be opposed to the government sharing the results with the villagers, but the government has not done so to date.

Women and girls may be particularly affected by lack of access to information about mining and its dangers. Malawi’s Constitution and policies recognize women’s right to full and equal protection in the law, and non-discrimination on the basis of their gender or marital status. However, in practice, their rights are largely curtailed by socio-cultural gender norms and patriarchal beliefs and attitudes.²⁰³ Poverty and discriminatory treatment in the family and in public life also negatively affect women and girls. Patrilineal systems of land ownership in parts of the country, including Karonga district, can further perpetuate discrimination against women in the family.²⁰⁴

Limited participation in meetings with companies or the government is one of the main challenges women face regarding access to information about mining, often of particular importance to them as family caregivers.

²⁰¹ Human Rights Watch interview with Greg Walker, August 17, 2015.

²⁰² Ibid.

²⁰³ Constitution of the Republic of Malawi, art. 24. For an in-depth discussion of the current framework see Human Rights Watch, *“I’ve never experienced happiness”: Child Marriage in Malawi*, 2014, <https://www.hrw.org/report/2014/03/06/ive-never-experienced-happiness/child-marriage-malawi#cdf20a>. Malawi Human Rights Commission (MHRC), “Cultural Practices and their Impact on the Enjoyment of Human Rights, Particularly the Rights of Women and Children in Malawi,” 2005, http://www.medcol.mw/commhealth/publications/cultural_practices_report.pdf (accessed May 3, 2016); The African Commission on Human and Peoples’ Rights noted in 2015 that the “harmful cultural practices continue to restrict women in Malawi from fully enjoying their rights, and are often the cause of several human rights violations against them,” African Union, African Commission on Human & Peoples’ Rights, “Concluding Observations and Recommendations on the Initial and Combined Periodic Report of the Republic of Malawi on the Implementation of the African Charter on Human and Peoples’ Rights (1995 –2013),” November 4-18, 2015, www.achpr.org/files/sessions/57th/conc-obs/1-1995-2013/concluding_observations__initial__combined_state_report_malawi.pdf (accessed May 3, 2016), para. 57.

²⁰⁴ Karonga district is one of the few patrilineal districts in Malawi, see Erling Bergea et al., “Lineage and land reforms in Malawi: Do matrilineal and patrilineal landholding systems represent a problem for land reforms in Malawi?” *Land Use Policy*, vol. 41 (2014), p. 64. For a general discussion of the impacts on women in Malawi, see Women’s Legal Resource Center, “Women’s access to land and household bargaining power: a comparative action-research project in patrilineal and matrilineal societies in Malawi,” March 2011, http://www.landcoalition.org/sites/default/files/documents/resources/WLR_9_Malawi.pdf (accessed May 13, 2016).

Several women said that they would learn from their husbands or the chiefs about promises companies made to the community, but could not access information about the risks of mining themselves. A woman who lives in Kayelekera recalled:

Many women attended a meeting [with Malcoal] but weren't given the opportunity to speak. I attended the meeting but I didn't raise my hand ... I didn't dare to ask a question. I would have liked to ask about transportation for child delivery.²⁰⁵

At Mwabulambo, several women said that women were excluded from participating in meetings organized by Eland.²⁰⁶ One woman said: "Only the men can get information directly from the company or the government."²⁰⁷ As a result, women often rely on their husbands for information about what is happening.

Threats to Water

The pipes were right by my house, [with running water] in the kitchen and bathroom. And then they destroyed everything.²⁰⁸

—Nagomba E., 75, Mwabulambo, July 2016

Mining can have significant impacts on water in communities, and on watersheds more broadly.²⁰⁹ These can include declining water quality—both ground and surface water—due to contamination; reduced availability of water; inadequate amounts of water for domestic and other uses; and decreased access to water and sanitation facilities due to

²⁰⁵ Human Rights Watch interview with Lucia K., Kayelekera, March 9, 2016.

²⁰⁶ Human Rights Watch interview with Modester M., Mwabulambo, March 7, 2016 and Rosbelle K., Mwabulambo, March 8, 2016.

²⁰⁷ Human Rights Watch interview with Modester M., March 7, 2016.

²⁰⁸ Human Rights Watch interview with Nagomba E., March 7, 2016

²⁰⁹ "Principle 3," ICMM, accessed September 14, 2016, <https://www.icmm.com/en-gb/about-us/member-commitments/icmm-10-principles/icmm-principle-3> (accessed September 14, 2016); ICMM, "2014 ICMM Stakeholder Perception Study: Tracking Progress, Final Report," 2014, <http://www.icmm.com/publications/pdfs/8615.pdf> (accessed September 14, 2016); Marta Miranda and Amanda Sauer, "Mine the Gap: Connecting Water Risks and Disclosures in the Mining Sector," September 2010, http://pdf.wri.org/working_papers/mine_the_gap.pdf (accessed September 14, 2016) p. 3; UN Human Rights Council, Report of Special Rapporteur on the rights of indigenous peoples, James Anaya, Extractive industries operating within or near indigenous territories, A/HRC/18/35, July 11, 2011, para. 30; UN Human Rights Council, Report of Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, mission to the United States of America, A/HRC/18/33/Add.4, August 2, 2011, para. 69.

resettlement.²¹⁰ Steps can be taken to mitigate the impact on communities or watersheds, but monitoring is necessary to ensure that the most severe effects are contained.

Both coal and uranium mining are known to be potential threats for nearby water sources and watersheds. Explosives used in coal mining can damage water tables; mining can release heavy metals in bodies of water and create acid mine drainage (AMD) and methane gas, contaminating nearby water supplies.²¹¹ Surface coal extraction also directly causes AMD because it exposes rocks, both in the mine and in mine waste, to sun and rain. This exposure causes chemical reactions that lead to the formation of sulphuric acid and dissolved iron. When rain washes over the acidified rocks, the runoff into streams and groundwater acidifies water sources. Slurry (also known as tailings), a byproduct created when the coal is chemically washed to separate it from other minerals, can also contaminate water used by communities.²¹²

Uranium mining creates radioactive and chemically toxic waste. The tailings retain radioactive elements as well as other hazardous materials including heavy metals.²¹³

Open pit uranium mining sites produce waste rock on an average scale of 40 tons of waste to every one ton of recovered uranium, and the waste rock can also retain radioactive elements.²¹⁴ Historically, water overflows during heavy rains and leaching of contaminants into groundwater through the bottom of the tailings pond are the most common causes of accidental radiation release into communities.²¹⁵

²¹⁰ For a comprehensive overview of scientific articles, company sustainability reports and community perspectives focused on eight developing countries that is more strongly focused on the environmental dimension of water, see International Mining for Development Center, “Water issues associated with mining in developing countries Centre for Water in the Mineral Industry,” August 2012, <http://im4dc.org/wp-content/uploads/2013/09/Water-Issues-Associated-with-Mining-in-Developing-Countries1.pdf> (accessed September 14, 2016), p. 8.

²¹¹ Kentucky Environmental Foundation, “Health Impact Assessment of Coal and Clean Energy Options in Kentucky,” 2011, p. 6. See also James Sams III and Kevin Beer, “Effects of Coal-Mine Drainage on Stream Water Quality in the Allegheny and Monongahela River Basins—Sulfate Transport and Trends,” *USGS National Water-Quality Program*, 2000, pp. 3-5.

²¹² Kentucky Environmental Foundation, “Health Impact Assessment of Coal and Clean Energy Options in Kentucky,” 2011, p. 15; Physicians for Social Responsibility, “Coal’s Assault on Human Health,” November 2009, <http://www.psr.org/assets/pdfs/psr-coal-fullreport.pdf> (accessed September 14, 2016), p. 7.

²¹³ OECD and NEA, “Managing Environmental and Health Impacts of Uranium Mining,” 2014, <https://www.oecd-neo.org/ndd/pubs/2014/7062-mehium.pdf> pp. 22, 79.

²¹⁴ *Ibid.*, p. 91.

²¹⁵ *Ibid.*, pp. 79-80; And examples of past failures in Germany and Canada are documented in *Ibid.*, pp. 83-89.

Interviewees in Kayelekera, where Malcoal and Paladin operate, described changes in the color, taste, and smell of the water used by households for drinking, cooking, and cleaning. One woman described the water that she believed to be contaminated as “sour and salty.”²¹⁶ While most people observed that the water they used generally looked clear, one woman stated: “During the rainy season the coal is swept from the mountain into the river as well as from the gully, and at those times the water turns blackish.”²¹⁷ They do not know what impact this has had on the safety of the water since water testing does not happen on a regular basis, and, even when it does, results are not reported back to the community.²¹⁸

Residents in Kayelekera complained that Malcoal does not properly manage its mining site and coal, and potentially dangerous coal run-off can enter the local river during the rainy season between November and March.²¹⁹ In particular, the mining company failed to take appropriate measures to segregate and contain tailings from the watershed and prevent the coal and mining waste from running into the local river.²²⁰ An inspection report from the Regional Mining Office from 2014 also indicated that the mine “pose[s] severe environmental challenges to the local community and Sere River.”²²¹

Malcoal company representatives interviewed by Human Rights Watch reported that government officials come about every three months for an inspection. “I don’t know whether the government is doing any testing,” said a site administrator at Malcoal. “But we make sure that the river does not get polluted.” Despite repeated requests, he and other company officials did not provide any details on the company’s strategy for mitigating the risks.²²²

People living in the community were also concerned about potential water pollution from the Paladin mining site. Bruno Chareyon, a French scientist who undertook partial testing of water sources in the village in 2012, warned that some “water sources will probably be

²¹⁶ Human Rights Watch interview with Lucia K., March 9, 2016.

²¹⁷ Human Rights Watch interview with Christina M., March 10, 2016.

²¹⁸ Human Rights Watch interview with Lucia K., March 9, 2016.

²¹⁹ Human Rights Watch interview with Schubert M., August 20, 2015.

²²⁰ This was confirmed during Human Rights Watch site visits in August 2015 and July 2016.

²²¹ Regional Office of Mines, “Inspection report,” August 19, 2014, on file with Human Rights Watch.

²²² Human Rights Watch interview with site administrator, Kayelekera, August 20, 2016. Email from Hastings Jere, July 23, 2016.

impacted by the mining activities [including by] spillage, direct discharges and contamination of underground water resources.”²²³

In a letter to Human Rights Watch, Paladin explained that the company maintains safety, health, radiation, and environmental management programs.²²⁴ Beginning in 2015, Paladin had started to discharge water from one of its tailings ponds into the river system. The company justified this by claiming it became necessary because the mine was not operational at the moment.²²⁵ Company representatives said the water had been treated prior to discharge to ensure that uranium levels were below the World Health Organization’s guidelines for drinking-water quality, an authoritative basis for the setting of national regulations and standards for water safety in support of public health; however, the community remains skeptical.²²⁶ A 24-year-old woman in Kayelekera said: “Everyone I know is scared of the water. But people still drink it because they are too far away from the taps or because they are not fit enough to walk such long distances.”²²⁷

For the community in Mwambulambo, one of the biggest worries is the destruction of previously available water sources by the mining company. Former President Hastings Banda ran a nationwide program to install piped water in rural areas. Mwambulambo was one of its beneficiaries, and the government installed several community drinking water taps.²²⁸ When mining started in 2007, the company destroyed the pipes that supplied these taps in the process of their mining operations.²²⁹ A 75-year-old woman who has lived all her life in Mwambulambo told Human Rights Watch:

When the company came in 2007, they cut the pipes of water from the government water supply and left the villagers to drink water from the river. The company promised that they would drill boreholes for us, but they didn’t. I worry about the safety of the [river] water due to the fact that it has

²²³ Bruno Chareyon, “Impact of the Kayelekera uranium mine, Malawi”, *EJOLT*, No. 21 (2015), <http://www.ejolt.org/2015/02/impact-kayelekera-uranium-mine-malawi/> (accessed July 21, 2015), p. 62.

²²⁴ Letter from Paladin to Human Rights Watch, July 29, 2015.

²²⁵ Human Rights Watch interview with Greg Walker, August 17, 2016.

²²⁶ *Ibid.*

²²⁷ Human Rights Watch interview with R. H., Kayelekera, March 9, 2016.

²²⁸ Human Rights Watch interview with Aaron Chaponda, July 29, 2016.

²²⁹ *Ibid.*; Human Rights Watch group interview with women, Mwambulambo, March 6, 2015.

remnants of coal from the water from the abandoned mining pits, which bursts at the seams and leaks into the river.²³⁰

Community members complained repeatedly to the government and company managers and asked for boreholes to replace the taps, but they said that it was not until 2015 that two boreholes were installed. Without access to improved sources for water, many villagers explained that they have used water collected directly from the river for many years, including for drinking, even though they did not think it was safe because of mining. A woman explained: “Before the mining started, we used tap water. But after the company destroyed the pipes my family used river water for drinking for a while.”²³¹

The experience of some families in Mwabulambo, who see no alternative but to use river water because their homes are too far from boreholes, runs counter to that of many other Malawians. Most Malawians (86 percent) have access to improved water—i.e., boreholes, shallow wells with a hand pump, protected wells, and tap water—due to efforts made by government and international donor to meet the Millennium Development Goals, a set of anti-poverty goals agreed to by 189 countries in 2000.²³² Some 62 percent use a tube well, boreholes with pumps, or a water point connected to a piped source as their source of drinking water.²³³

The challenges in accessing safe water for household use disproportionately impact women and girls, who are often primarily responsible for getting water for the family. Caregivers, often women, also shoulder a greater burden of care work and bear the responsibility of ensuring that vulnerable individuals—children, older people, and those recovering from surgeries or illnesses—avoid exposure to unsafe water.

²³⁰ Human Rights Watch interview with Nagomba E., March 7, 2016.

²³¹ Human Rights Watch interview with Mikinara N., Mwabulambo, March 7, 2016.

²³² Dataset from 2014, see National Statistical Office of Malawi, “Monitoring the situation of children and women, Malawi MDG Endline Survey 2014,” June 2015,

http://www.nsomalawi.mw/images/stories/data_on_line/demography/MDG%20Endline/MES%202014%20Report.pdf.

²³³ National Statistical Office of Malawi, “Welfare Monitoring Survey 2014,” October 2015,

http://www.nsomalawi.mw/images/stories/data_on_line/agriculture/wms_2014/Welfare%20Monitoring%20Survey%202014.pdf, p. 77.

In Karonga's mining communities, women often walk longer distances to access what they believe to be safer, less contaminated water, even if that can mean having to walk more than several kilometers up to five times a day.²³⁴

The limited number of boreholes in the community means that women often face significant wait times to fill the containers they carry to the water source. A Mwabulambo resident told Human Rights Watch that she has to travel one hour round trip to the borehole and back. As a result, her family sometimes uses water from the closest river, including to drink. She said:

The river is pretty far from my house, but the advantage is that there is no waiting line for the water there.... When we started drinking the river water, it was ok. But the coal changed the color of the water. Fishermen also complained. The water eventually turned black.²³⁵

Traveling long distances or waiting in line to collect water can expose women and girls to danger and leaves them with less time to attend school, earn money, or simply to rest. Having to walk long distances can also have a distinct impact on older women, pregnant women, or women with physical disabilities. A 75-year-old woman in Mwabulambo told Human Rights Watch:

As an old woman I find it very difficult to walk to the river all the time. My husband is very old and needs me to bring him water for bathing, my three grandchildren are at school during the day, so the situation is difficult for me. I go to the river three times a day. In the morning I collect water for my husband to bathe. Then mid-morning I go and collect water for drinking, and then midday I go and collect water for cooking.²³⁶

Community Health Concerns

My husband ... would spit black saliva when he returned from work. He eventually got really sick. He has difficulty breathing and his heart is

²³⁴ Human Rights Watch interview with Anamaria M., Mwabulambo, August 21, 2015.

²³⁵ Human Rights Watch interview with Alice N., Mwabulambo, March 7, 2016.

²³⁶ Human Rights Watch interview with Nagomba E., March 7, 2016.

weak.... The doctors told him not to work because of his illness. He can't help me with the household, so I am responsible for everything.

—Lucia K., Kayelekera, 41, who lives in a household of 13 people, March 2016

In Karonga district, many community members whom Human Rights Watch interviewed reported illnesses, including respiratory diseases, gastrointestinal illnesses, and skin problems that they believe might be related to coal or uranium mining due to the prevalence in the community since the mining started.²³⁷

The absence of regular environmental monitoring and limited access to healthcare make it difficult to attribute specific diseases to the impacts of mining operations on the environment. However, it is important to recognize that environmental health studies in other countries have shown that mining increases the health risks for people living in areas near mining operations.²³⁸

In Kayelekera, the dirt road to the coal mining and uranium mining sites passes by several mud and stone houses, tucked away behind hills and trees, and the primary school with five classrooms. Community members interviewed by Human Rights Watch complained about the dust blowing up from the mining trucks on the road and reported increasing prevalence of bad coughs and asthma in their community.²³⁹ A 34-year-old woman who lives with her husband and five children in a house by the road to Paladin told Human Rights Watch:

One of the big problems with the primary school is the dust from the road [used by trucks from Paladin and Malcoal]. I have two of my children there and they cough a lot. We had written to Mr. Jere [manager of Malcoal] and they started using another road. But then this year's rainy season made the other road impassable and they started using the old road again that passes directly by the primary school.²⁴⁰

²³⁷ Human Rights Watch group interview with women, Mwalumambo, March 6, 2015; Human Rights Watch group interview with women, Kayelekera, March 9, 2016.

²³⁸ See Human Rights Concerns section in Background, pp. 22-24.

²³⁹ While the number of trucks varies depending on the season and the activities at the mines, Human Rights Watch was able to document that trucks were passing about 10 times per day in mid-March 2016.

²⁴⁰ Human Rights Watch interview with Kettie M., Kayelekera, March 10, 2016.

High dust volumes alongside the dirt road and from coal trucks also created problems for the community in Mwabulambo. Residents said that the Eland coal mine produced 15 truckloads of coal per day when it was still operational. “They went in and out the whole day, covering the road, our houses and our fields with dust,” said a woman from Mwabulambo.²⁴¹

Community members in Mwabulambo also complained about an increased prevalence of illnesses that they suspect might be related to drinking polluted water.²⁴² As part of a country-wide program, a health worker employed by the government comes to the community several times a year to distribute vitamins for children. He thinks that children in particular are at risk of contracting mining-related diseases because they bathe and drink water from the rivers and are specifically vulnerable to water-borne diseases or toxic substances that might be in the water. He also observed that many children have skin rashes. “They look like chicken pox, but it is something else. Some of them are from the sun, for others I don’t know. Small children here are coughing a lot.”²⁴³

Caregivers—most often women—of children, older people, and people with disabilities told Human Rights Watch that health risks in their communities made their care work more burdensome and time-consuming and increased their worry about loved ones.

One woman explained that she takes care of her husband and her child who have both fallen sick with asthma and need additional care.²⁴⁴

Another woman who lives in Kayelekera told Human Rights Watch that her husband became ill with a bad cough when he worked at the coal mine. In order to sustain her family of 13 she sells *vitumbuwa*, traditional Malawian donuts, at the local market. When she is not at the market, she needs to take care of the fields where she grows maize, sorghum, groundnuts, and cassava. “I am responsible for everything,” she said. “If I get sick, my children have to take care of the house. They can’t go to school then.”²⁴⁵

²⁴¹ Human Rights Watch group interview with women, Mwabulambo, March 6, 2015.

²⁴² Human Rights Watch interview with Mkinara N., March 7, 2016.

²⁴³ Human Rights Watch interview with Samson Mkwezalamba, March 7, 2016.

²⁴⁴ Human Rights Watch interview with J. L., Kayelekera, March 10, 2016.

²⁴⁵ Ibid.

Impacts on Food and Livelihoods

Since the mining came we have had many problems. The coal is in our gardens and running into our fields. The way the crops look, you would think that someone had poured petrol on them.²⁴⁶

—Resident of Mwabulambo, Mwabulambo, March 2016

Community members voiced concern that mining is damaging their food and livelihoods.

Some villagers at Mwabulambo said they had noticed a significant decrease in the productivity of their fields. They believe this is related to the fact that Eland uses coal to patch up potholes on the road, which then would wash into their land during the rainy season. A 58-year-old widow, mother of 12 children, said:

The produce is not the same any more. The coal is all over the fields. Where I am staying now the fields are very close from the mine. The coal mine is uphill and enters into the field with the rains. When the coal flows into the fields the rice and maize look like they burnt. The crops don't grow well.²⁴⁷

One of the traditional leaders in Mwabulambo said the mining company also damaged the culverts, tunnels that allowed the water to pass under the road from the rice fields.²⁴⁸ As a result, the irrigation system for the rice fields is not functioning properly, adversely affecting rice production. A member of the village mining committee, a group of villagers who represent the community vis-à-vis the company and government, also said that the mining company cut down trees, reducing the amount of firewood available to the community.²⁴⁹

Changing weather conditions and water pollution may also be contributing to less productive harvests.²⁵⁰ One community member said:

²⁴⁶ Human Rights Watch group interview with women, Mwabulambo, March 6, 2016.

²⁴⁷ Human Rights Watch interview with Rojaina N., March 7, 2016.

²⁴⁸ Human Rights Watch interview with V.H. Messiah, August 21, 2015.

²⁴⁹ Human Rights Watch interview with Edward M., Mwabulambo, August 21, 2015.

²⁵⁰ Different toxic pollutants, which typically emerge from coal mines, can potentially harm crops. See for example, Greenpeace, "Coal Mine Polluting South Kalimantan's Water," October 2014, http://www.greenpeace.org/seasia/id/PageFiles/645408/FULL%20REPORT%20Coal%20Mining%20Polluting%20South%20Kalimantan%20Water_Lowres.pdf (accessed August 24, 2016); The Intergovernmental Panel on Climate Change (IPCC), the leading international body for the assessment of scientific, technical, and socio-economic information on climate change established in 1988, found that increasing temperatures and changes in precipitation in Africa will amplify existing stress on

We grow rice and maize here, but it has become more difficult to do so with the poor rains in recent years. Last year we had 32 bags of rice, this year only 8. We think that the bad rice harvest also has to do with the contamination of the water.²⁵¹

Danny Simbeye, who works with a local civil society organization in Karonga, thinks that climate change also contributes to the water scarcity. “Now, animals, and women they are fighting for water so it's a big problem,” he said.²⁵² Fear of environmental pollution has caused some people to change their diet and spend additional money buying food. One 36-year-old woman from Mwabulambo said: “I don’t eat fish anymore because I am afraid. We used to eat a lot of fish from the river. Now we have to buy usipa [regional type of fish] from the lake.”²⁵³

As farmers and caregivers, women in Malawi are often particularly impacted by food shortages and decreased crop productivity, which makes them work even longer hours and worry about producing enough to sustain their family. A 75-year-old woman in Mwabulambo recalled:

I had six acres of land. But because the coal mine had spread some coal on the road to make the road better for their trucks, during the rainy season the coal seeps into my gardens and this has negatively affected my [fruit] crop output.... Why did you destroy our land? They left us behind with nothing. We are suffering from hunger.²⁵⁴

After Mine Closure

Regarding environmental protection after mine closure and rehabilitation, the MMA requires a mining license applicant to submit a proposal for “the progressive reclamation and rehabilitation of land disturbed by mining and for the minimization of the effects of

water availability and are very likely to reduce cereal crop productivity with strong adverse effects on food security, see IPCC, “Africa,” http://www.ipcc.ch/pdf/assessment-report/ar5/wg2/WGIIAR5-Chap22_FINAL.pdf (accessed May 13, 2016), p. 1202.

²⁵¹ Human Rights Watch interview with GVH Mwangomba, Mwabulambo, August 21, 2015.

²⁵² Human Rights Watch interview with Danny Simbeye, Uraha Foundation, Karonga, July 31, 2016.

²⁵³ Human Rights Watch interview with Enara M., Mwabulambo, March 7, 2016.

²⁵⁴ Human Rights Watch interview with Nagomba E., March 8, 2016.

mining on surface water and ground water and on adjoining or neighboring lands.” However, enforcement of this provision is at the discretion of the government.²⁵⁵

In Mwabulambo, locals said they were not informed about plans to close the mine before the closure in 2015, including how the company intended to mitigate risks stemming from the abandoned mining site. The company left behind several open pits, piles of coal, and deep holes filled with water that were not adequately protected. One woman who lives in the community said: “I believe they left last year ... but they didn’t even say goodbye. When we realized they are leaving we told them to clean up. But until this day they have not cleaned up the area.”²⁵⁶

With the departure of the mining company people are also worried that the pipes to the seven boreholes would never be replaced. A 58-year-old widow and mother of 12 children in Mwabulambo said: “Before the company leaves they need to do something for us. They broke our pipes and left us without tap water.”²⁵⁷

Mining byproducts are capable of contaminating water sources long after a mine closes and need to be managed to prevent future contamination. There are indications that mining waste in Mwabulambo may not have been properly managed by Eland coal mine since it stopped operations in 2015. In particular, the mining company failed to install adequate dams to prevent coal and mining waste from entering the local water sources during its operation, and these contaminants are still threatening the community in Mwabulambo.²⁵⁸ Without an environmentally and socially conscious closure and rehabilitation plan, mines threaten further chemical leakage into water supplies either from breaches of storage or from further oxidation and acid runoff from exposed rocks.²⁵⁹

According to the Ministry of Agriculture, Irrigation and Water government water testing results from 2015 indicated that the water in the open pits is acidic and therefore harmful

²⁵⁵ Section 96 of the MMA permits, but does not require, the government to include in the prospecting or mining license conditions related to mine closure and rehabilitation.

²⁵⁶ Human Rights Watch group interview with women, Mwabulambo, March 6, 2015.

²⁵⁷ Human Rights Watch interview with Rojaina N., March 7, 2016.

²⁵⁸ This was confirmed during Human Rights Watch site visits in August 2015, March 2016, and August 2016.

²⁵⁹ Physicians for Social Responsibility, “Coal’s Assault on Human Health,” November 2009, <http://www.psr.org/assets/pdfs/psr-coal-fullreport.pdf>, pp. vi and 7.

for human health.²⁶⁰ During a Human Rights Watch visit in August 2016 children were swimming in the open pits filled with water.

Government officials from the Ministry of Natural Resources, Energy and Mining said that the failure of the Eland coal mine to rehabilitate the area after mine closure violated Malawi's legal regime for mining.²⁶¹ The government noted that "the Operator did not adhere to the mine closure and abandonment plans. Worse still, they did not even bother to inform the regulatory Institution (the responsible Ministry [of Natural Resources, Energy and Mining]) of their plan to abandon the site and subsequent termination of the mining activities."²⁶² Ministry officials further indicated that after their monitoring visit in May 2016, the government sent an official letter to the operator asking them to ensure that they follow the applicable laws before leaving the site permanently, including "filling the pits or putting fences around them for safety purposes".

However, government officials said that the operator of Eland coal mine has not responded to their request.

²⁶⁰ Human Rights Watch interview with Peaches Phiri, August 3, 2016.

²⁶¹ Human Rights Watch meetings with government officials at the Ministry of Natural Resources, Energy and Mining, March 15, 2016 and August 2, 2016.

²⁶² Government officials at the Ministry of Natural Resources, Energy and Mining, email to Human Rights Watch, July 27, 2016.

IV. Reform Efforts

Malawi is poised to enact a revised law to govern mining. In August 2015, the latest draft for a new Mines and Minerals Bill (MM Bill) was forwarded by the Ministry of Natural Resources, Energy and Mining to the Ministry of Justice for finalization after a consultation period with civil society. The government announced plans to table the bill in Parliament in March, July, and November 2016. However, its adoption looks likely to be delayed until 2017 as civil society and lawmakers have raised concerns about the bill's content.²⁶³

While remarkably progressive in some respects, the MM Bill fails to address the some of the core problems described in this report, most importantly the lack of transparency. One of its major weaknesses is a provision that acts to essentially prevent communities from accessing information about the risks related to mining. Section 38 (4), which deals with submission and ownership of mining-related information, contains a restrictive confidentiality provision.²⁶⁴ It presumes that “any information submitted by a mineral tenement” to the government is confidential until after the license expires and does not provide any relevant exceptions, even in situations where the director and the holder of the mineral right provide consent. Section 233 of the MM Bill addresses inspection results and reports produced by the government.²⁶⁵ It is unclear whether inspection reports carried out by the government could be made available to communities or workers.

²⁶³ See for example, Werani Chilenga, “Committee threatens to reject mining bill,” *MW Nation*, January 21, 2016, <http://mw-nation.com/committee-threatens-to-reject-mining-bill/> (accessed July 5, 2016).

²⁶⁴ Sections 38(3) and (4) of the draft Mines and Minerals Bill read as follows:

(3) Notwithstanding that the Government may be the owner of reports, data and information submitted by a mineral tenement holder, the Government shall be restricted in the use of such reports, data or information where such reports, data or information are to be treated on a confidential basis as provided in this Act.

(4) Unless otherwise specified in this Act, any information submitted by a mineral tenement holder shall remain confidential for as long as the license is valid and two years after the expiry or termination of the license.

Revised Mines and Minerals Bill, *Parliament of Malawi*, August 2015, secs. 38(3) and 38(4).

²⁶⁵ MM Bill Section 233 reads as follows:

(1) An Authorized Officer shall document the results of an inspection in a report, which the Officer shall submit to the Commissioner, within thirty (30) calendar days of the inspection.

(2) The Commissioner shall make inspection reports available to the person to whom the inspection report relates and any other entities as required or useful.

Revised Mines and Minerals Bill, sec. 233.

The government has been working on revising other related regulation including the land laws, petroleum law, and the Environmental Management Act (EMA). The government also announced that they are planning to develop a policy drawing on international best practices in the oil and gas sector and then work to revise the 1983 Petroleum (Exploration and Production) Act.²⁶⁶ However, the timeline for the development and adoption of these laws and policies remains unclear. Recent pressure from various civil society organizations urging the Malawian government to review the 33-year-old law have been met with silence.²⁶⁷

At the same time, as Malawi revises the legal regime for extractive industries, it is also preparing and negotiating an Access to Information Bill (ATI Bill), which may impact the mining sector in terms of information disclosure and transparency. The ATI Bill and the type of information to be made available and accessible to the public have been the subject of intense debate within and between the Malawi Parliament, executive branch, and civil society over the course of many years.²⁶⁸ Even though the November 2015 draft of the bill appeared to be acceptable to most stakeholders, the government revised the bill again in February 2016. In its most recent form, the ATI Bill does not provide for the establishment of an independent oversight body; compromises the principle of maximum disclosure by avoiding retroactive application; and gives the minister of information the power to determine “fees payable for processing requests for information.”²⁶⁹ Members of Parliament have requested more time to review and amend the draft given civil society’s mobilization against this watered-down draft.²⁷⁰

Government officials who spoke to Human Rights Watch in March 2016 seemed optimistic that the proposed ATI bill would be adopted by the end of 2016 and would make it easier

²⁶⁶ Collins Mtika, “Lets woo investors, revise laws later- Malawi Mining Official,” *Nyasa Times*, January 23, 2016, <http://www.nyasatimes.com/lets-woo-investors-revise-laws-later-malawi-mining-official/#sthash.xChqXGYS.dpuf> (accessed July 6, 2016).

²⁶⁷ Rachel Etter-Phoya, “Unanswered Questions Remain Unanswered on Oil and Gas Exploration In Malawi’s Lake and Land (PWYD Malawi Press Release, 24 June 2016),” post to “Mining in Malawi” (blog), June 29 2016, <https://mininginmalawi.com/2016/06/29/unanswered-questions-remain-unanswered-on-oil-and-gas-exploration-in-malawis-lake-and-land-pwyp-malawi-press-release-24-june-2016/> (accessed July 8, 2016).

²⁶⁸ For a detailed analysis of the November 2015 draft, see Center for Law and Democracy, “Malawi, Analysis of the Access to Information Bill, 2015,” February 2016, http://www.law-democracy.org/live/wp-content/uploads/2016/02/Malawi.RTI_Feb16.pdf (accessed March 1, 2016).

²⁶⁹ Access to Information Bill, *Parliament of Malawi*, 2016, on file with Human Rights Watch.

²⁷⁰ “Malawi Civil Society, Media Accuse, Mutharika of Butchering ATI Bill, Bill Rejected,” *Afriem*, February 25, 2016, <http://www.afriem.org/2016/02/malawi-civil-society-media-accuse-mutharika-of-butchering-ati-bill-bill-rejected/> (accessed March 1, 2016).

for communities to access environmental health information.²⁷¹ Asked about the changes made by the government to restrict the scope of the ATI bill to exclude information predating the bill, then-Minister of Information Jappie Mhango, said: “We don’t want to open a lot of books. Every government has something to hide, and applying the law retroactively would create a lot of problems.”²⁷²

In an interview with Human Rights Watch, the former minister also said that their own ministry should act as the oversight body because the Malawi Human Rights Commission, which the previous draft named as the designated oversight body, did not have the capacity to fill that role.²⁷³

Another major initiative aimed at improving transparency in mining governance is Malawi’s steps to become a compliant country with the Extractive Industries Transparency Initiative (EITI).²⁷⁴ EITI promotes good governance in resource-rich countries by fostering open public debate about how oil, gas, and mining revenues are used and setting a global standard for the governance of these resources.²⁷⁵ 51 countries currently implement the EITI and 31 countries are fully compliant with the EITI requirements. Malawi was admitted as an EITI member candidate in October 2015 and is currently undergoing a validation process within two and a half years of admittance. After validation, the EITI Board will give final approval of acceptance.²⁷⁶

At the regional level Malawi is also aiming to align its mining policy to the Africa Mining Vision (AMV).²⁷⁷ The Africa Mining Vision was adopted by Heads of State at the February 2009 AU summit and has been presented as “Africa’s own response to tackling the

²⁷¹ Human Rights Watch interview with Charles Kaphwiyo, March 17, 2016.

²⁷² Human Rights Watch interview with Jappie Mhango, Minister of Information, Lilongwe, March 14, 2016.

²⁷³ Ibid.

²⁷⁴ For more information, see “The Extractive Industries Transparency Initiative,” accessed March 1, 2016, <https://eiti.org/>.

²⁷⁵ For a critical review of some of the challenges of EITI see Human Rights Watch, *Extractive Industries: A New Accountability Agenda, Human Rights and the Extractive Industries Initiative*, May 2013, <https://www.hrw.org/news/2013/05/21/extractive-industries-new-accountability-agenda>.

²⁷⁶ To become a compliant member of the EITI, a country must adhere to the EITI Standard, which includes seven specific requirements, such as effective oversight and complete government disclosure of extractive industry revenues and payments made to the government by extractive industry companies.

²⁷⁷ “Malawi aligns its mining policy to the Africa Mining Vision,” United Nations Economic Commission for Africa press release, August 12, 2016 <http://www.uneca.org/stories/malawi-aligns-its-mining-policy-africa-mining-vision> (accessed September 14, 2016).

paradox of great mineral wealth existing side by side with pervasive poverty.”²⁷⁸ It contains a roadmap to “transparent, equitable and optimal exploitation of mineral resources” to support sustainable growth and socio-economic development in Africa.²⁷⁹

²⁷⁸ “About AMV,” Africa Mining Vision, United Nations Economic Commission for Africa, accessed September 14, 2016, <http://www.africaminingvision.org/about.html>.

²⁷⁹ *Ibid.*

V. Government and Company Response

Malawi's government has acknowledged the impact that mining can have on the health and livelihoods of nearby communities.²⁸⁰ The minister of health said that their ministry was not proactive regarding health monitoring in mining areas.²⁸¹ Government officials at the Ministry of Natural Resources, Energy and Mining were also aware of the weaknesses of the regulatory system and said that authorities sometimes fail to adequately protect environmental health and monitor pollution, creating health risks for communities.²⁸² Specifically, ministry officials admitted that, while inspections are carried out for occupational health and safety issues for workers, the government has failed to monitor health impacts of mining on nearby communities.²⁸³

Ministry officials described capacity problems, such as the lack of facilities equipped to perform water testing.²⁸⁴ The government also acknowledged that there is a lack of coordination among the different ministries and levels of government to carry out effective monitoring.²⁸⁵

Asked about plans for how to address these challenges, the government said that every mining community should have a health facility for local residents and also committed to including social issues in EIA guidelines.²⁸⁶ The government further highlighted that the MM Bill contains a provision making community development agreements mandatory for future mining licenses.²⁸⁷ In a meeting with Human Rights Watch in March and August

²⁸⁰ Ministry of Natural Resources, Energy and Mining, "Strategic Environmental and Social Assessment of the Minerals Sector, Final Report," pp. 86, on file with Human Rights Watch; Human Rights Watch interview with Bright Msaka, March 16, 2016.

²⁸¹ Human Rights Watch interview with Peter Kawale, March 16, 2016.

²⁸² Human Rights Watch interview with government officials at the Ministry of Natural Resources, Energy and Mining, Lilongwe, March 17, 2016.

²⁸³ Human Rights Watch interview with government officials at the Ministry of Natural Resources, Energy and Mining, August 2, 2016.

²⁸⁴ Human Rights Watch interview with government officials at the Ministry of Natural Resources, Energy and Mining, March 15, 2016.

²⁸⁵ *Ibid.*

²⁸⁶ Human Rights Watch interview with government officials at the Ministry of Natural Resources, Energy and Mining, August 2, 2016.

²⁸⁷ Human Rights Watch interview with government officials at the Ministry of Natural Resources, Energy and Mining, March 17, 2016.

2016, officials at the Ministry of Natural Resources, Energy and Mining further announced intentions to visit each mine once per month and to implement the new communications strategy.²⁸⁸ Ministry officials also said that they were working with the company in Mwalumbambo to set up a rehabilitation plan to ensure the safety of the residents.²⁸⁹ However, at time of writing the situation at Eland coal mine site has not changed.

In a letter to Human Rights Watch, Paladin explained that the company maintains safety, health, radiation, and environmental management programs. Paladin also pointed to the company's Human Rights Policy, highlighting the company's commitment to respecting human rights. However, in an interview with Human Rights Watch, Paladin Malawi admitted that the company does not disclose monitoring results regarding water testing or other potential environmental impacts. Paladin had yet to reply to Human Rights Watch's questions regarding the situation in Kayelekera at time of writing.

Malcoal stated in an email to Human Rights Watch that they "strive to help the government to reduce rural poverty by providing employment while at the same time taking care of our communities and the environment".²⁹⁰ Malcoal disputed that any resettlements had taken place in Kayelekera but did not comment on any of the other issues raised in this report.

Representatives of Eland informed Human Rights Watch in writing and by phone that the company has suspended operations at Mwalumbambo.²⁹¹ They had yet to reply at time of writing to Human Rights Watch's request for comment on the substantive issues raised in this report.

²⁸⁸ The draft of the strategy from November 2015 acknowledges that significant knowledge gaps exist on some key issues relating to the sector. It seeks to improve and increase direct communication with community members about "health issues; protection of vulnerable groups, including women and children; ...relocation; resettlement; and land ownership." However, the strategy fails to ensure that mining-affected communities receive regular and updated information about the results of environmental monitoring. Government of Malawi, "Communications Strategy for Malawi's Mineral Sector, Final Draft," November 2015, on file with Human Rights Watch.

²⁸⁹ Human Rights Watch interview with government officials at the Ministry of Natural Resources, Energy and Mining, March 17, 2016.

²⁹⁰ Email from Hastings Jere, director of Malcoal, to Human Rights Watch, July 21, 2016.

²⁹¹ Jan Egil Moe, chairman of the board of Independent Oil and Resources PLC, informed Human Rights Watch via email on July 30, 2015 that "Eland Coal Mine has suspended operations as the operations were not sustainable, and is in the process of being liquidated." This was confirmed on a phone call on July 20, 2016.

VI. Regional and International Legal Obligations

Malawi's government is obliged under international and regional law to protect the rights of people who live in mining communities, including their rights to access information and to water, health and a healthy environment, food, housing, and nondiscrimination.

At the international level, Malawi is a party to core human rights treaties, which provide for the protection of basic civil, political, economic, social, and cultural rights. These include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC).²⁹²

At the regional level, Malawi is party to several relevant treaties, including the African (Banjul) Charter on Human and Peoples' Rights (the African Charter) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol).²⁹³

The 2012 Guiding Principles on Extreme Poverty and Human Rights, which are global policy guidelines focused specifically on the human rights of people living in poverty, state that governments "should take into account their international human rights obligations when designing and implementing all policies, including international trade, taxation, fiscal, monetary, environmental and investment policies."²⁹⁴ These guidelines also elaborate:

²⁹² International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S.171, entered into force March 23, 1976, ratified by Malawi on December 22, 1993; International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res.2200A (XXI), 21 U.N. GAOR Supp. (No.16) at 49, U.N. Doc. A/6316 (1966) 993 U.N.T.S. 3, entered into force January 3, 1976, ratified by Malawi on December 22, 1993; International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981, ratified by Malawi on March 12, 1987; Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, ratified by Malawi January 2, 1991.

²⁹³ African [Banjul] Charter on Human and Peoples' Rights (ACHPR), adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, ratified by Malawi on November 11, 1989; Protocol to the African Charter on Human and People's Rights on The Rights of Women in Africa (the Maputo Protocol), adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, September 13, 2000, CAB/LEG/66.6, entered into force November 2005, ratified by Malawi on May 20, 2005.

²⁹⁴ UN Human Rights Council, Final draft of the guiding principles on extreme poverty and human rights, submitted by the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, A/HRC/21/39, July 18, 2012,

States have a duty, in accordance with their international obligations, to prevent and protect against human rights abuse committed by non-State actors, including business enterprises, which they are in a position to regulate. Where transnational corporations are involved, all relevant States should cooperate to ensure that businesses respect human rights abroad, including the human rights of persons and communities living in poverty.²⁹⁵

Right of Access to Information

Information is a prerequisite for the exercise of various other rights, including the right to the highest attainable standard of physical and mental health, the right to food, the right to safe drinking water and sanitation, the right to a healthy environment, the right to self-determination, and the right to life.

The right of access to information is enshrined in international and regional instruments. The UN Human Rights Committee's General Comment 34 expressly articulates a right for citizen access to information held by public bodies as such access relates to Article 19 of the ICCPR.²⁹⁶ The Human Rights Committee stated that in order to "give effect to the right of access to information, States parties should proactively put in the public domain government information of public interest," ensuring access is easy, prompt, effective, and practical.²⁹⁷ Malawi is also a party to the African Charter, which, in Article 9, states "every individual shall have the right to receive information" and "every individual shall have the right to express and disseminate his opinions within the law."²⁹⁸ The African Commission on Human and Peoples' Rights has further developed an African Model Law on Access to Information "to give effect to the right of access to information as guaranteed by the African Charter on Human and Peoples' Rights."²⁹⁹

<http://daccessdds-ny.un.org/doc/UNDOC/GEN/G12/154/60/PDF/G1215460.pdf?OpenElement> (accessed April 22, 2013), art. 61.

²⁹⁵ *Ibid.*, art. 99.

²⁹⁶ UN Human Rights Committee, General Comment No. 34, Right of Access to Information, U.N. Doc. CCPR/C/GC/34 (2011), paras. 18-19. The Human Rights Committee also pointed out that the right to information is addressed in other articles of the ICCPR, including arts. 17, 14, 2, and Art. 10.

²⁹⁷ *Ibid.*

²⁹⁸ ACHPR, art. 9.

²⁹⁹ Model Law on Access to Information for Africa, African Commission on Human and Peoples' Rights, http://www.achpr.org/files/news/2013/04/d84/model_law.pdf (accessed July 31, 2016).

In 1992, the United Nations Conference on Environment and Development specifically recognized access to environmental information, public participation in decision-making over natural resources, and access to justice as important pillars of sustainable development.

Principle 10 of the 1992 Rio Declaration on Environment and Development emphasizes that “each individual should have appropriate access to information concerning the environment ... including information on hazardous materials and activities in their communities.”³⁰⁰ The 2010 voluntary Bali Guidelines developed the concept further and proposed steps for effective national legislation with regard to access to environmental information.³⁰¹

The right of access to environmental information is also recognized under international human rights law. As Fatma Zohra Ksentini, special rapporteur to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, noted as early as 1994: “The right to information includes the right to be informed, even without a specific request, of any matter having a negative or potentially negative impact on the environment.”³⁰²

Several UN human rights treaty bodies have further explained the link between access to information and other substantive rights. In its General Comment 15 on the Right to Water, the Committee on Economic, Social and Cultural Rights (CESCR) noted that a core obligation of states under the right to water is that individuals have the right to seek, receive, and impart information concerning water issues.³⁰³ In General Comment 14 on the Right to Health, the CESCR further stated that a “core obligation” of states is to “provide

³⁰⁰ Rio Declaration on Environment and Development, adopted June 14, 1992, U.N. Doc. A/CONF.151/26 (vol. I), 31 I.L.M. 874 (1992), <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm> (accessed March 18, 2016).

³⁰¹ UNEP, “Guidelines for the Implementation of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters,” UNEP/GCSS.XI/11, Decision SS.XI/5 Part A, adopted by Governing Council of UNEP February 26, 2010, http://www.unep.org/civil-society/Portals/24105/documents/Guidelines/GUIDELINES_TO_ACCESS_TO_ENV_INFO_2.pdf (accessed March 18, 2016).

³⁰² UN Commission on Human Rights, Report of the Special Rapporteur on the Prevention and Discrimination of Minorities, Fatma Zohra Ksentini, Review of Further Developments in Fields with Which the Sub-Commission Has Been Concerned, Human Rights and the Environment, E/CN.4/Sub.2/1994/9, July 6, 1994 https://www1.umn.edu/humanrts/demo/HRandEnvironment_Ksentini.pdf (accessed March 17, 2016).

³⁰³ Committee on Economic, Social and Cultural Rights, General Comment No. 15, The Right to Water, E/C.12/2002/11 (2002), para. 12(c). The CESCR has also noted that “[i]ndividuals and groups should be given full and equal access to information concerning water, water services and the environment, held by public authorities or third parties.” CESCR, General Comment No. 15, para 48.

education and access to information concerning the main health problems in the community, including methods of preventing and controlling them.”³⁰⁴

According to the UN Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, a lack of information, particularly as it relates to factors affecting the environment or health, prevents free, active, and meaningful public participation, decision-making.³⁰⁵

Information that is related to the environment or that may have an effect on any individual’s health must be available, accessible, and functional.³⁰⁶ In order for information to be available, it must be current, reliable, and generated and collected in a manner that adequately assesses all potential negative impacts on human rights.³⁰⁷ In order for information to be accessible, everyone must be able to seek, obtain, receive, and hold available information, subject only to an overriding, legitimate public-interest justification for non-disclosure, discussed further below.³⁰⁸

In order for information to be functional it must be fit for its intended use, which, in the case of hazardous substances, is to prevent harm, to enable informed decision-making, and to ensure accountability, access to justice, and an effective remedy. In addition, the information must be scientifically accessible, meaning that where information is highly technical, it must be translated into a language that will enable individuals to understand the information so that they may make informed choices.³⁰⁹

³⁰⁴ CESCR, General Comment No. 14, The Right to the Highest Attainable Standard of Health, E/C.12/2000/4 (2000), para. 44(d).

³⁰⁵ UN Human Rights Council, Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Başkut Tuncak, July, 8 2015, para. 24.

³⁰⁶ *Ibid.*, paras. 32-36. The Aarhus Convention, to which Malawi is not a[n eligible] party, requires states parties to ensure that, “in the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is disseminated immediately and without delay to members of the public who may be affected.” Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the “Aarhus Convention”), 2161 U.N.T.S. 447, 38 I.L.M.514 (1999), entered into force October 30, 2010, art. 5(1)(c).

³⁰⁷ Information related to hazardous substances must include intrinsic properties that can cause harm. It must also include details about the presence or potential presence of substances in both people and in their environment, including, where relevant, in the water, air, soil, and food. Finally, it must also include details about protective measures.

³⁰⁸ The public must be made aware that information is available, and the information must be physically available in a timely manner. Further, information must be economically accessible and costs must be kept at a minimum.

³⁰⁹ UN Human Rights Council, Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Başkut Tuncak, July, 8 2015, para. 36.

The African Commission on Human and People’s Rights has also interpreted the African Charter to protect the right of access to environment information.³¹⁰ Specifically, the commission found in 2001 that governments have the following obligations: to order or at least permit independent scientific monitoring of threatened environments; to publicize environmental and social impact studies prior to any major industrial development; to undertake appropriate monitoring; to provide information to those communities that were exposed to hazardous materials and activities; and to provide meaningful opportunities for individuals to be heard and to participate in the development decisions affecting their communities.³¹¹

The African Ministerial Conference on the Environment and regional bodies have also repeatedly recognized the importance of access to information in environmental decision-making.³¹²

Right to Water

The human right to water entitles everyone, without discrimination, “to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use.”³¹³ Various resolutions from the UN General Assembly and Human Rights Council affirm that the human right to safe drinking water is derived from the right to an adequate standard of living.³¹⁴ The right to an adequate standard of living is enshrined in human rights instruments ratified by Malawi, such as the ICESCR, CEDAW, and the CRC.

³¹⁰ Banjul Charter, para. 45(3); African Commission on Human and Peoples’ Rights, Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria, judgement of October 37, 2001, 155/96.

³¹¹ UN Human Rights Council, Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Başkut Tuncak, July, 8 2015. Notably, the European Court of Human Rights held, in *Guerra and Others v. Italy* that Italy had breached its duty to provide essential information that would have enabled the nearby community to assess risks to which they were exposed if they continued to live in a town that was exposed to danger in the event of an accident at a chemical factory. *Guerra and Others v. Italy*, [14967/89], judgement of February 19, 1998.

³¹² Benson Owuor Ochieng, “Implementing Principle 10 and the Bali Guidelines in Africa,” *UNEP Perspectives*, Issue No. 16 (2015), http://www.unep.org/civil-society/Portals/24105/documents/perspectives/ENVIRONMENT%20PAPERS%20DISCUSSION_BALI_003.pdf (accessed May 31, 2016).

³¹³ United Nations General Assembly, “The human rights to safe drinking water and sanitation,” Resolution 70/169 (2015), U.N. Doc. A/RES/70/169.

³¹⁴ *Ibid.*; See also, UN Human Rights Council resolutions 15/9 of September 2010, 16/2 of March 2011, 18/1 of September 2011, and 21/2 of September 2012.

The Maputo Protocol explicitly references the government’s obligation to “provide women with access to clean drinking water.”³¹⁵

The CESCR, in General Comment 15 on the Right to Water, noted that an aspect of the core content of the right to water is that water required for personal or domestic use must be safe. This means it must be free from microbes and parasites, chemical substances, and radiological hazards that constitute a threat to a person’s health.³¹⁶

The special rapporteur on water and sanitation has stated in the context of service provision by non-state actors: “Given that intrinsic link to the fulfilment of human rights, exercising due diligence to become aware of and address potential negative impacts is particularly important.”³¹⁷ She continues:

To meet [their] responsibility, service providers should take certain measures, such as ensuring that the water they provide is of safe quality, ensuring the regularity of supply, not discriminating in their operations, adopting fair procedures in cases of disconnections due to non-payment and refraining from disconnections when people are unable to pay and the disconnection would leave them without access to minimum essential levels of water.³¹⁸

Right to Health and Right to a Healthy Environment

The right to highest attainable standard of health is found in Article 25 of the Universal Declaration of Human Rights (UDHR) and in international and regional treaties binding upon Malawi, including the ICESCR and the CRC.³¹⁹

³¹⁵ Maputo Protocol, Article 15 a.

³¹⁶ The Committee on Economic, Social and Cultural Rights is the U.N. body responsible for monitoring compliance with the ICESCR. CESCR, General Comment No. 15, para. 12(b).

³¹⁷ UN Commission on Human Rights, Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque, A/HRC/15/31, June 29, 2010, para. 42.

³¹⁸ *Ibid.*, 49.

³¹⁹ Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), art. 25; ICESCR, art. 12; CRC, art. 24; Banjul Charter, art. 16; Maputo Protocol, art. 14.

The CESCR, in its General Comment 14 on the Right to Health, has interpreted the ICESCR to include:

[T]he requirement to ensure an adequate supply of safe and potable water and basic sanitation [and] the prevention and reduction of the population's exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health.³²⁰

The Committee on the Rights of the Child, in its General Comment 15 on children's right to health, asserts:

States should regulate and monitor the environmental impact of business activities that may compromise children's right to health, food security and access to safe drinking water and to sanitation.³²¹

The Maputo Protocol specifically obliges governments to “provide adequate, affordable and accessible health services, including information, education and communication programmes to women especially those in rural areas.”³²²

It is well established that the right to health encompasses the right to healthy natural environments.³²³ Article 12 of the ICESCR obliges states parties to improve "all aspects of environmental and industrial hygiene" in order to prevent, treat, and control "epidemic, endemic, occupational and other diseases." The CESCR has clarified that this right imposes on states "the requirement to ensure an adequate supply of safe and potable water and basic sanitation; the prevention and reduction of the population's exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health."³²⁴

³²⁰ CESCR, General Comment No. 14, The Right to the Highest Attainable Standard of Health, U.N. Doc. E/C.12/2000/4 (2000), para. 15.

³²¹ UN Committee on the Rights of the Child, General Comment No. 15, The Right of the Child to the Enjoyment of the Highest Attainable Standard of Health (Art. 24), (Sixty-second session, 2013), U.N. Doc. CRC/C/CG/15, para. 49; CESCR, General Comment No. 14, The Right to the Highest Attainable Standard of Health, para. 15.

³²² Maputo Protocol, art. 14(2).

³²³ ICESCR, art. 12; CESCR, General Comment No. 14, The Right to the Highest Attainable Standard of Health, para 15.

³²⁴ CESCR, General Comment No. 14, The Right to the Highest Attainable Standard of Health.

Relevant regional human rights instruments—such as the African Charter, and its Additional Protocol on the Rights of Women—also recognize a right to a healthy environment.³²⁵ The Maputo Protocol stipulates that states parties shall take all appropriate measures to “ensure greater participation of women in the planning, management and preservation of the environment and the sustainable use of natural resources at all levels.”

Right to Food

The right to adequate food is enshrined in international and regional instruments. Pursuant to Article 11(1) of the ICESCR, states parties pledge to use available resources to progressively realize “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.” As with all socioeconomic rights, the right to adequate food will have to be pursued in a non-discriminatory manner. The Maputo Protocol specifically requires that states parties provide “women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food.”

Right to Housing

The right to housing is enshrined in Article 25 of the UDHR, as a part of the right to an adequate standard of living, and in international and regional treaties binding upon Malawi.³²⁶ Article 19 of the Maputo Protocol also promotes women’s access to and control over productive resources such as land and guarantees their right to property.

The CESCR, in its General Comment 4 on the Right to Adequate Housing, has interpreted the right to include:

[C]ertain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for

³²⁵ Banjul Charter, art. 24; Maputo Protocol, art. 18.

³²⁶ UDHR, art. 25; ICESCR, art. 11(1); Maputo Protocol, art. 16.

cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency.³²⁷

International human rights law recognizes that evictions are legitimate in some circumstances but prohibits resort to forced evictions. Under international law a “forced eviction” is the permanent or temporary removal against the will of individuals, families, or communities from the homes or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.³²⁸ Governments are prohibited from conducting forced evictions themselves, and are obligated to ensure through law and regulation that other parties do not carry out forced evictions. These obligations apply regardless of whether residents are legally entitled to reside on the land they occupy.

The UN Basic Principles and Guidelines on Development-Based Evictions and Displacement, drafted by the UN expert on housing rights, set out the human rights framework under which states may, in exceptional circumstances, resort to involuntary resettlements.³²⁹

Any such involuntary resettlement must be properly provided for in, and comply with, domestic law as well as be in compliance with international human rights law. Those subject to involuntary resettlement should not suffer regression in the enjoyment of their rights due to the resettlement, nor bear any undue burden that undermines their right to maintain and improve a standard of living that is equal or better to the one they previously enjoyed.³³⁰

Those subject to involuntary resettlements “have the right to relevant information, full consultation and participation throughout the entire process,” as well as to just compensation in accordance with human rights standards. Compensation should cover both material losses and lost opportunities including employment, business losses, lost crops, livestock, and lost income. Where resettled people have lost land, the guidelines clearly state:

³²⁷ CESCR, General Comment No. 4, The Right to the Adequate Housing, U.N. Doc. E/1992/23 (1992), para. 8(b).

³²⁸ CESCR, General Comment No. 7, Forced Evictions and the Right to Adequate Housing, U.N. Doc E/1998/22 (1997), Annex IV.

³²⁹ UN Human Rights Council, Annex 1 of the Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari Basic Principles and Guidelines on Development-Based Evictions and Displacement, U.N. Doc. A/HRC/4/18, February 7, 2007, para. 6.

³³⁰ *Ibid.*, para. 56(d).

Cash compensation should under no circumstances replace real compensation in the form of land and common property resources. Where land has been taken, the evicted should be compensated with land commensurate in quality, size and value, or better.³³¹

The guidelines also provide special protections to women, children, and marginalized members of society and call for states to give special assistance to these groups when carrying out development projects.³³²

Right to Nondiscrimination

Core international and regional human rights treaties expressly prohibit discrimination, and require the parties to these conventions to take measures to eradicate all forms of discrimination against individuals.

The CESCR, in General Comment 20 on non-discrimination in economic, social, and cultural rights, recommended that states parties adopt “specific legislation that prohibits discrimination in the field of economic, social and cultural rights. Such laws should aim at eliminating formal and substantive discrimination, attribute obligations to public and private actors and cover the prohibited grounds discussed above. Other laws should be regularly reviewed and, where necessary, amended in order to ensure that they do not discriminate or lead to discrimination, whether formally or substantively, in relation to the exercise and enjoyment of Covenant rights.”³³³

Corporate Responsibility to Respect Human Rights

In 2008, then-Special Representative of the UN Secretary-General on Business and Human Rights John Ruggie elaborated the “Protect, Respect and Remedy” framework for business and human rights, which were further supplemented by a set of “Guiding Principles on Business and Human Rights” (Guiding Principles) endorsed by the United Nations Human

³³¹ Ibid., para. 61.

³³² Ibid., paras. 29, 37, 39, and 57.

³³³ CESCR, “Non-discrimination in economic, social and cultural rights (art. 2, para. 2),” General Comment No. 20, The Right to Non-Discrimination, U.N. Doc. E/C.12/GC/20 (2009), para. 37.

Rights Council in 2011.³³⁴ The Guiding Principles set out 1) the state’s duty to protect human rights, 2) the corporate responsibility to respect human rights, and 3) the need for a remedy for victims of business-related human rights abuses.³³⁵ The Guiding Principles detail basic steps companies should take to respect human rights, including conducting due diligence to avoid causing or contributing to human rights abuses through their operations; avoiding complicity in abuses; and taking steps to mitigate them if they occur.

Ruggie’s framework outlines integral components of human rights due diligence that businesses should undertake, including assessment of potential human rights impacts with explicit reference to internationally-recognized human rights; integration of respect for human rights throughout the company; and monitoring as well as communicating performance.³³⁶

³³⁴ UN Human Rights Council, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, Annex, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, A/HRC/17/31, March 21, 2011, http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf (accessed December 10, 2012).

³³⁵ Ibid.

³³⁶ Human Rights Council, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, Protect, Respect and Remedy: a Framework for Business and Human Rights, A/HRC/8/5, April 7, 2008.

VII. Recommendations

To the Government of Malawi

- Amend the draft Mines and Minerals Bill to include provisions that ensure robust environmental health monitoring at all stages of the mining process. In particular, amend the bill to require that impact assessments and regular inspections detail the potential impacts that exploration, active mining, and abandoned mines may have on affected communities and their rights; steps the government and companies will take to continually inform and communicate with affected communities; and ways in which adverse rights impacts will be mitigated or avoided. Include a provision to require that impacts on marginalized populations such as women and children are specifically monitored and addressed.
- Amend the draft Mines and Minerals Bill to ensure it has provisions that guarantee access to information. In particular, replace any provisions that limit access to mining-related information and ensure that communities receive information on all adverse environmental and social impacts. Include provisions to ensure that environmental impact assessments, environmental monitoring reports, and resettlement plans are easily available and accessible to the public.
- Revise the draft Access to Information Bill to ensure that minimum requirements for access to information follow international best practices and are in line with the model law by the African Union.
- Develop, through broad consultation, a policy for corporate social responsibility in the extractive industry that meets the international human rights standards laid out in the “Protect, Respect, and Remedy” framework. Make a strong human rights due diligence procedure a legal requirement for all companies extracting minerals in Malawi and monitor company compliance.
- Ensure coordination between different ministries and national, regional and district government bodies involved in mining governance and oversight. Provide written information to government officials about the different responsibilities with regard to mining, making clear who bears each responsibility. Hold regular coordination meetings across ministries and

government levels to ensure that information is exchanged and disseminated to community members. Consider creating positions for district mining officers who can communicate and coordinate at the local level.

- Participate in partnerships and informational exchanges with other governments and institutions with relevant experience in ensuring human rights safeguards in managing natural resource booms, including institutions able to provide independent monitoring.

To the Ministry of Natural Resources, Energy and Mining

- Ensure that impact assessments and regular inspections contain relevant details, including: the potential impacts that exploration, active mining, and abandoned mines may have on communities and their rights; steps the government and companies will take to continually inform and communicate with affected communities; and ways in which adverse impacts will be mitigated or avoided.
- Ensure impacts on marginalized populations, such as women and children, are monitored and addressed. Such monitoring should cover the cumulative impacts on the environment and livelihoods, including impacts resulting from extractive industries, social changes, and climate change.
- Regularly communicate environmental information to affected communities and detail the potential impacts that exploration, active mining and abandoned mines may have on affected communities and their rights; steps the government and companies will take to continually inform and communicate with affected communities; and ways in which adverse impacts will be mitigated or avoided.
- Ensure that outcomes of environmental assessments, periodic environmental monitoring reports, resettlement action plans, and updates on implementation are easily and readily accessible and include short summaries in non-technical language. Summaries and full reports should be translated into local languages, available on the internet, posted in public buildings, including at sub-county headquarters and local schools in directly affected communities. Government authorities should not only make the information accessible upon request, but also proactively disseminate information that is relevant to the protection of rights of affected communities.

- Require companies that prepare environmental impact assessments, environmental monitoring reports, and resettlement plans to make them easily available and accessible to the public, including to women and other marginalized groups.
- Amend the draft Communications Strategy for Malawi's Mineral Sector to ensure that mining communities receive regular and updated information about the results of environmental monitoring.
- Promptly fill all vacancies for inspectors at the Ministry of Mining and at the district level including the vacant district environmental officer position in Karonga district.
- Increase the number and capacity of trained staff to analyze environmental impact assessments (including resettlement action plans), monitor compliance reports, and form inspection teams to verify that companies adhere fully to their commitments. Empower and instruct ministry staff to carry out more thorough and proactive monitoring and oversight of existing mining projects, including by providing the staff and other resources necessary to fulfill this role effectively.
- Approve proposed extractive industries projects only after duly assessing human rights and environmental risks, particularly in areas such as land and labor rights.
- Identify measures to avoid or mitigate risks of adverse impacts.
- Implement mechanisms that enable continual analysis of developing human rights and environmental risks and that ensure adequate supervision.

To the Ministry of Lands, Housing and Urban Development

- Provide a process for fair compensation and remedy negative human rights impacts of relocation in mining communities including the payment of compensation for losses that have already occurred. Pay special attention to impacts on women and ensure they are appropriately compensated for their losses.
- Develop a national resettlement policy in line with international human rights standards. In the meantime, international best practice should guide displacement, resettlement, and compensation and be used as a basis for educating communities in negotiating resettlement arrangements.

To the Ministry of Health

- Actively monitor health indicators and disease patterns in mining communities and ensure that results are easily available and accessible to the public.
- Develop a national strategy to improve health in mining communities and increase access to healthcare in mining areas, taking into account the increased health risks for marginalized populations. Include in the strategy measures to support family caregivers, especially women.
- Ensure that commitments by extractive industries to build additional health facilities in mining communities are implemented.
- Devise a comprehensive public health strategy to tackle the health problems of residents in mining communities.

To the Ministry of Information

- Increase mining communities' knowledge of the impacts of mining on community health and global climate change.

To the Ministry of Agriculture, Irrigation and Water Development

- Map out the boundaries of watersheds potentially impacted by mining operations and actively monitor water throughout watersheds under the influence of mining to identify potential contamination, including monitoring waste water discharges, ground and surface water sources, and drinking water in mining communities on an ongoing basis. Ensure that results are easily available and accessible to the public.
- Actively monitor boreholes, shallow wells, and rivers in mining communities on an ongoing basis and ensure that results are easily available and accessible to the public.
- Monitor fisheries within mining-affected watersheds for unsafe levels of heavy metal contamination.

To the Ministry of Justice

- Work with the Ministry of Information to ensure that the draft Access to Information Bill follows international best practices and are in line with the model law by the African Union.

To the Ministry of Gender

- Work with Ministry of Mining to ensure that impacts of mining on marginalized populations such as women and children are specifically monitored and addressed.
- Work with Ministry of Mining to implement dedicated measures that facilitate access to information about mining for groups that may face specific impacts or that are marginalized, such as women, children, older people, people with disabilities, and minorities.
- Work with Ministry of Mining to ensure regular, broad, and meaningful consultation with, and participation of, women in affected communities with respect to large extractive industries projects.

To the Mzuzu Regional Office of Mines and to the Karonga District Commissioner

- Ensure that environmental monitoring reports are easily available and accessible to the public in northern region, including by providing short summaries in non-technical language; translating the summaries and the full reports into local languages; posting them online; providing copies in public buildings such as local schools; and holding information sessions in directly affected communities. Implement dedicated measures that facilitate access for groups that may face specific impacts or that are marginalized, such as women, children, older people with disabilities, and minorities.

To the Water Department in Karonga

- Ensure that water testing reports are easily available and accessible to the public in Karonga district, including by providing short summaries in non-technical language; translating the summaries and the full reports into local languages; posting them on the internet; providing copies in public buildings

such as local schools; and holding information sessions in directly affected communities. Implement dedicated measures that facilitate access for groups that may face specific impacts or that are marginalized, such as women, children, older people, people with disabilities, and minorities.

To the Parliament of Malawi

- Work with the government to ensure that the draft Mines and Minerals Bill provides robust environmental and health monitoring in the extractive industries.
- Work with the government to ensure that the draft Access to Information Bill includes minimum requirements for access to information that follow international best practices and are in line with the model law by the African Union.

To Companies Extracting Minerals in Malawi

- Improve public access to information and be more transparent by strengthening communication with local and national civil society and with affected community members. Make information available to both literate and non-literate community members. Outcomes of environmental assessments, periodic environmental monitoring reports, resettlement action plans, and updates on implementation should be easily accessible and include short summaries in non-technical language. Summaries and full reports should be translated into local languages, made available online, and posted in public buildings, including at sub-county headquarters and local schools in directly affected communities of Malawi.
- Establish a thorough due diligence process, including regular monitoring, to ensure that the rights of affected communities. Monitors should be independent and the results of monitoring should be published. If there are reports of human rights violations companies should specifically investigate these reports. The due diligence, process should also include procedures to address adverse human rights impacts.
- Provide a process for fair compensation and remedy negative human rights impacts of relocation in mining communities, including the payment of

compensation for losses that have already occurred. Pay special attention to impacts on women, and ensure they are appropriately compensated for their losses.

- Establish effective grievance mechanisms—in line with good international practice—so that individuals affected by mining projects can complain directly to companies in addition to the government.

To the Governments of Australia, Cyprus, and Other Home Governments of Mining Firms Operating in Malawi

- Take steps to regulate and monitor the human rights conduct of domestic companies operating abroad, such as requiring companies to carry out and publicly report on human rights due diligence activity.

To UNESCO

- Work with the government of Malawi to ensure robust environmental and health monitoring in the extractive industries, including at the UNESCO world heritage site at Lake Malawi.
- Work with extractive industries operating within or in the vicinity of the world heritage site to minimize the impacts of its operations on the world heritage site.

To the Donor Community

- Work with the government of Malawi to ensure robust environmental and health monitoring in the extractive industries. Support the government to ensure that environmental impact assessments, environmental monitoring reports, and resettlement plans are easily available and accessible to the public.

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The government of Malawi has promoted private investment in mining and resource extraction to diversify its mostly agriculture-based economy. Existing and potential future extraction sites are located on the shores and tributaries of Lake Malawi, a fragile ecosystem and a key source of livelihood for over 1.5 million people. In Malawi and globally, there is evidence that mining poses serious risks to human health when it is not properly regulated and monitored.

“They Destroyed Everything” documents the failure of the Malawian government to adequately protect communities from potential harmful impacts of mining. It details how families living near sites of coal and uranium mining operations in Karonga district face serious problems with water, food, and housing and are not informed about health and other risks of mining. Women, who bear greater responsibility for caregiving, fetching water, and feeding their families, face distinctive impacts. Malawi currently lacks adequate legal standards and safeguards to ensure the necessary balance between development and protecting the rights of communities.

The Malawian government has obligations to protect human rights, including to health, a healthy environment, food, water, and housing, and to ensure that private companies respect these rights. Mining companies should exercise due diligence to prevent harms from their operations and should mitigate them if they occur.

A more comprehensive legal framework is in the works and the government has committed to better enforcement of protections, but there is much more to be done. The rights and well-being of many of Malawi’s communities depend on it.

(above) Fishermen bring in their daily catch of local fish usipa from Lake Malawi, Karonga district.

(front cover) Nagamba E., 75, standing where her house used to be in Mwabulambo, Karonga district. She and her family were told to relocate in 2008 because the land was needed for coal mining.

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