



Centre for Social Concern

*Research, Reflection and Evidence-based-Advocacy*

# The cost of Tax Evasion and Avoidance

## The Case of Paladin-Kayelekera

The more people step up to the tax table, the smaller the burden on each tax payer, and the better the quality services

- Mathias Burton Kafunda

# TAXATION JUSTICE

- ***The tax Code, once you get to know it, embodies all the essence of life: greed, politics, power, goodness, charity.”***

(J. Birnbaum & A. Murry)

# Outline

- Stats
- Contextual Analysis
- Tax Issues: Incentives, Avoidance

# Statistical Snapshot

## Malawi

<b>Population</b>	14.4 million
<b>Urbanisation</b>	19%
<b>Life Expectancy</b>	54.2 years
<b>Human Development Index</b>	171
<b>Population Below Poverty Line</b>	52.4%
<b>Agriculture</b>	37% of GDP
<b>Agricultural Exports</b>	85% (65% tobacco)
<b>Mineral Sector</b>	10% of GDP

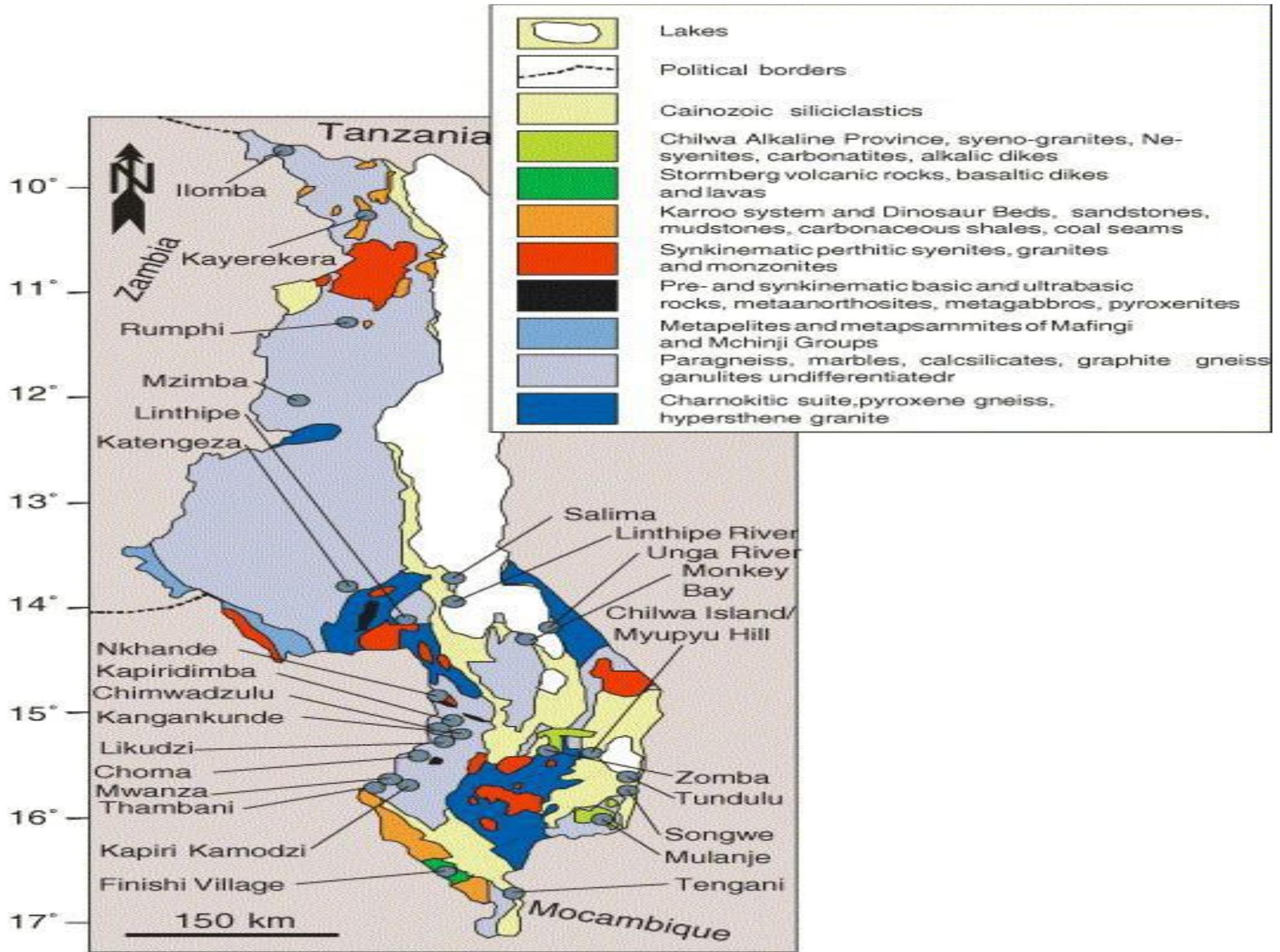
Source: Ministries of Finance, Trade and Mining

# Contextual Analysis

- Predominantly, Malawi's economy is agro-based rather than mineral-based, with tobacco, tea, and sugar as its major export crops.
- Indeed, the first President Dr. Kamuzu Banda in turn rallied the people to greater efforts by stressing that though Malawi did not have gold, diamonds and copper, it had something just as valuable . fertile soil and plentiful water to grow more maize . our green gold

## Context: Development in Mining Sector

- In the mid-2000s, however, it would come to light that the nation was sorely misled and Malawi was endowed with various minerals.
- These included a variety of known mineral resources such as: uranium, heavy mineral sands, strontianite, rare earth minerals, phosphate, bauxite gypsum, vermiculite, precious and semi-precious stones, limelight, dimension stone silica sand, sulphides and coal. The country has equally potential for discovery of other metallic minerals and high value minerals including gold, platinum group



# Context: Developing Mining Sector

- Malawi's extractive sector had begun to attract global attention, in the same period of mid-2000s.
- Mining reasonably new and fast expanding
- However, little attention was paid to the significant needs to reform the policies, laws and institutions which would govern the mineral sector and it was very unlikely that Malawi's mineral governance structures would keep pace with the rapid modernization of mining codes that had occurred throughout

# Context: Lack Of Oversight-in Reforms

- Lack of harmonisation of legislation that affect mining activities
- Inadequate and outdated legal provisions
- The existing legislative arrangements for mining rely excessively on the discretionary exercise of ministerial powers.
- Many of the key terms under which a company would operate are subject to bilateral negotiations with the Government

## Context: Lack Of Oversight-in Reforms

- The mining legislation makes provision for numerous and, in some cases, redundant licenses. The licensing system is also very general and regulations have not been fully developed to create clarity as to how it is administered.
- Lack of complement mineral sector policy goals on local content, community development and vulnerable groups
- Inadequate institutional structures and

# Malawi Mining Sector: Paradise Lost?

## Potential Direct Economic Benefit of the Mineral Sector (annual constant US\$)

	2008	2009 - 2012	2013 - 2019	> 2020
<b>Value of Output</b>	\$7 m	\$250 m <i>(5-6% of GDP)</i>	\$400 m	\$500-1000 million
<b>Exported (%)</b>	10%	95% <i>(20-25% of exports)</i>	90%	85%
<b>Government Revenue</b>	<\$250,000	\$5 million	\$20-\$30 million	\$50-\$100 million

# Tax Avoidance Issues Malawian Context

- Right from the contract design foreign direct investors are given a lot of investment incentives in the form of tax holidays, tax exemptions, depreciation incentives, reduced royalty rates and export incentives among others;
- In return, multinational corporations are fail to meet their obligations by posting losses yearly; thereby prejudicing the government of its earnings which are normally based on profits.
- In addition to the generous investment incentives, the investors use complex accounting systems and procedures to evade and avoid paying taxes through complex mechanisms such as transfer mispricing etc.

# Paladin-Keyelekera Uranium Mining

- The commissioning of the Keyelekera uranium mine marked a dramatic change in the role of the mineral sector in Malawi. Keyelekera Uranium mining is Malawi's only mine of significant scale by international standards.
- The Mining Licence, ML 152, covering 5,550 hectares was granted in April 2007 for a period of 15 years.
- Paladin's investment in Malawi now exceeds US\$500million- more than any other investments made in the country

## Tax Incentives and Avoidance Elements

- Paladin Africa Limited pays to the government of Malawi a subsidized corporate tax of 27.5% (2.5 % less than the normal 30 %); as stipulated in the development agreement. Reduction of the tax was perceived as an incentive for the FDI to invest in Malawi.

## Tax Incentives-*cont*

- Paladin is exempted for **10 YEARS** of stabilisation from paying Tax (both import duty and export value added tax) on the costs, insurance, freight, and value of all equipment consumables used in the mining and processing of ore, materials, fuels and lubricants which are for the use in the business. The tax holiday has been viewed as being too long and exorbitant considering that the life span of the mine is 15 years.
- Between Sep 2009-Feb 2011 Paladin had used 26,627,873 litres of Diesel; amounting to a revenue loss of US\$6.9m in Import and Excise duty.
- As of 27 Aug 2012 - The Mine was consuming 12m Litres of Diesel per Year

# MW LOSES K1BN IN KAYELEKERA TAXES

The miners gave government K300m while they saved almost K1bn in tax exemption on diesel alone.

BY REX CHIKOKO

**G**overnment's duty free status agreement with Paladin (Africa) Limited in exchange for a 15 percent shareholding would be more costly than beneficial, economic and mining experts have said.



## Tax Incentives-cont

- The standard royalties as stipulated in the Finance Act is 5-10%. However, for Paladin the rate was dropped to 1.5 % for the first three years and 3 % thereafter. As of October 2012, Paladin Africa has paid a total of US\$1.9 million in royalties since 2009. Calculations reveal that the government has lost US\$8.5 million as a result of this concessionary agreement; it is agreed upon that the government will not increase the royalties for the remainder of the life span of the mine.

## Tax Incentives-*cont*

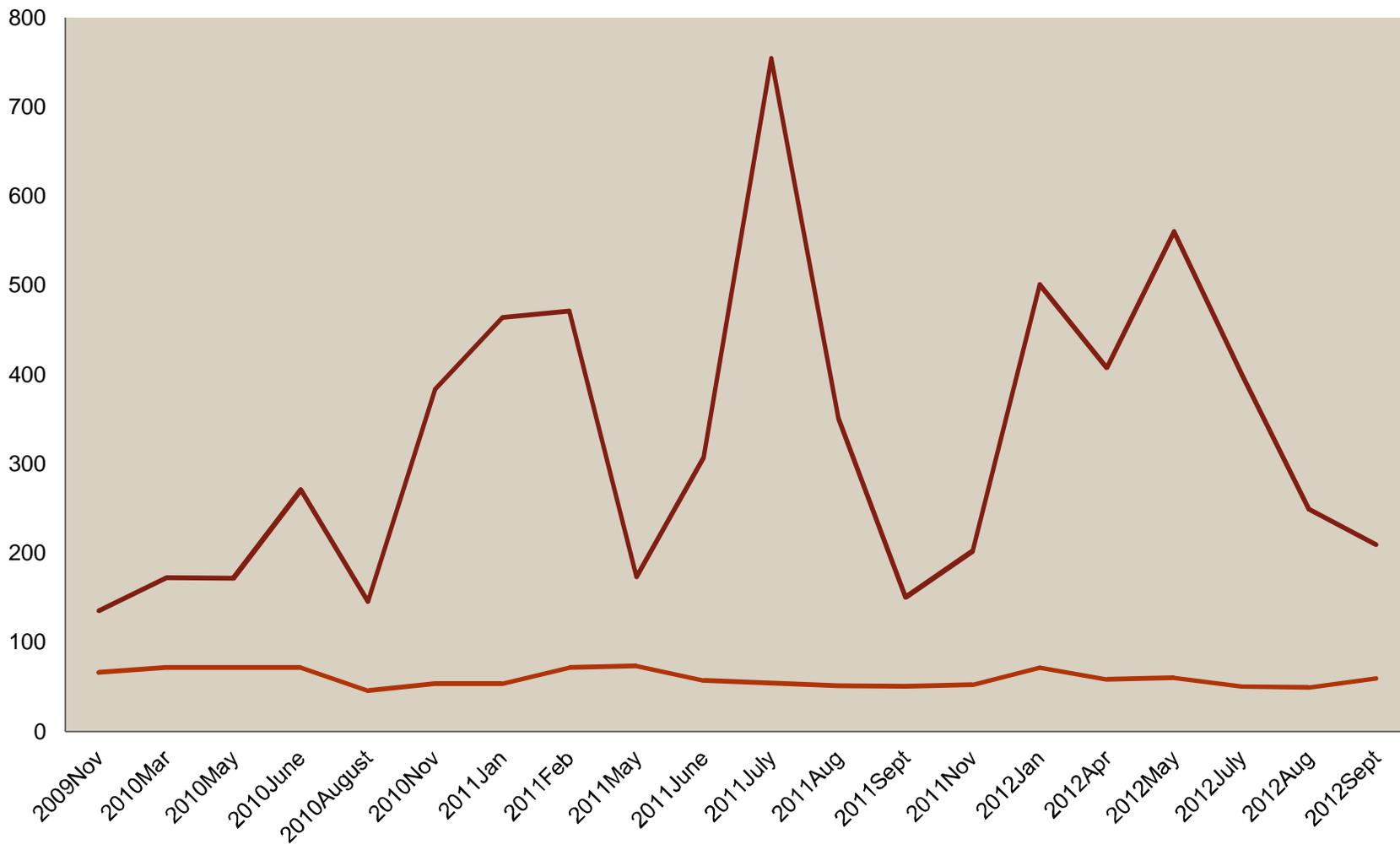
- Another source of revenue loss is on the resource rent which was removed as part of the incentives the government of Malawi negotiated with the uranium company. The stand resource rent is at 10% and is taxed on profits after tax, if the company's rate of return exceeds 20%.

## Tax Incentives-*cont*

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

## Rule of Thumb

- No relationship between the price of uranium oxide and the quantity exported.
- This is perceived to be an anomaly that violates the natural laws of economics for supply and demand. In these clandestine practices, the mispriced financial transfers which are intimately associated with mis-invoicing are highly suspected.



— Average Price of Uranium Oxide(in US\$ per lbs)

— Quantity of Uranium Of Exported(in lbs)

Kayelekera export proceeds in 2012, the sum of quantity reported does not match what was actually written.

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

## Offshore Account

- The development agreement allows Paladin to have an offshore account- dangers of round tripping
- **PALADIN BRINGS MONEY, ONLY THAT IS NEEDED FOR OPERATIONS**

# CAPITAL FLIGHT

- The company, Paladin Africa owns 85% of Kayelekera Uranium mine and the other share is owned by the government of Malawi. Paladin Africa also owns Langer Heinrich mine in Namibia. The same Paladin Africa is owned by Paladin Energy which also owns Langer Heinrich holdings in Mauritius, Kayelekera Holdings are in Switzerland and Kayelekera Finance BV in Netherlands according to the 2010 Paladin annual report. The pattern of holding companies that have been mentioned to be associated with Paladin Energy is a classical scheme of clear intent of shifting profits around and navigating the financial proceeds to countries with low taxation regimes like Switzerland and Netherlands.

# Mortgage Rights – Clause 28.5 of the Development Agreement

- **Government under the Agreement granted exclusive rights to Paladin to borrow against “*all ore and mineral –bearing material, sand, slimes, tailings and residues of whatsoever nature located on and under the Tenement*”. Clause 28.5 has to be read with the definition of the word ‘*Tenement*’**
- By virtue of Clause 28.5 above, Paladin can mortgage all the uranium and ore
- This right can be likened to a tenant of a house having power to mortgage the landlord's house to secure a personal loan. Before the landlord knows it, his/her house could be sold by the tenant's creditor on account of failure to pay back the loan and/or interest.

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# CONCLUSION

- Malawi has an underdeveloped mining culture, little technical capacity and inadequate and outdated legal provisions.
- The existing legislative arrangements are under increasing pressure as more companies seek to explore for and develop minerals in Malawi.
- If the sector is to grow sustainably and contribute to economic development and poverty reduction, the highest priority must be given to the revision of the legal framework which in turn would allow for renegotiations of current contracts as well as equip the government to better negotiate in the future.

# Conclusion

- It will be essential for the BIG to consider:
- the BIG needs to show different nations that they have the potential and ability to contribute to the social protection of their citizens within and outside their borders.
- Show the evidence, proposal of the extractives must show the taxes being foregone, the potential to collect more from the extractives

# GOVT GOOFED ON KAYEREKERA

## Paladin not to blame

By **THERESA CHAPULAPULA**

**G**overnment has admitted it rushed through the process of Kayerekera uranium mining deal such that all that Malawi has benefited is employment while the miner gets all the profits. The realization has forced government to renegotiate the deal with the miner Paladin Africa.

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**OPTIMISTIC**—President Mutharika opening the mine.—File photo



## PALADIN (AFRICA) LIMITED

A member of the Paladin Energy Ltd Group of Companies

# Comment on Statements by the Governor of the Reserve Bank of Malawi, Dr. Perks Ligoya

Paladin (Africa) Limited, owner and operator of the Kayelekera Uranium Mine in Karonga District, northern Malawi, wishes to inform the people of Malawi of its position in relation to comments made during the past week by the Governor of the Reserve Bank of Malawi, Dr. Perks Ligoya.

In remarks on radio on 25 November and published in the local media on 26 November and 30 November, Dr. Ligoya criticised the Paladin Group of Companies. Dr. Ligoya:

- Alleged that there was no accountability in how much money Paladin earned as proceeds from sales of uranium oxide.
- Claimed that Paladin did not remit proceeds of uranium sales to Malawi. Dr. Ligoya said: "They were allowed to open an offshore account somewhere and they just get enough money from that account to run their show."
- Stated that "It was not correct for Reserve Bank at that time to agree to the arrangement that proceeds from export of uranium be deposited in an offshore account without the Reserve Bank having any records of movements in that account."
- Maintained that: "It is common knowledge in any country that proceeds of main exports are recorded as part of the foreign reserves of that country. To correct this anomaly, we have now agreed with Paladin (Africa) Ltd that Reserve Bank of Malawi will be a co-signatory to the offshore account. This will improve level of accountability."

Paladin (Africa) Limited rejects Dr. Ligoya's claims. They are unfair, untrue and misleading.

are immediately converted to Kwacha, as required by Reserve Bank regulation.

### Benefits to Malawi

Kayelekera Mine is the first large, modern mining project developed in Malawi on an international scale. Paladin's investment in Malawi now exceeds MWK 925 billion (US\$ 500 million) - more than any other investment made in the country.

As a result of that investment, Malawi has gained the following benefits:

- ✓ Additional foreign currency earnings to-date - MWK 34.9 billion (US\$ 207.6 million)
- ✓ Purchases of Kwacha with foreign currency - MWK 14 billion.
- ✓ Taxes paid to the Government of Malawi - MWK 2.8 billion.
- ✓ Royalties paid to the Government of Malawi - MWK 379.9 million.
- ✓ Purchases of goods and services from Malawian businesses - MWK 31.4 billion.
- ✓ Kayelekera Mine injects MWK 200 million into the Malawian economy every week.
- ✓ Expenditure on social and community projects (water supply, schools, health, etc) - MWK 2.55 billion.
- ✓ Expenditure on exploration to extend the life of the mine - MWK 576.7 million.
- ✓ Direct employment of 994 Malawians; indirect employment of thousands more.

### Concessions and Conditions

Dr Ligoya said: "We gave out a lot of concessions and fancy conditions that Kayelekera people - they are in Namibia - they don't have those

withstand the most rigorous third party scrutiny and auditing.

- As a shareholder in Paladin (Africa) Ltd, the Government of Malawi has a Director on the Company's Board and is able to scrutinise the Company's actions and accounts at any time.

### Profitability of Kayelekera Mine

Despite the assertions by Dr. Ligoya, the people of Malawi should know and understand that Paladin's Malawi operations are currently loss making (not profitable) and its running costs, including wages and salaries, continue to be part funded by the parent company in Australia, thus enabling the Kayelekera Mine to continue operating.

- Rather than making substantial profits from its Malawi operations, in view of the current world economic crisis and the significantly- reduced price of uranium oxide, Paladin has not received a single Kwacha in return on its investment in Malawi of US\$ 500M over the past five years.
- Paladin has not received any interest on inter-company loans provided to the Malawi operations as the Kayelekera Mine is currently unable to afford such payments.
- This situation is largely a consequence of tsunami-related damage to the Fukushima nuclear power plant in Japan last March, which led to a 30 per cent reduction in the price of uranium oxide.
- Far from making profits, the audited financial statements for Paladin (Africa) Ltd, which have been provided to the

# MORE DIRT IN KAYEREKERA DEAL

- Crucial documents go missing
- Malawi loses billions for negligence
- US firm reaping fruits of shoddy record keeping

by **Gregory Gondwe**

**G**overnment is going to lose millions of dollars in the Kayerekera Uranium Mining deal due to negligence, *Malawi News* can exclusively reveal.

Information that *Malawi News* has, indicate that Malawi has been unable to collect a 15 percent Non-Residence Tax in the royalty payments because it lost geological information for the mine, forcing Paladin Africa Limited (PAL) to buy it outside the country.

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**BANDE**—Needs time to respond



**WALKER**—The information was critical

# Paladin snubs govt on earnings

By **Gregory Gondwe**

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PALADIN (Africa) Limited, the company that is mining uranium in Karonga, has snubbed government on the need to create a foreign currency reserve account in the country where its uranium oxide proceeds should be deposited.

In an email response to a questionnaire from The Sunday Times, the company's General Manager responsible for International Affairs, Greg Walker,

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