



HUMAN
RIGHTS
WATCH

“They Destroyed Everything”

Mining and Human Rights in Malawi

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 Mwalumbo, 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 Mwabulambo 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.**



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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