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HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND
www.ohchr.org • TEL: +41 22 917 9643 • FAX: +41 22 917 9006 • E-MAIL: srfood@ohchr.org

Mandate of the Special Rapporteur on the right to food

MISSION TO MALAWI FROM 12 TO 22 JULY 2013

LILONGWE, 22 JULY 2013

END-OF-MISSION STATEMENT

I. Introduction

The Special Rapporteur on the right to food, Mr. Olivier De Schutter, conducted a mission to Malawi from 12 to 22 July 2013, at the invitation of the Government. During his visit, he met with senior Government officials from the Office of the President and Cabinet; Ministry of Foreign Affairs; Ministry of Agriculture and Food Security; National Food Reserve Agency; Ministry of Lands, Housing and Urban Development; Ministry of Justice and Constitutional Affairs; Ministry of Home Affairs and Internal Security;Malawi Prison Service; Ministry of Industry and Trade; Ministry of Labour and Vocational Training; Ministry of Local Government and Rural Development; Ministry of Gender, Child Development and Community Development; Ministry of Economic Planning and Development; Malawi Vulnerability Assessment Committee; Ministry of Health;and Ministry of Finance.The Special Rapporteur also met with members of the Malawi National Assembly, of the Malawi Human Rights Commission, and with members of the United Nations Country Team and of international donors/development cooperation agencies.

The Special Rapporteur convened five roundtable discussions with representatives of non-governmental organizations, trade unions, farmers associations and academics, held in Lilongwe and Zomba. Moreover, the mission included visits to the central and southern regions, during which the Special Rapporteur met with local officials and communities in the Districts of Dedza, Salima, Mulanje, Thyolo and Zomba, including meetings with tea estate workers in the village of Bwaila in Traditional Authority Mchilamwela, villagers facing displacement to give way to a sugar cane plantation in Mtakataka, tenant workers on a tobacco farm in Changoma, a Nutrition Rehabilitation Unit developing a community garden project at the Mulanje Mission Hospital; farmers involved in agroecological projects inEkwendeni and Dedza (Lodi). The Special Rapporteur also visited Maula Prison in Lilongwe where he met with prisoners and with representatives of the Prison administration.

The Special Rapporteur is grateful to the Government for facilitating his visit and for the open and frank spirit in which the dialogues were conducted. He expresses his thanks and appreciation to the wide range of people and local communities he was able to meet with during his visit. The United Nations Country Team and the United Nations Resident Coordinator in Malawi provided excellent support to the mission.

II. The general context

The mission took place at a time the country is making important choices for its near- and long term future. On 8 June 2013, the President, Her Excellency Mrs. Joyce Banda, announced at the G8 'Nutrition for Growth Summit' in London, that Malawi had joined the New Alliance for Food Security and Nutrition, an agreement materialized in a Country Cooperation Framework that includes a series of policy commitments engaging the country for the years to come. The 2014 elections and the 50th Anniversary of Independence ('Malawi at 50') also provide opportunities for a national dialogue on a renewed comprehensive vision for the country: this was also the goal of the national consultations held to shape the Malawi Post-2015 Development Agenda.

And the challenges are considerable. Malawi is among the poorest countries in the world, ranking 170th of 186 surveyed countries in the 2013 Human Development Index. More than half the population live below the poverty line and have seen little or no improvement in their situation over the past decade. Despite growth averaging 7 percent for 2006-2010, overall poverty has only slightly declined(from 52.5 percent in 2004/05 to 50.7 percent in 2010/11),and for the more than 80 percent of the population living in rural areas, it has in fact worsened. One fourth of Malawians are “ultra poor”, having an income below the estimated cost of food providing the minimum daily recommended calorie intake. Inequality has also worsened in recent years, with the country’s Gini Coefficient rinsing from 0.39 in 2004 to 0.45 in 2010.

In part as the result of its strong demographic growth (2.6% per year), the pressure on Malawi’s natural resources is extreme. Land degradation (aggravated depletion of soil fertility) is the most worrying sign of Malawi’s ecological crisis. Forest cover is decreasing at the alarming rate of 2.8 percent per year. Unsustainable natural resources management costs Malawi an estimated US$ 191 million annually, or 5.3 per cent of gross domestic product (GDP). Malawi is prone to natural disasters, in particular floods, droughts, and dry spells (erratic rains). Droughts and floods push on average approximately 265,000 more people into poverty each year and cause an annual average loss of 1.7 percent of GDP.

Levels of malnutrition are alarmingly high. About half of all children under the age of five show signs of chronic malnutrition. An estimated 48 percent are too short for their age (stunted),30.6 percent weight too little for their age (underweight), and 11.4 percent weigh too little for their height (wasted).One third of the population is food insecure, with disrupted eating patterns and reduced food intake. The incidence of food insecurity is markedly higher in rural areas (34 percent) compared to urban areas (23 percent), amongst women headed households (38 percent) compared to male headed households (31 percent), and in the southern region of the country (36 percent) compared to the northern (29.9 percent) and central (29.5 percent) regions. The disparity in levels of food insecurity amongst districts is particularly pronounced. In the Shire valley districts ofNsanje and Chikhwawarespectively 78 and 75 percent were considered food insecure, compared to 14 percent in Machinga district.

Acute food insecurity is a recurrent phenomenon during the lean season. According to the latest forecast of the Malawi Vulnerability Assessment Committee (MVAC), an estimated 1,461,940 people (9.5% of the population) will not be able to meet their annual food requirement during 2013/14. 42 percent of households spend more than 75 of their income on food. Therefore, even slight increases in the price of food commodities would further deteriorate this situation.

III. Core issues examined during the mission

1. Improving the legal and institutional food security framework

a) Collecting and analysing data

As a State party to the International Covenant on Economic, Social and Cultural Rights, the Government of Malawi has undertaken to take appropriate steps, to the maximum of its available resources, to ensure the realization of the right to an adequate standard of living, including adequate food (art. 2(1) and art. 11(1)). A fundamental requirement to identify “appropriate steps” is to have a system in place to collect and analyse data on the actual status of realization of the right to food. Such data collection and analysismust be carried out periodically in order to continuously monitorprogress made, or the lack thereof, with a view to adjusting ineffective policies and programmes.

In Malawi, two main means of monitoring progress in improving food security, both conducted out by the National Statistical Office, are the Integrated Household Surveys, carried out every five years, and the Welfare Monitoring Survey, carried out on an annual basis. But considerable discrepancies can be noticed between the assessment of food and nutrition security in the 2009 Welfare Monitoring Survey (WMS) and in the 2011 Third Integrated Household Survey (IHS3). WMS 2009 showed significant progress in poverty reduction and in the number of people in risk of hunger. Overall levels of poverty were estimated to have decreased to 39 percent, from 50 percent in 2005, and poverty was being reduced both in rural and urban areas. The WMS figures were used in a range of policy documents and reports, including MGDS II, the 2010 and 2011 MDGs Reports, and the Core Document submitted to the UN human rights treaty bodies in April 2012.

These findings, however, were contradicted by IHS3, which was published, with some delay, in August 2012. According to IHS3, the proportion of the population with a food consumption lower than the minimum food consumption (the "ultra poor"), had not decreased but rather increased from 22.3 percent in 2005 to 24.5 percent in 2010; overall poverty in rural areas had increased from 55.9 percent to 56.6 percent.

The Special Rapporteur considers it important to identify the reasons for significant discrepancies between the two surveys to ensure greater accuracy of such surveys, which are essential to monitoring the progressive realization of the right to food.

b) A National Food and Nutrition Security Framework Law

Malawi has a wide range of well-formulated and well-intended policies and strategies to accelerate progress in the realization of the right to adequate food. What is missing, however, is a more solid framework to bring together and build synergies between the multiple policies, strategies and programmes. Such framework could ideally be grounded in law, through a National Food and Nutrition Security/Right to Food Framework Law. The Special Rapporteur was encouraged by the support expressed by interlocutors within Government and civil society for such framework law. Initial steps have already been taken in this direction through discussions on a "Draft Food Security Bill" prepared in consultation with civil society organizations through the National Right to Food Network. The Special Rapporteur encourages the Government to revive this proposal in consultation with relevant stakeholders, including Parliamentary Committees, Malawi Law Commission, Malawi Human Rights Commission, civil society organizations, farmers associations and the private sector.

The Framework Law could build upon the various coordination mechanisms referred to in recent policies and strategies in the area of food security and nutrition, and help address the problems encountered in making these coordination mechanisms fully operational. The Framework Law would establish one robust institutional mechanism to promote coordination and synergies across different sectors. In this regard, it could draw inspiration from similar framework laws in other countries.

Based on experience from other countries, a Framework Law presents the following benefits: (1) institutionalization of a coherent and integrated approach, through the creation of an independent council formed by relevant Government ministries and institutions and member of civil society, associations of food producers and the private sector, which will provide advice to the Government on matters related to food and nutrition security; (2) grounding of national policies and programmes in a society-wide consensus increasing their survival in the face of changes in Governments; (3) predictability and ring fencing of resources for food and nutrition programmes, possibly through the establishment of a national fund; (4) strengthened accountability and institutional oversight of food and nutrition security programmes, including on the way information is collected and programmes assessed, increasing transparency and safeguards against the use of political criteria in the targeting of programmes. In this regard, the Malawi

Human Rights Commission could usefully be given a specific mandate to receive complaints regarding the right to food, including cases concerning the arbitrary exclusion from specific food and nutrition security programmes.

A national Framework Law could help the Government ensure that policies and programmes are effectively geared towards addressing the actual needs of beneficiaries/rights holders, in line with the right-based approach adopted in recent strategy papers aimed at ensuring "improved accountability of service provided to rights holders". To achieve this, a transformation of mind-sets will also be required, moving towards an understanding of food security and social support interventions in terms of human rights rather than hand-outs.

2. The future of agriculture

Malawi's agriculture is based on small-scale farming. The total area under cultivation is between 2.2 and 2.5 million hectares, more than 90 percentof which are cultivated by small scale farming households, which number 2.3 to 2.8 million. But the very small landholding sizes (1.2 ha on average), the fact that the country has one short rainy season as well as agro-meteorological conditions that make the cultivation of most high value perennial food crops (cooking bananas) or cash crops (e.g. coffee, tea, cocoa) difficult or impossible in many areas of the country, have serious consequences for the food security of the population. These characteristics, as well as past agricultural and economic policies putting emphasis on maize, have led farmers to gradually depend on a single annual staple for the bulk of their food: maize. The monoculture of maize year after year on the same land has led to the erosion of soils nutrients, causing a dire soil fertility problem. In addition, the pressure on land has gradually limited livestock ownership. Most farming households consequently do not have access to sufficient quantities of animal manure to maintain the fertility of their soils.

It is therefore welcome that Malawi has put agriculture and food security at the top of its political agenda for almost a decade. It is one of the few countries in Africa that reached the target of allocating 10% of the national budget to agriculture, set at the Maputo Summit of the African Union in 2003. The adoption of Malawi's Agricultural Sector Wide Approach (ASWAp) in September 2011, supported by a Multi Donor Trust Fund, and now the National Agricultural Policy, should allow a new consensus to emerge on the need to diversify Malawi's agriculture beyond the 'maize economy' it currently is.

a) Access to inputs

Malawi is widely known for the remarkable success of its Farm Input Subsidy Programme (FISP) initiated during the 2005/6 growing season. The programme has had significant positive impacts on maize production. Following the introduction of FISP, Malawi reportedly produced enough food to meet its national maize requirements, while it had suffered from chronic food shortages for the two preceding decades, with a resulting dependence upon foreign aid and commercial maize imports. The programme iscredited for low inflation, a higher degree of food self-sufficiency among deficit producers, and a reduction in household food insecurity (improvement in the number of meals taken in a day),though it may not always be easy to attribute these benefits to FISP only.

At the same time, massive rural food insecurity and extreme poverty remains. Though FISP has improved in recent years, including by a welcome increase in the availability of subsidized legumes seeds, various concerns have been expressed.

First, the targeting of the programme is under considerable scrutiny. FISP officially targets vulnerable resource-poor Malawians that own a piece of land and can make an effective use of the subsidized inputs (the 'productive poor'). But several assessments concluded that households headed by young females were less likely to receive complete input subsidy packets than households headed by older males; poor households were less likely than rich households to receive any vouchers; and those with more education received more coupons than the recommended amount. Measures have been taken to improve targeting, including public village meetings held to ensure greater transparency in the coupon allocation process; farm household registers maintained to prevent 'outsiders' from becoming beneficiaries; and the communication of targeting criteria through the FISP implementation guidelines, which stipulate that a number of 'resource poor' vulnerable groups should be 'considered' in the identification of beneficiaries, including households affected by HIV/AIDS, child- or female-headed households. The impacts of these reforms remain to be analysed. This is a first area in which improvements could be made.

Secondly, the rising costs of fertilizer imports and the impacts on the balance of payments of the country have cast doubt on the sustainability of the program. As it stands, it accounts for about one tenth of the total value of imports. The program is therefore highly vulnerable to external shocks such as fuel and fertilizer prices volatility. The depreciation of the exchange rate since the devaluation has increased the cost of imported fertilizers, and the adoption of a floating exchange rate regime adds to the vulnerability to external shocks. In that context, donor fatigue, combined with the perception that FISP is instrumentalized for political ends and that there is no political will to aggressively tackle irregularities, could threaten the continued operation of the programme.

A third concern relates to the question of opportunity costs. In 2006/7 and 2007/8, more than 8 percent of the national budget were dedicated to FISP; the figure was 16.2 percent in 2008/9 due to skyrocketing fertilizer prices. The Ministry of Agriculture allocated 54,5percent of its 2012/13 budget to FISP (approx. MWK 60 billion out of a total budget of MWK 110 billion). This led to an inevitable decline in spending on agricultural research, extension services, training, rural roads and infrastructures, and a delay in the implementation of the Green Belt Initiative (GBI). In addition, FISP draws the energy, time and attention of the majority of the staff within the Ministry of Agriculture. Moreover, a range of programmes may have higher development impacts that FISP, including the Farm Income Diversification Programme (FIDP), the Integrated Rural Development and Agriculture, Public Works Programme, the Agroforestry Security Programme, and the "OneVillage One Product" Programme.

Fourth, from a purely agronomic point of view, inorganic fertilizers may be masking soil nutrient depletion, rather than correcting it. The continued loss of soil micronutrients puts into question the possibility of maintaining yield levels over the long term. Yields of both cereals and maize, which rose between 2005/6 and 2009, have reportedly levelled off since 2010.

FISP has made a significant contribution to household and national food security. But the above shortcomings lead to conclude that it is in need of reform. Several future scenarios are currently being debated, including 'exit' and 'graduation' strategies, and the replacement of subsidies by loans for the least vulnerable farmers. Much as Malawi was inspired to start a bold move in its food security policies in 2005/6 with its FISP programme, it would now benefit from drawing the lessons learned from nine consecutive years of implementing the programme, and consider the huge advantages of opting for a stronger developmental strategy. The risks associated with a 'FISP-as-usual' programme are simply too great to be taken.

FISP, by design, helps small-scale vulnerable farmers to survive by enhancing household food security. It can however hardly be considered as a self-standing agricultural development strategy for small-scale farmers, who contribute 70 percent of the agricultural GDP, as it does not create a 'development' dynamic for them.While ASWAp and the future National Agricultural Policy both adopt a more comprehensive approach, the commendable intentto achieve a better balance across different goals is not reflected in budget allocation. In the view of the Special Rapporteur, five transformations are necessary.

First, agricultural diversification is required. There exists a broad consensus on the need for crop diversification and for the expansion of crops which can serve in an industrial import substitution strategy, including through support to the creation of value chain and local agro-food processing activities andbetter access to credit and markets. Future efforts could be even more strongly rooted in the recognition of the links between agriculture, nutrition, and health. The Special Rapporteur met with nurses in several Nutrition Rehabilitation Units who found that it is not possible to sustainably improve children's health without improving the soil fertility of their parents' land plots. There would be considerable gains from a diversification aiming to produce the food Malawians need for adequate diets. For instance, FISP could enhance the quantity and diversity of subsidized legume seeds distributed across the country, as well as fruit tree seeds and seedlings.

Second, a 'Brown Revolution' is required.Aconcerted national effort to support farmers in improving structural soil fertility is urgent. The application of inorganic fertilizers does not result in a structural improvement of Malawi's depleted soils. What Malawi needs is a strategy to improve soil fertility, organic matter and water-holding capacity, so as to gradually reducedependency on imported fertilizers and become more resilient to dry spells. Fortunately, home-grown organic soil fertilization technologies and practices have recently achieved remarkable success and international recognition. A starting point would be to incorporate more legumes in Malawi's cropping system. In addition to their contribution to family nutrition and income, legumes build soil fertility, and improve inorganic fertiliser use efficiency between 50 to 120 percent. Semiperennial rotation systems involving legumes and maize, including 'doubled up grain legume systems', such as groundnut-pigeonpea intercropped, in rotation with maize, are particularly promising. Agroforestry systems combining cereal crops, fertilizer trees and shrubs with small doses of inorganic fertilizers produce food-crop yields far greater than farmers' use of inorganic fertilizers alone, while improving soil fertility in a few years. For instance, the maize-*Tephrosiavogelii* intercrop grows during the dry season, has modest labour requirements and produce large amounts of nitrogen-rich residues, which can be incorporated in the soil. Other systems include fruit trees, fodder trees and fuel-wood trees.

The Government of Malawi and development partners could allocate more resources to these practices, building on existing successful practices, and designing a comprehensive soil fertility and land management strategy seeking to scale up best practices. Malawi possesses all the building blocks for initiating this "Brown Revolution", including the accumulated experience of the well-known Soils, Food and Healthy Communities (SFHC) project in Ekwendeni (> 8000 farmers), the Malawi Farmer-to-Farmer Agroecology Project in Dedza (> 2000 farmers), the Africa RISING Programme, Total Land Care projects, and the ICRAF Malawi AgroForestry Food Security Project (> 180,000 farmers).

Third, a 'Blue Revolution' is required to improve water conservation and scale up sustainable irrigation methods. Under the Malawi Growth and Development Strategy (MGDS) II, Malawi plans to expand the area under irrigation through its Green Belt Initiative (GBI), from 90, 000 hectares to 400,000 hectares. However, only 36% of Malawi's agricultural area is potentially irrigable with river/lake water. Other options are necessary to improve irrigation for those living in other areas. Yet, very few efforts are under way, despite the fact that the establishment of 'rainwater harvesting systems' is a 'Focus Action' of MGDS II. Developingsmall farm ponds, tanks, contour ridges, checkdams and stone bunds, for harvesting and storing rainwater water, that could be included in public works programmes, would go a long way to increase infiltration and recharge ground water levels. Permaculture vegetable and fruit gardens, which are vital for food security and nutrition, could be disseminated more broadly. Landscape management and conservation agriculture techniques would also increase soil moisture in farmers' fields.

Fourth, as anticipated in the ASWAp, agricultural extension services should be significantly scaled up. Their staff has been drastically reduced since the late 1990s (from 3,000 approx. to approx. 1,000 extension staff), with negative consequences on vulnerable farmers, in particular in areas distant from communication infrastructures. In joining the New Alliance on Food Security and Nutrition, the government committed to strengthen extension services to support export growth clusters. This is promising, but insufficient: market-led extension usually leaves the most vulnerable farmers side-lined, and it is also unfit to support the necessary transformations outlined above.

Malawi could consider supporting innovative bottom-up models of horizontal extension. Initiatives such as ‘Farmers Research Teams’ and ‘Agriculture and Nutrition Discussion Groups’not only facilitated the dissemination of agroecological practices to above 8,000 farmers in Ekwendeni, but also improved consideration of gender issues and ‘family cooperation’ in agricultural change. Decentralized extension networks involving extension officers, farmers’ organizations and scientists, could be established and tasked to facilitate the identification, development and dissemination of the best agroecological practices, as well as identifying obstacles and incentives. Such a modernization of extension services is vital. The implementation of the agroecological practices described in preceding sections requires a deep ownership of new practices by local communities, in order to overcome certain technical and social obstacles. Finally, the hiring and training of female extension workers (massively under-represented), as well as the integration of gender issues in all extension activities, are vital to the success of all efforts: any strategy that does not affirmatively reach out women farmers will fail to achieve significant results.

Finally, there a need to carefully pace the shift towards a greater diversification of the economy across sectors as well as the change within agriculture. Recent policy documents and discourse increasingly put an emphasis on agricultural diversification through large-scale commercial estates, in an export-led approach. However, such capital-intensive farming minimises labour use. An expansion of this model therefore requires careful consideration, given complex social and economic consequences, including on rural-urban migration. The scale, speed and timing of mechanisation must be adapted to the scale, speed and timing of the creation of non-agricultural employment opportunities, which is slow. A priority for Malawi in the years to come is the creation of more employment opportunities, which may require the promotion of labour-intensive technologies and practices: the adoption of labour-saving technologies, though part of any long-term development strategy, must be gradual so as to avoid social disruptions.

The Special Rapporteur found that there was a broad consensus on the need to address the five challenges outlined above. He expresses the hope that the Government of Malawi, and its development Partners, will gradually reflect this consensus in budgetary choices. What is lacking for a catalytic transformation to materialize, is the type of budget allocation FISP received since the 2005/6 growing season. He notes however that the cost of implementing the changes suggested above could be covered by savings in fertilizer imports and associated foreign exchange requirements, with ‘Brown Revolution’ techniques being gradually disseminated and improving soil fertility; as well as by an assertive implementation of rigorous accountability mechanisms and anti-corruption measures within FISP, including in procurement. In addition, tremendous positive externalities would be generated, including on health, food security and nutrition, employment, people skills, and resilience to climate change shocks. Substantive multiplier effects are associated with these measures, which have a strong ‘home-grown’ character.

WereMalawi to succeed in designing an agricultural development policy integrating these elements at the same time thatFISP is reformed, it will achieve gradual but lasting successes in combating hunger and malnutrition, and it will turn into a model for other countries affected by hunger and climate change.

b) Access to land

Land is critical source of livelihood for a majority of the Malawian population living in rural areas as smallholders. Land is also becoming an increasingly scarce resource as a consequence of rapid population growth and Government policy to develop large-scale estates. A new Land Bill, in the form of 11 pieces of legislation, isnow pending approval. In this regard, the Special Rapporteur would like to highlight the following areas where the Land Bill could strengthen protection of the right to food.

The reformed legal framework should provide for adequate protection against illegitimate acquisitions of land in the context of agricultural investments, such as the investmentsforeseen under the GBI and the G8 New Alliance for Food Security and Nutrition. One of the commitments of the Government under the latter framework is to release 200,000 ha of land to investors, "after conducting a survey to identify idle land and crop suitability under both customary and leasehold." The Special Rapporteur welcomes in this regard the commitment under G8 New Alliance for Food Security and Nutrition cooperation framework to comply with the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests, adopted in May 2012 by the Committee on World Food Security. He notes that the Guidelines refer to equitable access to land and recommend the adoption of ceiling laws, considering the positive impacts of equitable access to land on food security. Beyond the investments that are currently planned, this should guide the future allocation of the estimated 2,4 million ha of underutilized land in the country. He recommends that the surveys to identify available land be done in aparticipatory manner. Moreover, in order to ensure adequate security of tenure for rural communities, the new legislative framework should include safeguards against excessive powers of traditional chiefs to agree to land acquisitions against the will of their communities.

The Special Rapporteur concludes from his meetings with Government officials and communities that had been displaced from their land to give way to a sugar plantation that the current safeguards are inadequate. In assessing whether or not displacement can be justified, legislation should ensure that the impacts on affected communities are adequately assessed, that all potentially affected persons are fully consulted and, in cases of resettlement, are provided with fair compensation and not deprived of their sources of livelihood. Persons who are resettled should be compensated with land commensurate in quality, size and value, or better.

The new legislation should also give adequate attention to the situation of women and their vulnerability to be disadvantaged in their access to land, as also discussed in the Special Rapporteurs report on women's right and the right to food (A/HRC/22/50).

Finally, the Customary Land Bill should ensure that the security of tenure is ensure for of those who may not get their land registered, for example because they lack resources and access to information about procedures.

c) Contract farming

Contract farming arrangements between small-scale farmers and agrifood companies are currently being experimented in tobacco farming. Such arrangements could multiply as Malawi takes steps to promote large-scale commercial agricultural projects. Malawi's Cooperation Framework to Support the New Alliance for Food Security and Nutrition includes a policy commitment to 'fast track' the Contract Farming Strategy initially prepared in 2009.
The Special Rapporteur encourages the Government to develop a legal framework to regulate the development of contract farming. In order to ensure that it complies with the requirements of the right to adequate food, such framework could build on the set of conditions outlined earlier by the Special Rapporteur, including support for small-scale farmers in negotiations to ensure greater balance in bargaining positions, clear and transparent pricing mechanisms and ways of resolving disputes (A/66/262, para 25-32). Beyond contract farming, which seldom encourages farmers to climb up the value chain and move into the packaging, processing or marketing of their produce,

other and more inclusive business models could be explored, such as joint ventures, farmer-controlled enterprises, or direct-to-consumer food marketing.

d) Integrating nutrition in agricultural development

Vision 2020 stated that in Malawi, "diets are bulky and monotonous. Meals consist of '*nsima*' made from maize or cassava flour taken together with cooked vegetable dishes. The result is a high level of chronic under nutrition and micronutrient deficiencies." Despite some improvements since Vision 2020 was formulated, levels of child malnutrition remains unacceptably high in Malawi. Ensuring access to a more balanced diet is crucial to address this problem. However, apart from the important nutritional education programmes launched by the Government, there is a need to link these initiatives (coordinated by the Ministry of Health and the Office of the President and Cabinet) with initiatives to promote the a more diversified agricultural food production (coordinated by the Ministry of Agriculture).

In this regard, the Special Rapporteur was impressed by the initiatives started in Nutrition Rehabilitation Units across the country, including at Ekwendeni Hospital in Mzimba District and at Mulanje Mission Hospital in Mulanje District which have successfully combine treatment and nutrition education with programmes to assist communities diversity the crops and legumes they grow in their gardens and plots of land. The Government could study how such initiatives could be scaled up, including through integration nutritional education in strengthened extension services for local communities.

3. Workers' rights and social protection

a) The right to food through a living wage

With the agrarian transition and the expected redevelopment of large estates, waged employment as a means to improve access to food is bound to increase. It is essential that waged workers can, through their incomes, have access to adequate food. The minimum wage is currently fixed at MWK 371 per day (US$ 1.12), based upon the Employment Act (No 6 of 2000). Thus, Malawi has one of the lowest national minimum wages worldwide. In 2012, it was estimated to represent only approximately 55 percent of the US$1.25 PPP Extreme Poverty Line defined by the World Bank (predevaluation).

This results from several decades of policies designed to produce cheap labour for the emerging estate sector by depressing the price of labour, including the so-called 'maximum wage policy' enshrined in the 1971 Wage Restraint Policy, restriction on migration to outside Malawi and repression of trade unions. This policy is increasingly indefensible in an inclusive development strategy. Following the devaluation of the kwacha in 2012, certain sectors now enjoy remarkable operational profits: Illovo Sugar (Malawi) allegedly reported operational profits increased from MWK 12 billion in 2012 to 31.1 billion in 2013, with a 85 percent increase in dividends per share. A well-informed expert compared Malawi as a 'labour utopia' for employers, with cheap labour and poor labour inspection, a situation witnessed by the Special Rapporteur, who met with female seasonal tea pluckers earning MWK 430 per day for eight hours of work, provided they collect 44 kilograms of tea leaves.

The absurdly low minimum wage has serious negative consequences on workers' right to adequate food. It is estimated that the requirements to cover the food basket of an average household is above MWK 58,000 per month (1,900 per day). It is therefore of utmost importance to address the situation, given that current policies – such as the National Export Strategy and Malawi's Cooperation Framework to Support the New Alliance for Food Security and Nutrition – could result in an increase in agricultural workers.

The Special Rapporteur recommends that serious consideration be given to the intrinsic relationships between wages and the right to adequate food, by the government, employers and development partners alike. Steps should gradually but immediately be taken to adapt the national minimum wage to a 'living wage', a wage that "provides an income allowing workers to support themselves and their families", as required under articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights. Secondly, the government should monitor compliance with labour legislation to ensure that companies pay a living wage to all waged workers, including all casual/seasonal workers. Labour inspection should be adequately staffed and resourced. Only companies paying living wages should be awarded public contracts. Collective bargaining, which is respected in the sugar sector, should be applied in other estates sector, in particular tea, and the right to organize should be respected.

These measures reflect the goals and standards Malawi set for itself in its 1994 Constitution, which calls for equal and fair treatment, and affirms rights in relation to employment conditions and labour relations, such as fair and safe labour practices including remuneration, trade unionism and freedom to work (Section 31). These were recalled in Malawi's Decent Work Country Programme (DWCP) 2011-2016 developed by the ILO constituents: the government together with the employers' and workers' organizations.

b) Tenant workers in the tobacco sector

The Special Rapporteur could witness the extremely precarious conditions in which an estimated 300,000 tobacco tenant families live in Malawi. The incomes of tenant workers depend on the quantity and quality of tobacco sold to their landlord after harvest season. In certain cases, they are left without any income once they reimburse loans covering their food requirements during the tobacco growing season. Certain tobacco tenants are reported to go without food for several days when they run out of their monthly allocation. Another consequence of the low prices received for their product is the massive use of child labour: 78,000 child labourers are employed in tobacco leaves plucking.

A Tenancy Labour Bill was presented in 2010. It addresses basic rights of tobacco tenant workers. The Special Rapporteur strongly encourages that this Bill be tabled in an upcoming sitting of the National Assembly. He also encourages the country to become a party to the WHO Framework Convention on Tobacco Control (FCTC) and to identify alternative options to tobacco growing (in relation to Art. 17 and 18 of FCTC). Finally, the negative impacts of collusion between global tobacco companies over tobacco leaf prices on the livelihoods of tenant workers (in 2010, global tobacco companies paid prices 37 percent below the government-set average minimum prices) should be addressed, without interference from the tobacco industry.

c) Reaching the "ultra poor"

There are arange of social support/protection schemes in Malawi.With the exception of the FISP input subsidy programme, the programmes all have limitedgeographical coverage. Moreover, international donors provide the major part of programme budgets. The programmes include emergency response to communities affected by shocks in the form of food aid (in-kind or through or cash or voucher transfers); public works programmes (food or cash for work) targeted at households experiencing periodic food insecurity; targeted transfers (cash/productive assets) to assist households who are particularly vulnerable to food insecurity (child-headed, ultra poor and labour-constrained households). In addition, a separate Presidential Initiative on Poverty and Hunger Reduction was launched on 17 June 2012 focusing on livelihoods in the agricultural sector, with separate budgets for a range of interventions, including the handing out of seeds and livestock (known as the "one family one cow" initiative) to poor rural households.

Several Government institutions are involved in the implementation of social protection programmes, including the Ministry of Agriculture(food aid); Ministry of Local Government and

Rural Development (public works programmes); and Ministry of Gender, Children and Community Development, Ministry of Agriculture, and the Office of the President and Cabinet fortargeted transfers. Furthermore, as described in 2012 National Social Support Policy, the Ministry of Economic Planning and Development coordinates the National Social Support Programme (NSSP), which include an inter-Ministerial Social Support Steering Committee and Technical Committee.

The number of beneficiaries of the social protection programmes has been gradually increasing in recent years. Still, national coverage remains limited, and there are significant disparities amongst regions and districts. With regard to school feeding programmes for instance, that WFP and NGOs implement in corporation with the Ministry of Education, while an average of 14.8 percent of the population benefited from school feeding programmes in 2010, in 9 of the 28 districts less than 3 percent of the population are covered. In contrast, 40 percent or more participate in such programmes in the districts of Chiradzulu, Mulanje,Nsanje and in the urban centres of Muzuzu City and Blantyre City. These differences do not seem to correspond with a deliberate targeting of districts with a particularly high level of child malnutrition and school drop-out rates. For instance, in the district of Nkhotakota, where no child benefitted from school feeding programmes, the rates of primary education drop-out and of stunting of children below the age of 5 are well above the national average.

With regard to public works programmes, available data seem to indicate that they may not always be reaching the intended target group. Allowing members of poor food-insecure households to enrol in public works programmes for a limited period on a salary below the minimum wage, these programmes are designed to be self-targeting, since they would only seem to be an attractive option to those in genuine need, who have run out of other options. Yet, IHS3 data shows that significantly more people from the 4th highest consumption quintile (3.2 percent) of the population had participated in a public works programme compared to those from the lowest consumption quintile (2 percent).

Schools participating in school feeding programmes have seen a significant reduction in drop-out rates and improved child nutrition, with evident benefits for Malawi’s development. The Special Rapporteur encourages the Government to give priority to scaling up school feeding programmes to achieve full national coverage. He also welcomes the Government’s stated intention to source food for such programmes locally to create synergies with efforts to promote small holder food production. As regards public works programmes, the Special Rapporteur believes targeting could be improved, and synergies should be identified with rural development objectives that build resilience and relieve women from the burden they shoulder, such as afforestation programmes, landscape arrangements to allow the soil to capture moisture, the building of infrastructure for water harvesting.

In the village of Mzembera, Salima District, the Special Rapporteur met with beneficiaries of the country’s main programme of targeted cash transfers, the Malawi Social Cash Transfer Programme (SCTP). The programme targets households that are both ultra poor and labour constrained.It now covers8 of the country’s 28 districts, reaching an estimated 26,000 households and 103,000 individuals. Beneficiary households receive a monthly cash transfer which is calculated on the basis of the number of people in the household (ranging from MWK1,000/USD 2.75 per month for a 1 person household to MWK2,400/USD 6.60 for a 4+ person household).As the Special Rapporteur learned from his conversations with beneficiaries, the small amounts received had made a significant contribution to improving livelihoods, allowing households to purchase food, farm inputs, school uniforms, etc.

Currently, 10 percent of the programme’s budget is provided by the Government and the rest by international donors. The Government intends to gradually scale up the scheme to cover the whole country. This will indeed be critical to reversing the trend of increasing rates of extreme poverty in rural areas. More broadly, moving towards the establishment of a comprehensive social protection system and a national Social Protection Floor will be an important element of a national strategy to curb accelerated population growth, in a context where children currently constitute the main means of livelihood security for parents in their old age. Indeed, a comprehensive social protection system for the elderly, the chronically sick, or those without other source of income is already urgently needed. As a recent study showed, children are increasingly failing to provide for the needs of the elderly due to economic hardship and changing family ties. Moreover, HIV/AIDS has resulted in a high number of orphaned elderly, who lack the support of other family members, and of orphaned children being cared for by the grandparents or living in child-headed households.

As also recognized in MGDS II, key challenges surround efforts to ensure access to basic social protection for those most vulnerable to poverty and food insecurity in Malawi. First, programmes are often ad hoc and uncoordinated, spread over a multiple initiatives and Government institutions: as noted in the MGDS II, this calls for the establishment of "coherent and progressive social support synergies."The 2012 National Social Support Policy seeks to address this problem. It will be important to ensure that the coordination mechanisms foreseen in this Policy become fully operational.

Second, current schemes are overly reliant on donor funded, time-bound projects, undermining their overall coherence and sustainability. One essential requirement to address this problem would be a greater contribution from the national budget towards the financing of social protection programmes.

Third, there is a need to better target social support programmes to ensure that they reach the intended beneficiaries/rights holders and to find innovative ways to minimize transaction costs and leakages. The system of decentralized targeting at community level in which village heads play a major role, though cost effective and relatively successful, could be improved by introducingfurther checks and balanced to safeguard against favouritism and arbitrary exclusion. More specifically, the Special Rapporteur would suggest that community-based targeting be strengthened by: (1) publishing and making available in local languages the guidelines and criteria for identifying beneficiaries; (2) providing for accessible grievance redressal mechanisms against mismanagement and arbitrary allocation of benefits; (3) introducing a system of community score cards to allow for the tracking of inputs (e.g. vouchers, farm inputs) and ensure that the community is aware of their rights and entitlements; and (4) strengtheningthe oversight role of local committees, made up of committee members, possibly building upon existing systems of Village Development Committees and Civil Protection Committees.

4. Women's right to food

Among the ultra poor in Malawi, women face specific impediments to their enjoyment of the right to food. Given their traditional role in the family, women in most cases shoulder an unequal share of household responsibilities, such as taking care of the children, of the elderly and of the sick. In Malawi, women spend on average 1.2 hours a day on getting water and fetching fire wood, adding to their time poverty. Moreover, it is estimated that women provide 70 of the agricuturalworkforce, yet they are unequal with men in decision-making and control over production resources and land. The same general pattern was found in all regions, irrespective of whether customary land ownership was governed by a matrilineal and patrilineal system.

In order to strengthen the protection of women's right to food, the Special Rapporteur underlines the importance of integrating a gender perspective in food security interventions and programmes: (1) The specific constraints faced by women must be recognized. For example women's care-taking responsibilities and time constraints should be borne in mind in the design of agricultural extension services or public works programmes. (2) Women must be relieved from some of theburdens they shoulder, for instance by prioritizing measures which would reduce the time spent on fetching water and fire wood (e.g. providing access to electricity or boring wells).

(3) To achieve a more equal distribution of tasks within households, a transformation of existing gender role divisions should be promoted. In this regard, an initiative of organizing "recipe days" in local communities served to get men involved in household cooking and to sensitize them about maternal and child nutrition.

5. Prisoners' right to adequate food

The Special Rapporteur visitedMaula Prison in Lilongwe to assess the situation of prisoners with regard to their right to adequate food,in light of a 2009 High Court ruling concerning problems of severe overcrowding and inadequate feeding in Malawian prisons. The High Court found that prison overcrowding amounted to inhuman and degrading treatment. In response to allegations that feeding prisoners only one meal per day, consisting in maize meal (*nsima*) and peas or beans, was grossly inadequate, the Courtalso found that the "minimum standards set by the [1955] Prisons Act have outlived their time and ought to be amended to raise those minimum standards to meet nutritional needs of the prisoners to address new health challenges of inmates."

The Special Rapporteur regrets in this regard the slow progress made in reforming the Prison Act.AtMaula Prison, the Prison Service wasonly able to provide prisoners one daily meal made up of maize meal and beans or peas, due to budget constraints. At times when food stocks and the budget ran out, the prison had to rely on a private provider to sell the prison maize meal oncredit. According to the prisoners there were days when they received no food at all, for example when there was no firewood available or provisions of maize flour had run out. Moreover, they explained that prisoners with HIV/AIDS and other chronic diseases did not receive any special treatment to meet their special dietary needs.

The United Nations Standard Minimum Rules for the Treatment of Prisoners provides in its article 20, paragraph 1, that "Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served." While the Special Rapporteur appreciates the budget constraints faced by the Prison Service, he recalls that this cannot justify violations of the right to adequate food and to be free from hunger or, as the Human Rights Committee has underlined, non-compliance with the Standard Minimum Rules for the Treatment of Prisoners.

6. Financing the new trajectory

a) Making maximum use of available resources

Malawi has committed to take steps to the maximum of its available resources to progressively achieve the full realization of the right to adequate food (ICESCR, art. 2). Beyond the adoption of the legislative and policy measures considered in the above sections, including optimizing the impact of policies and programmes by appropriate budget allocation, the Special Rapporteur considers two issues as vital to the realization of the right to adequate food in Malawi.

A first issue concerns measures to reduce illicit financial flows and tax evasion. It is estimated that Malawi has lost over 10 percent of GDP to illicit outflows over the period 1980-2009. This impacts its ability to realize the right to food. Recognizing that "illicit capital flight undermines the capacity of State Parties to implement the African Charter on Human and Peoples' Rights and to attain the Millennium Development Goals," the African Commission on Human and Peoples' Rights has recently called upon States parties to the African Charter on Human and Peoples' Rights "to examine their national tax laws and policies towards preventing illicit capital flight in Africa."As mining develops, Malawi can simply not afford business-as-usual. The Special Rapporteur urges the Government of Malawi to swiftly implement the concrete recommendations suggested by the African Development Bank and Global Financial Integrity, including joining the Extractive Industries Transparency Initiative (EITI), and adopting legislation transforming EITI voluntary requirements in legal requirements, as done in Liberia and Nigeria for a number of years.

Second, the Special Rapporteur notes that Malawi offers a great range of tax incentives to domestic and foreign companies. Mining companies are exempt from customs duty, excise duty, VAT on mining machinery, plant and equipment. They can also sign special deals on the rate of royalty owed to the government. Companies operating in Export Processing Zones pay no corporate tax, no withholding tax on dividends, no VAT and no duty on capital equipment, machinery and raw materials. For instance, revenue losses from special incentives given to Australian mining company Paladin Energy, which manages the Kayelekera uranium mine, are estimated to amount to at least US$ 205 million (MWK 67 billion), and could be up to US$ 281 million (MWK 92 billion) over the 13 year lifespan of the mine. This amounts to at least US$ 15.8 million (MWK 6.5 billion) or up to US$21.65 million (MWK 8.9 billion) a year.

The Special Rapporteur is convinced that, unless combined with a comprehensive enhancement and optimization of tax revenue in Malawi, current macroeconomic reforms may not have substantive positive impacts on the realization of the right to food.

b) Securing the financing of post-2015 food security objectives

The Special Rapporteur notes the challenges associated with Malawi joining the New Alliance for Food Security and Nutrition. He welcomes the reference, in the Country Cooperation Framework to the transposition in Malawi of the Voluntary Guidelines on the responsible governance of tenure of land, fisheries and forests. Beyond the reforms aimed at improving the investment climate,the Special Rapporteur sees the announcement of new investments under the New Alliance framework as an opportunity to make progress towards (i) a comprehensive enhancement and optimization of tax revenue and appropriate control of illicit financial flows; and (ii) the implementation of all ILO Fundamental Conventions and the Decent Work Country Programme 2011-2016, by requiring that actors joining the New Alliance comply fully with this agenda.

The Special Rapporteur suggests that linkages be made between the implementation of the New Alliance commitments and the post-2015 Development Agenda, as to ensure that the latter receives appropriate support from the range of actors present in Malawi. In that spirit, it is suggested that a ‘post-2015 Trust Fund’ be established. Such a fund would be gradually financed by the revenues collected as new investments are made in the country. The Trust Fund could be overviewed and monitored by the National Food Security Council that should be instituted by the National Food Security Bill, as anticipated in the draft bill. It would finance policies aimed at improving food security and nutrition, including through school feeding, social protection, agricultural diversification, and sustainable agricultural practices.

The Special Rapporteur expresses the hope that the findings highlighted in his end-of-mission statement, and the associated challenges for Malawi, will inform the national dialogue on these issues. His final report will be available early 2014 and presented in Geneva to the Human Rights Council in March 2014.

* * *

Olivier De Schutter *was appointed the UN Special Rapporteur on the right to food in March 2008 by the United Nations Human Rights Council. He is independent from any government or organization, and he reports to the Human Rights Council and to the General Assembly.*

For more on the work of the Special Rapporteur on the right to food, visit http://www.ohchr.org/EN/Issues/Food/Pages/FoodIndex.aspx or www.srfood.org.

PALADIN ENERGY LTD
ACN 061 681 098

24 July 2013

By email: srfood@ohchr.org

Mr Olivier De Schutter
Special Rapporteur
Office of the High Commissioner for Human Rights
United Nations
Palais Des Nations
1211 GENEVA 10
SWITZERLAND

Dear Sir

End-of-Mission Statement to Malawi by United Nations

I refer to your mission statement released 22 July 2013 and in particular the reference in section 6a) to Paladin Energy Ltd's Kayelekera uranium mine.

You state that "revenue losses from special incentives given to Australian mining company Paladin Energy, which manages the Kayelekera uranium mine; are estimated to amount to at least US$205 million (MWK 67 billion), and could be up to US$281 million (MWK 92 billion) over the 13 year life span of the mine".

The "estimate" to which you presumably refer (but do not cite nor indeed cite any supporting material) was made in a report made on or about 21 June 2013 by the Norwegian Church Aid/CCJP ('Report'). The Report included a number of fundamental misunderstandings and factual errors which could have been corrected if consultation with Paladin Energy had been sought. The Report, which is demonstrably flawed, unfortunately now has been given undue credibility as a consequence of this ill-considered imprimatur bestowed by the United Nations.

I am extremely disappointed and concerned that you also did not choose to consult Paladin Energy to verify or challenge the data to which you refer. Had you done so, we would have provided you with the attached presentation in answer to the many errors in the Report.

A publication on behalf of an organisation with the standing of the United Nations is no doubt given special attention, as evidenced by its wide and prominent reporting in the Malawian media and subsequent referencing on Google alerts for international dissemination. Your reference concerning the Kayelekera mine is erroneous and has caused reputational harm to the Company. Paladin Energy is an EITI-Compliant company, which has invested more than US$ 500 million in Malawi, far more than any other foreign investor. The Report and your statement no doubt is also embarrassing to the Government of Malawi, which has acted in the best interests of its people in approving the development of the Kayelekera Mine (to international standards). Moreover it deleteriously affects the opportunity for Malawi to encourage further crucial foreign investment that is so vitally needed to meet the Government's Economic Recovery Plan (ERP) objectives.

I urge you to consider the enclosed response to the Report, discuss the matter further if you wish with my Company and publish a statement of clarification. Due to the publicity given to your statement, I intend to publish this letter and the enclosed response on my Company's website.

Yours faithfully
Paladin Energy Ltd

RICK CRABB *B. Juris (Hons), LLB, MBA, FAICD*
Chairman

cc Mia Seppo, UN Resident Coordinator & UNDP Resident Representative, Malawi

Hon. John Bande MP, Minister for Mining, Malawi

Hon Dr. Ken Lipenga MP, Minister for Finance, Malawi.

Hon. Ephraim Mganda Chiume MP, Minister of Foreign Affairs and International Cooperation, Malawi

Mr. Shyley Kondowe, Special Advisor to the President on Policy and Strategy, Office of President and Cabinet, Malawi

His Excellency, Mr. Matthew Neuhaus, Australian High Commissioner to Malawi

His Excellency, Mr. Michael Nevin, British High Commissioner to Malawi

Her Excellency, Mrs Jeanine Jackson, US Ambassador to Malawi

His Excellency, Mr. Alexander Baum, Head of the EU Delegation to Malawi

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PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND
www.ohchr.org • TEL: +41 22 917 9323 • FAX: +41 22 917 9008 • E-MAIL: srfood@ohchr.org

Mandate of the Special Rapporteur on the right to food

REFERENCE: Food 2013/RH/UH

25 July 2013

Dear Mr Crabb,

I am writing concerning your letter dated 24 July 2013 in which you raise concerns about the reference to Paladin Engergy Ltd. in the end-of-mission statement I presented on 22 July 2013 following my visit to Malawi.

Allow me first to thank you for the additional information provided, which I will of course take into consideration as I prepare the final report on my visit, to be presented to be presented to the United Nations Human Rights Council in March 2014. Please do not hesitate to provide me with more information in the next few weeks, as my report will not be finalized before the month of November.

Let me state at the outset that as Special Rapporteur on the right to food, I serve in a personal and fully independent capacity. While I am appointed by and report to the United Nations Human Rights Council, the observations and recommendations I make in my capacity of Special Rapporteur are neither those of Office of the High Commissioner for Human Rights, nor those of any other United Nations organization. Thus, contrary to the way they were presented in local media reports, the observations made in my statement of 22 July do not represent a position of the United Nations System in Malawi

I have carefully studied the documents you have kindly provided me with. Based on this information and other information that is publicly available I would like to describe in further detail the nature of my concerns.

For the least developed countries, negotiating fair agreements for the exploitation of their natural resources, including mining, by domestic or foreign companies, is a considerable challenge. It involves managing complex sets of data, asymmetry of information, and future forecasts on commodity markets. This is a problem I have studied in detail in other countries and for other sectors. This task requires a capacity that many least developed countries have yet to develop.

…/…

Mr. Rick Crabb
Chairman
Paladin Energy Ltd.
Level 4, 502 Hay Street (Po Box 201)
Subiaco Western Australia 6008

Indeed, during my mission in Malawi, I heard calls expressed at the highest level for support from the international community to assist the Government negotiate better deals with foreign companies, in the best interest of the population. While emphasizing the fact that Malawi is aiming at creating a favourable business environment for domestic and foreign companies, my interlocutors acknowledged that they were still learning how best to negotiate multi-year agreements with large companies, noting that if they had had a stronger capacity to negotiate such agreements in the past, they might have reached more favourable agreements with your and other companies.

In this regard, I would like to underline that I am fully aware of the need for Malawi to attract investments on its territory, and of the benefits that such investments, if well managed, can accrue to its population. Thus, I am not in any way questioning the importance of the Government's ongoing efforts to improve the investment climate in Malawi. As you will know, these efforts are supported by the UN System in Malawi and international donors through a range of programmes, including specific programmes supporting the Government's capacity to build an efficient, transparent and environmentally and socially sustainable framework for managing mineral rights and operations and ensuring optimal generation and use of mineral revenues.

It is my hope that my mission will serve to underline the importance of such capacity-building, in the best interest of the Malawian people. As underlined in my statement, Malawi has committed to take steps *to the maximum of its available resources* to progressively achieve the full realization of the right to adequate food. This is a requirement under the International Covenant on Economic, Social and Cultural Rights, which Malawi has ratified. In that context, Malawi's mineral resources are obviously of vital importance, and the capacity of the Government to collect revenus on their exploitation has direct consequences on its capacity to fulfil its duties under international human rights law.

With regard to the information provided in the powerpoint presentation you sent to my attention, I would appreciate your comments on the following:

(1) While your presentation states (on slide 7) that Malawi's standard royalty rate of 5 per cent is a "disincentive to investment", it strikes me that a similar royalty rate of 5 per cent also applies to uranium in Western Australia, along with a company tax rate of 30 per cent on profit, and a goods and services tax of 10 per cent that applies to mining company activities ("New Investment Opportunities in Western Australia", Government of Western Australia, Department of Mines and Petroleum, July 2009). I would welcome complementary information from your company on this aspect, including a rationale for comparing Malawi's tax and royalty structure only with African countries, and not with uranium-producing countries, including Canada and Australia. Indeed, if anything, the low cost of labour in Malawi should allow for payment of higher royalties, not lower. I am aware that other differences, such as infrastructure and the availability of skilled staff, have an influence on the profitability of the investment. I would be grateful for your comments on this point.

(2) Your presentation seems to give some weight to the recent profitability decreases of the industry. I am of course aware that the global financial crisis and the explosion of the Fukushima nuclear power plant have had important repercussions on the future of nuclear energy, with direct negative consequences on your company's stock, and, as reported in your presentations, repercussions on operational profits in Malawi. I understand that these two developments reduced uranium demand, even as supply grew as a result of what has been described as the past decade's 'mining boom'. Obviously, this situation exacerbates the competition among uranium producers.

I would note however that the long term prospects for uranium producers appear much less worrying than what seems to be assumed in the powerpoint presentation you provided me with. Demand from China and elsewhere is bound to increase: 500 reactors are being built or planned, more than double the 435 reactors currently in operation. The Ux Consulting Company (UxC) 2012 edition of the Uranium Suppliers Annual anticipates uranium demand to increase 22% by 2020 and 52% by 2030. Combined with the planned decrease of Russian uranium from discarded nuclear weapons for use as reactor fuel – as part of a 1993 disarmament treaty – , this should contribute to a stable recovery of uranium prices. The Australian government forecasts an increase in uranium prices between 2013 and 2017. By 2017 the uranium price is projected to reach around US$69 a pound (in 2012 dollars), representing an average annual increase of 3 per cent in real terms (Australia's Uranium Factsheet, June 2012).

(3) The presentation your provided me with is silent on the assertion made in the report published by Norwegian Church Aid and Catholic Commission for Justice and Peace that, according to figures from Paladin obtained by the authors, royalty payments amounted to $2.58 million during 2009-2012, a rate of 0.87 per cent. The authors of the report noted that this is inconsistent with the stipulation in the agreement that Paladin would pay a rate of 1.5 per cent for the first three years (p. 20). There seems there is no controversy on the royalty payments in the recent past. I would welcome your comments on this assertion.

(4) The above-cited report also mentions the question of transparency and tax havens. It notes that "Paladin has a complex group structure with 32 entities including several in Switzerland, the British Virgin Islands and Mauritius" (p. 5), and asserts that "Kayelekera Holdings SA is incorporated in Switzerland. Another company, called Indo Energy, which is 100 per cent owned by Paladin, is incorporated in the British Virgin Islands. Another - Langer Heinrich Mauritius Holdings Limited - is incorporated in Mauritius. Meanwhile, Paladin Netherlands Holdings Co-Operative UA is used to control several subsidiaries related to Canada (where the company is also exploring) – Paladin Canada Holdings (NL) Ltd, Paladin Canada Investments (NL) Ltd and Paladin Energy Canada Ltd" (p. 25).

Decades of research have demonstrated the negative impact of tax havens on development and the progressive realization of human rights in developing countries. This has been recently acknowledged at the G-20 Ministers of Finance meeting in Moscow on 19-20 July 2013, which held discussions on the issue of "Addressing Base Erosion and Profit Shifting (BEPS), Tackling Tax Avoidance, Promoting Automatic Exchange of Information, and Fighting Non-cooperative Jurisdictions", as well as OECD Action Plan on Base Erosion and Profit Shifting, endorsed in Moscow.

I would therefore welcome your comments as to whether Paladin's group structure, in particular the alleged domiciliation of entities in tax havens, provides opportunities for transfer pricing, and if any additional safeguards to guard against transfer pricing might be useful both to protect the company against allegations expressed in NGO reports, and associated reputational damange, and to ensure that investments allow the Government to make maximum use of its resources for the realization of the human rights of its population. While these issues were not addressed in my end-of-mission statement, I would be most grateful for your comments to improve my understanding of the situation.

(5) Finally, while Paladin Energy may be an Extractive Industries Transparency Initiative (EITI)-Compliant company, Malawi as a country is not. In my conversations and in my end-of-mission statement, I have encouraged Malawi to join EITI, and to follow the

example of other African countries, including Liberia and Nigeria, which turned the EITI voluntary requirements into legal requirements.

African countries as a whole may suffer from a lack of regional policies, including on the harmonization of mining taxes and royalty rates. Such harmonization could go a long way to avoid harmful beggar-thy-neighbour policies. In this regard, I would welcome your comments on the challenges for developing countries in ensuring that they benefit, and do not suffer, from the intense global competition between mining companies, including uranium producers, and that they increasingly receive a fair share of the added value of the commodities they own.

I would welcome if this letter could be posted on the website of your company, together with your letter dated 24 July.

I look forward to our continued conversation on this important topic, which is of great importance to Malawi's development prospects.

Sincerely,

Olivier De Schutter
Special Rapporteur on the right to food

Cc. Mr. Greg Walker, General Manager-International Affairs, Paladin Energy Ltd, Malawi

Hon. John Bande MP, Minister of Mining, Government of the Republic of Malawi

Hon. Ken Lipenga MP, Minister of Finance, Government of the Republic of Malawi

Hon. Ephraim Mganda Chiume MP, Minister of Foreign Affairs and International Cooperation, Government of the Republic of Malawi

Mr. Shyley Kondowe, Special Advisor to the President on Policy and Strategy, Office of the President and Cabinet

His Excellency, Mr. Matthew Neuhaus, Australian High Commmissioner to Malawi

Her Excellency, Ms. Jeanine Jackson, Ambassador of the United States of America to Malawi

His Excellency, Mr. Alexander Baum, Head of the EU Delegation to Malawi

Ms. Mia Seppo, United Nations Resident Coordinator and UNDP Resident Coordinator in Malawi

PALADIN ENERGY LTD
ACN 061 681 098

Ref: 315108

2 August 2013

Mr Olivier De Schutter
Special Rapporteur
Office of the High Commissioner for Human Rights
United Nations
Palais Des Nations
1211 GENEVA 10
SWITZERLAND

By email: srfood@ohchr.org

Dear Sir

End-of-Mission Statement to Malawi by United Nations

Thank you for your letter of 25 July 2013 and the explanation of your role as Special Rapporteur and the nature of your relationship with the United Nations. I am inclined to think that this relationship was not made sufficiently clear during your visit to Malawi, i.e. that:

- you serve in a personal and fully independent capacity; and
- your views do not represent those of the Office of the High Commissioner for Human Rights, nor any other United Nations organization, including the Office of the United Nations Representative to Malawi.

Under the circumstances, I believe it would be appropriate for you and the Office of the United Nations Representative to publicly clarify the nature of your relationship with the UN, since there is obviously – and understandably – confusion in the Malawi media and therefore the public mind over your vested authority.

It is clear that your observations have been accorded the imprimatur of the United Nations. This is hardly surprising since you spoke in the company of the United Nations Representative to Malawi and your End of Mission Report appears on United Nations High Commission for Human Rights letterhead.

With regard to your comments concerning the asymmetrical nature of negotiation between least developed countries and resource companies; this raises the more fundamental question as to why least developed countries remain in that state. It is, in my view, a function of three factors:

1. the prevalence or otherwise of economically-viable resources suitable for development;
2. the climate created for foreign investment in that country; and
3. the global economic conditions prevailing at the time.

There is, in particular, a clear correlation between least developed countries and country risk factors such as political and economic stability; ease of doing business and indeed transparency. Malawi rates

Level 4, 502 Hay Street, Subiaco Western Australia 6008 Postal: PO Box 201, Subiaco Western Australia 6904
Tel: +61 (8) 9381 4366 Fax: +61 (8) 9381 4978 Email: paladin@paladinenergy.com.au Website: www.paladinenergy.com.au

poorly on all such indices and, unfortunately, its position relative to emerging competing economies in fact is not improving, but is deteriorating, which is a most regrettable trend.

It is a fact that when Paladin invested in Malawi, no other company had contemplated a level of investment on this scale – in the resource sector or any other. It has entered Malawi mythology that the negotiation with Paladin was asymmetrical and thus unfair. This overlooks the following inconvenient facts:

1. The Finance Minister at the time, Hon. Goodall Gondwe, was a highly respected economist and a former director of the Africa Division for the International Monetary Fund (IMF).

2. Ministry of Finance officials were supported by an experienced British economist, Mr. Keith Hammond, seconded to Malawi from the UK Ministry of Finance throughout the period of negotiation of the Kayelekera *Development Agreement.* Mr. Hammond was involved in supporting and advising his Malawian counterparts throughout this process.

3. The Government of Malawi (GoM) sought and received advice and assistance from the IMF and the World Bank and consulted neighboring governments for their advice and input.

4. The GoM was provided with a full economic model of the Kayelekera Project and was able to do its own modeling to establish the viability or otherwise of the project under various fiscal regimes.

5. The terms and conditions were discussed in Full Cabinet on numerous occasions under the chairmanship of the late President, Dr Bingu wa Mutharka, himself a noted economist and former executive of the African Development Bank (ADB).

It is patronizing and unfair to those able Malawians to suggest that they were incapable of negotiating an appropriate *Development Agreement* to serve the best interests of their country. Indeed, the fact that the GoM is the only party to have made any money to-date from the development of the Kayelekera Mine is testament to their negotiating skill and foresight.

With regard to the common comments that Malawi “made mistakes” and “could have done better,” it is as well to remember that these utterances generally come from those uninvolved at the time and/or the politically partisan. Those who were involved continue to assert that it was a good deal for Malawi – as history has shown.

I acknowledge the important role the United Nations and international donors are playing in supporting capacity-building to create an efficient, transparent and environmentally and socially sustainable framework to manage Malawi’s mineral rights and operations and to ensure optimal generation and use of mineral revenues.

While it is important for the Government to focus on its regulatory framework, it is equally important to focus on creating a favorable climate for investment – a point that has also been made to the GoM by its supporting donors. Regrettably, there appears more appetite for establishing the machinery of control and regulation than for encouraging the foreign direct investment (FDI) which will fuel and lubricate that machinery. This arises from the mistaken perception – frequently repeated in government literature – that Malawi is well-endowed mineralogically and therefore the focus should be on regulating the stream of foreign investors which has yet to materialize. This is misguided, particularly in the current international investment climate. Unfortunately, it would appear that Malawi is destined to learn this lesson the hard way. It is axiomatic to state that this will not assist in dealing meaningfully with the problems of poverty and food inequality with which your End of Mission Report deals so eloquently.

Let me now deal with the specifics of the questions you posed:

1. Comparative Royalty Rates

Western Australia, like Malawi, has a standard royalty rate of five per cent. As the presentation demonstrated, applying this royalty rate to Kayelekera was an economic disincentive to investment and was recognized as such by the government of the day. Unless the royalty had been reduced to three per cent, the Kayelekera Project would not have proceeded. It was reduced and, as a result, Malawi now has a significant uranium mine.

Western Australia does not currently have any uranium mines. The Australian listed junior, Toro Energy Limited (Toro) has environmental approval to develop its US$ 270 million Wiluna Project as that State's first mine and hopes to have it on-stream by 2016. This will depend on Toro's ability to finance the project, which will be challenging in the current economic climate.

It may well be that the State of Western Australia will have to face the same choice as Malawi – maintain an unrealistic royalty rate and forego project development – or strike a royalty rate appropriate to the specific economics of the Wiluna Project in order to foster its development.

With regard to Canada, you may be aware that the Province of Saskatchewan in March this year announced a reduction in its royalty on uranium to support the industry in the post-Fukushima environment. This is the first change in the Province's royalty regime in 12 years. The provincial government described the old regime as a "barrier to investment."

Paladin has enjoyed no such consideration from the Government of Malawi.

With regard to your comment that the low cost of labour in Malawi should enable the Company to pay a higher rate of royalty, you should be aware that uranium mining – like most resource projects – is capital intensive and not labour intensive. The cost of local labour at Kayelekera Mine represents about two percent of total operating costs, despite our people being among the best paid in the country and earning – grade for grade – approximately double their counterparts in the civil service. This – together with Kayelekera's safe and humane working conditions – explains why jobs at Kayelekera Mine are so eagerly sought-after in Malawi.

You are quite correct that the paucity of suitably qualified and experienced local professional, technical and artisan staff adversely affects operating costs due to the necessity of employing expensive expatriates. Add to this the lack of a reliable grid power supply; poor infrastructure; low productivity, widespread theft; an inefficient bureaucracy; a generally hostile, ill-informed and irresponsible media; the debilitating impact of HIV/AIDS and a society which is largely insular and suspicious of foreigners and you have some appreciation of why Malawi is such a difficult operating environment for foreign companies with high standards of governance and conduct.

2. Outlook for Uranium

The Paladin Group shares your positive assessment of the medium to long-term outlook for the nuclear industry and the uranium sector. It is for this very reason that we persevere in supporting the loss-making operations of our Malawian subsidiary company, Paladin (Africa) Limited (PAL). The Paladin Group has injected more than US$211M in additional funding to maintain the operations of the Kayelekera Mine since it opened in April 2009. Paladin's shareholders have received no return to-date on this investment, while Malawi is gaining from foreign earnings, direct and indirect employment, taxes & royalties; expenditure by PAL with Malawian businesses and the expenditure of US$16.6M on some 70 Social Development projects during 2008-13.

You will appreciate therefore how disheartening it is for the Company to be confronted by some quarters of Government and society that is disbelieving of the facts and disdainful of Paladin's efforts to sustain Kayelekera Mine until such time as we collectively see an upturn in the uranium price. Frankly, it beggars belief that, rather than being accorded any recognition for these efforts, the Company is met with a constant chorus of calls for renegotiation of the Kayelekera *Development Agreement* to provide a "better deal" for Malawi.

Demands for renegotiation do not benefit Malawi, but potentially harm the country's efforts to reduce poverty by undermining the Government's Economic Recovery Plan (ERP), which seeks to significantly increase the level of FDI in Malawi.

Malawi's success in attracting such investment in a highly competitive world depends on its ability to convince investors that it is safe to invest in Malawi without fear that Government will shift or attempt to shift the goalposts after the investment has been made.

In the short-term however, the global uranium price remains depressed. The uranium spot price has declined from US$72.63/lb prior to Fukushima in March 2013 to a current price of US$34.50/lb – an eight-year low in nominal terms.

Rising concerns over political risk, particularly in Africa, and the direction of the global economy (especially Chinese demand) is fuelling this anxiety. Large and small companies are reducing costs and cutting capital spending across big, medium and small ventures. This includes BHP-Billiton, Rio Tinto, Xstrata, Vale and AREVA.

This impact has been felt in the uranium sector, with major projects being cancelled or deferred. In August 2012, BHP-Billiton announced that it was postponing a US$30 Billion redevelopment of its Olympic Dam Project in Australia – the biggest project in the uranium sector - due to global economic factors.

In September 2012, the Canadian company Cameco deferred its Kintyre Project in Australia, saying it was "uneconomic and needed at least US$62/lb to proceed." In October 2012, the giant French company AREVA suspended work on its US$1.0 Billion Trekkopje Project in Namibia, putting the project on care and maintenance, with 100 job losses. AREVA has also deferred its US$1.5 Billion Imouraren Project in Niger, saying Imouraren was "not economic at current prices."

So, it is clear that, in the current economic climate, it is not enough just to have a uranium deposit, as does Malawi. Namibia, Niger and Australia also have uranium deposits, but projects there have been cancelled or deferred due to the current economic climate. Kayelekera Mine is loss-making and is a high cost producer.

Paladin is working to reduce costs at Kayelekera Mine, with the objective of getting the Operation to break-even, in order to ensure its survival until such time as we see a recovery in the uranium price. It should be understood however that Paladin's resources are finite and should we not see an upturn in the uranium price within a reasonable timeframe, the Company would have no choice but to rationalize PAL's activities to a considerable extent.

3. Royalties Paid To-date

With regard to the CCJP/Norwegian Church Aid allegation on underpayment of royalty, this is dealt with on Pages 13 and 14 of the presentation.

To further clarify, royalty is payable after receipt of payment by PAL in respect of shipments to power utilities. Slide 14 illustrates the cycle time from production to payment, which typically is three-to-four months. Royalty is payable on revenue received within a quarter and is payable within 60 days of the end of a quarter. Slide 13 describes the transparency of the process in terms of product movement and revenue flows.

The supposed shortfall in royalty revenue "discovered" by the CCJP/Norwegian Church Aid results from this time lag. To be clear, Paladin has paid the full amount of royalty due – at the rate of 1.5 per cent for the first three years of operation and at the rate of three per cent from 01 January this year. Any alleged variance would have been detected by the Government, which has a Director sitting on the PAL Board and/or by the Company's auditors, Ernst & Young.

The GoM has never queried its royalty receipts, nor should it. If the CCJP/Norwegian Church Aid had asked the question prior to publishing this report, this misconception could have been corrected – along with many others.

I note, incidentally, that you now acknowledge the CCJP/Norwegian Church Aid Report as the source of your assertions regarding underpayment of royalty and taxes by Paladin. I hope that your final report will properly cite your source.

You may be interested to learn that, since hearing the Company's explanation at the workshop on 21 June 2013, Norwegian Church Aid now has dropped its call for Paladin to renegotiate the Kayelekera *Development Agreement* (you may confirm that with Norwegian Church Aid).

This is the only one of the four demands made by CCJP/Norwegian Church Aid with which Paladin had not already complied.

The four demands were that Paladin should:

- Provide explanations for the discrepancies on financial figures noted in this report.
- Make its current mining development agreement public.
- Commit to negotiating a new mining agreement with the Government.
- Publish detailed figures online on its tax and other payments to the Government of Malawi.

Paladin has:

- Demonstrated that there are <u>no financial discrepancies</u> as wrongly asserted in this report.
- <u>Already made public</u> the key fiscal terms of the current mining Development Agreement (ASX release 23 February 2007) and has acknowledged that it is willing for it to be made public.
- Explained why the validity of the current Development Agreement <u>must remain intact</u>.
- Become an EITI supporting Company and <u>already publishes</u> this information online.

4. Paladin Corporate Structure

As I am sure you are aware the CCJP/Norwegian Church Aid Report offers no evidence in support of its allegations of transfer pricing and observes simply that the Company has a "complex group structure." I would not accept even that proposition. Given that the Paladin Group has interests in various projects in Australia, Canada and Niger, as well as its operating companies in Malawi and Namibia, its corporate structure is not that complex. It is also totally transparent, being available on Paladin's website.

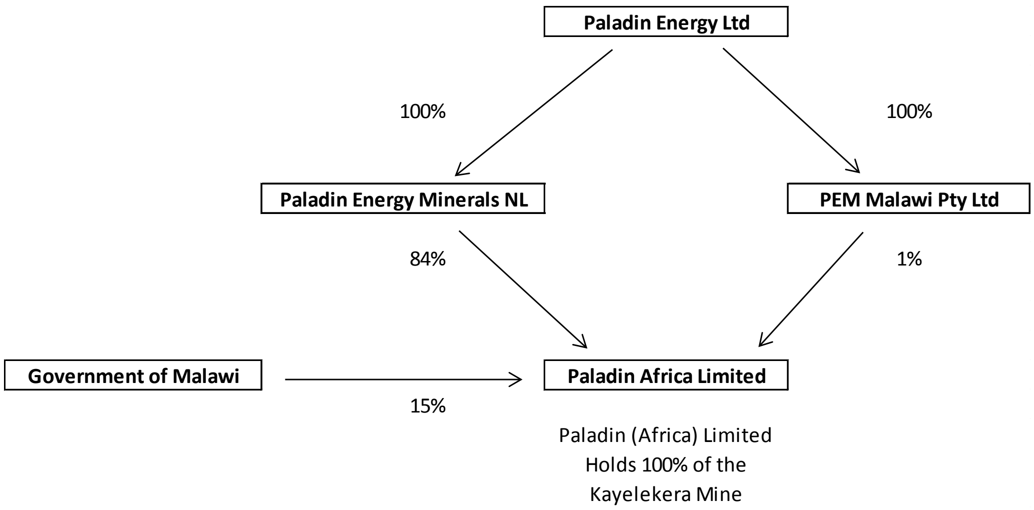
With regard to specific queries, Indo-Energy Limited is a company acquired by Paladin that holds exploration leases in Niger. It was incorporated in the British Virgin Islands before its acquisition by Paladin. Langer Heinrich is the Group's operating mine in Namibia and has nothing to do with PAL or Kayelekera Mine. There is no cross-holding or linkage between the two operating companies.

Paladin Energy Ltd owns 85 per cent of Paladin (Africa) Limited through two entities – Paladin Energy Minerals NL and PEM Malawi Limited. The remaining 15 per cent stake in PAL is held by the GoM. PAL holds the Kayelekera Mine (100%).

Paladin Energy Ltd owns 100 per cent of Langer Heinrich Mauritius Holdings Ltd which is not related to PAL in any way. Kayelekera Holdings SA is in the process of being wound up and has always been dormant.

Paladin Energy Ltd owns 100 per cent of Paladin Netherlands BV (formerly Kayelekera Finance BV). This is a wholly-owned subsidiary of Paladin Energy Ltd, whose primary purpose is to provide financial and management services to PAL and the Kayelekera Mine, in accordance with internationally-accepted practices.

Please see the following illustration of the Kayelekera Mine's ownership structure:



In summary, Paladin does not use tax havens to avoid payment of taxes. The Company's activities in Malawi are totally transparent to the GoM, as evidenced by the provision on a monthly basis of a full reconciliation of physical product movement and revenue flows, supported by copies of the Company's bank statements. These are provided to the Ministries of Finance and Mining and the Reserve Bank of Malawi (RBM).

5. EITI Compliance

You correctly note that, while Paladin is compliant with the Extractive Industries Transparency Initiative, Malawi is not, nor is Namibia, our other country of operation. Paladin does not have the remit to address that issue – the Company can only lead by example. EITI compliance is a matter for the GoM to decide, although I note that the GoM has indicated that it is considering joining the Initiative. Paladin, however, endorses the reporting standards under EITI and accordingly discloses all its tax payments made in both Malawi and Namibia, despite the fact those countries are not signatories.

Finally, you asked me to comment on the issue of harmonization of mining taxes and royalty rates. You suggest that such harmonization could go a long to avoiding "harmful beggar-thy-neighbour policies."

Harmonization is fine in theory, but ignores the practical realities that different projects, even involving the same commodity, have different technical and financial parameters. Therefore, a “one size fits all” approach, which is what harmonization implies, necessarily will work in some circumstances and not in others. Therefore, it will encourage the very inequality that you seek to avoid.

Mining companies – like any investor contemplating a large-scale, long-term investment – seek security of tenure; an honest and transparent regulatory environment; political and social stability and clear evidence that the impartial rule of law applies. All too often, governments in developing countries – despite making no financial contribution themselves - seek short-term gain within an unrealistic timeframe and well before shareholders might reasonably expect to see a return on their investment – and attendant risk.

Therefore I would encourage a focus, not on harmonization, but on establishing a stable and conducive environment for investment. Some African countries, like Botswana, have been very successful at that and provide an example for others to emulate. A feature of Botswana’s approach has been its openness and willingness to dialogue with existing and potential investors – and to actually listen to what they have to say. I am a strong believer in such dialogue, as I hope this response will demonstrate.

As a final word, I think it is regrettable that the many sensible observations and recommendations contained in your Report regarding food security in Malawi have been overshadowed by the undue emphasis placed on the issue of Malawi’s benefit from the Kayelekera Mine.

We will shortly publish on the Company’s website a detailed response to the CCJP/Norwegian Church Report. As you suggest, we will also publish your letter to me of 25 July and this reply.

Yours faithfully
Paladin Energy Ltd

RICK CRABB *B. Juris (Hons), LLB, MBA, FAICD*
Chairman

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HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND
www.ohchr.org • TEL: +41 22 917 9323 • FAX: +41 22 917 9008 • E-MAIL: srfood@ohchr.org

Mandate of the Special Rapporteur on the right to food

REFERENCE: Food 2013/RH/UH

25 July 2013

Dear Mr Crabb,

I am writing concerning your letter dated 24 July 2013 in which you raise concerns about the reference to Paladin Engergy Ltd. in the end-of-mission statement I presented on 22 July 2013 following my visit to Malawi.

Allow me first to thank you for the additional information provided, which I will of course take into consideration as I prepare the final report on my visit, to be presented to be presented to the United Nations Human Rights Council in March 2014. Please do not hesitate to provide me with more information in the next few weeks, as my report will not be finalized before the month of November.

Let me state at the outset that as Special Rapporteur on the right to food, I serve in a personal and fully independent capacity. While I am appointed by and report to the United Nations Human Rights Council, the observations and recommendations I make in my capacity of Special Rapporteur are neither those of Office of the High Commissioner for Human Rights, nor those of any other United Nations organization. Thus, contrary to the way they were presented in local media reports, the observations made in my statement of 22 July do not represent a position of the United Nations System in Malawi

I have carefully studied the documents you have kindly provided me with. Based on this information and other information that is publicly available I would like to describe in further detail the nature of my concerns.

For the least developed countries, negotiating fair agreements for the exploitation of their natural resources, including mining, by domestic or foreign companies, is a considerable challenge. It involves managing complex sets of data, asymmetry of information, and future forecasts on commodity markets. This is a problem I have studied in detail in other countries and for other sectors. This task requires a capacity that many least developed countries have yet to develop.

…/…

Mr. Rick Crabb
Chairman
Paladin Energy Ltd.
Level 4, 502 Hay Street (Po Box 201)
Subiaco Western Australia 6008

Indeed, during my mission in Malawi, I heard calls expressed at the highest level for support from the international community to assist the Government negotiate better deals with foreign companies, in the best interest of the population. While emphasizing the fact that Malawi is aiming at creating a favourable business environment for domestic and foreign companies, my interlocutors acknowledged that they were still learning how best to negotiate multi-year agreements with large companies, noting that if they had had a stronger capacity to negotiate such agreements in the past, they might have reached more favourable agreements with your and other companies.

In this regard, I would like to underline that I am fully aware of the need for Malawi to attract investments on its territory, and of the benefits that such investments, if well managed, can accrue to its population. Thus, I am not in any way questioning the importance of the Government's ongoing efforts to improve the investment climate in Malawi. As you will know, these efforts are supported by the UN System in Malawi and international donors through a range of programmes, including specific programmes supporting the Government's capacity to build an efficient, transparent and environmentally and socially sustainable framework for managing mineral rights and operations and ensuring optimal generation and use of mineral revenues.

It is my hope that my mission will serve to underline the importance of such capacity-building, in the best interest of the Malawian people. As underlined in my statement, Malawi has committed to take steps *to the maximum of its available resources* to progressively achieve the full realization of the right to adequate food. This is a requirement under the International Covenant on Economic, Social and Cultural Rights, which Malawi has ratified. In that context, Malawi's mineral resources are obviously of vital importance, and the capacity of the Government to collect revenus on their exploitation has direct consequences on its capacity to fulfil its duties under international human rights law.

With regard to the information provided in the powerpoint presentation you sent to my attention, I would appreciate your comments on the following:

(1) While your presentation states (on slide 7) that Malawi's standard royalty rate of 5 per cent is a "disincentive to investment", it strikes me that a similar royalty rate of 5 per cent also applies to uranium in Western Australia, along with a company tax rate of 30 per cent on profit, and a goods and services tax of 10 per cent that applies to mining company activities ("New Investment Opportunities in Western Australia", Government of Western Australia, Department of Mines and Petroleum, July 2009). I would welcome complementary information from your company on this aspect, including a rationale for comparing Malawi's tax and royalty structure only with African countries, and not with uranium-producing countries, including Canada and Australia. Indeed, if anything, the low cost of labour in Malawi should allow for payment of higher royalties, not lower. I am aware that other differences, such as infrastructure and the availability of skilled staff, have an influence on the profitability of the investment. I would be grateful for your comments on this point.

(2) Your presentation seems to give some weight to the recent profitability decreases of the industry. I am of course aware that the global financial crisis and the explosion of the Fukushima nuclear power plant have had important repercussions on the future of nuclear energy, with direct negative consequences on your company's stock, and, as reported in your presentations, repercussions on operational profits in Malawi. I understand that these two developments reduced uranium demand, even as supply grew as a result of what has been described as the past decade's 'mining boom'. Obviously, this situation exacerbates the competition among uranium producers.

I would note however that the long term prospects for uranium producers appear much less worrying than what seems to be assumed in the powerpoint presentation you provided me with. Demand from China and elsewhere is bound to increase: 500 reactors are being built or planned, more than double the 435 reactors currently in operation. The Ux Consulting Company (UxC) 2012 edition of the Uranium Suppliers Annual anticipates uranium demand to increase 22% by 2020 and 52% by 2030. Combined with the planned decrease of Russian uranium from discarded nuclear weapons for use as reactor fuel – as part of a 1993 disarmament treaty – , this should contribute to a stable recovery of uranium prices. The Australian government forecasts an increase in uranium prices between 2013 and 2017. By 2017 the uranium price is projected to reach around US$69 a pound (in 2012 dollars), representing an average annual increase of 3 per cent in real terms (Australia's Uranium Factsheet, June 2012).

(3) The presentation your provided me with is silent on the assertion made in the report published by Norwegian Church Aid and Catholic Commission for Justice and Peace that, according to figures from Paladin obtained by the authors, royalty payments amounted to $2.58 million during 2009-2012, a rate of 0.87 per cent. The authors of the report noted that this is inconsistent with the stipulation in the agreement that Paladin would pay a rate of 1.5 per cent for the first three years (p. 20). There seems there is no controversy on the royalty payments in the recent past. I would welcome your comments on this assertion.

(4) The above-cited report also mentions the question of transparency and tax havens. It notes that "Paladin has a complex group structure with 32 entities including several in Switzerland, the British Virgin Islands and Mauritius" (p. 5), and asserts that "Kayelekera Holdings SA is incorporated in Switzerland. Another company, called Indo Energy, which is 100 per cent owned by Paladin, is incorporated in the British Virgin Islands. Another - Langer Heinrich Mauritius Holdings Limited - is incorporated in Mauritius. Meanwhile, Paladin Netherlands Holdings Co-Operative UA is used to control several subsidiaries related to Canada (where the company is also exploring) – Paladin Canada Holdings (NL) Ltd, Paladin Canada Investments (NL) Ltd and Paladin Energy Canada Ltd" (p. 25).

Decades of research have demonstrated the negative impact of tax havens on development and the progressive realization of human rights in developing countries. This has been recently acknowledged at the G-20 Ministers of Finance meeting in Moscow on 19-20 July 2013, which held discussions on the issue of "Addressing Base Erosion and Profit Shifting (BEPS), Tackling Tax Avoidance, Promoting Automatic Exchange of Information, and Fighting Non-cooperative Jurisdictions", as well as OECD Action Plan on Base Erosion and Profit Shifting, endorsed in Moscow.

I would therefore welcome your comments as to whether Paladin's group structure, in particular the alleged domiciliation of entities in tax havens, provides opportunities for transfer pricing, and if any additional safeguards to guard against transfer pricing might be useful both to protect the company against allegations expressed in NGO reports, and associated reputational damange, and to ensure that investments allow the Government to make maximum use of its resources for the realization of the human rights of its population. While these issues were not addressed in my end-of-mission statement, I would be most grateful for your comments to improve my understanding of the situation.

(5) Finally, while Paladin Energy may be an Extractive Industries Transparency Initiative (EITI)-Compliant company, Malawi as a country is not. In my conversations and in my end-of-mission statement, I have encouraged Malawi to join EITI, and to follow the

example of other African countries, including Liberia and Nigeria, which turned the EITI voluntary requirements into legal requirements.

African countries as a whole may suffer from a lack of regional policies, including on the harmonization of mining taxes and royalty rates. Such harmonization could go a long way to avoid harmful beggar-thy-neighbour policies. In this regard, I would welcome your comments on the challenges for developing countries in ensuring that they benefit, and do not suffer, from the intense global competition between mining companies, including uranium producers, and that they increasingly receive a fair share of the added value of the commodities they own.

I would welcome if this letter could be posted on the website of your company, together with your letter dated 24 July.

I look forward to our continued conversation on this important topic, which is of great importance to Malawi's development prospects.

Sincerely,

Olivier De Schutter
Special Rapporteur on the right to food

Cc. Mr. Greg Walker, General Manager-International Affairs, Paladin Energy Ltd, Malawi

Hon. John Bande MP, Minister of Mining, Government of the Republic of Malawi

Hon. Ken Lipenga MP, Minister of Finance, Government of the Republic of Malawi

Hon. Ephraim Mganda Chiume MP, Minister of Foreign Affairs and International Cooperation, Government of the Republic of Malawi

Mr. Shyley Kondowe, Special Advisor to the President on Policy and Strategy, Office of the President and Cabinet

His Excellency, Mr. Matthew Neuhaus, Australian High Commmissioner to Malawi

Her Excellency, Ms. Jeanine Jackson, Ambassador of the United States of America to Malawi

His Excellency, Mr. Alexander Baum, Head of the EU Delegation to Malawi

Ms. Mia Seppo, United Nations Resident Coordinator and UNDP Resident Coordinator in Malawi