

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders

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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 33/30, 26/7, 28/11, 32/32 and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged arbitrary arrest and detention of eight Tanzanian environmental rights defenders following a cross-learning mission to visit the Kayekera Uranium Mine in Malawi.

Messrs. **Briton Mateus Mgaya, Wakisa Elias Mwansangu, Majidi Nkota, Christandusi Ngowi, Martin Guido Ndunguru, Wilbert Mahundi, Rainery Komba** and Ms. **Ashura Kyula** are environmental rights defenders working to defend the right to a clean environment, right to health, and other rights enshrined in the United Nations Convention on Economic, Social and Cultural Rights. The environmental rights defenders are associated with various civil society groups in Tanzania and participated in the organized educational tour in order to gain first-hand information on uranium mining and its adverse impacts on the environment and health. Several of the defenders are members of the **Tanzania Uranium Awareness Mission**, a consortium for information sharing on the socio-economic and environmental impacts related to mining and extractive industries which emphasises knowledge exchange and cross-learning on democratic ownership, as well as transparency in the mining sector. A number of the aforementioned defenders have undertaken similar visits on related topics to other countries in the past.

According to the information received:

On 19 December 2016, eight environmental defenders from Songea, Tanzania crossed the Tanzania-Malawi border into Malawi in order to participate in a study tour to visit the Kayekera Uranium Mine. Tanzanian citizens do not require a visa or any special authorization to visit Malawi. However, while organizing the study

tour with their partner organisation in Malawi, the Malawian authorities were notified of the visit.

On 20 December 2016, the eight Tanzanian environmental defenders left their lodge in order to visit the Kayekera Uranium Mine. On its way, the group was intercepted by Malawian police and ordered to follow them to the Karonga police station. Upon arrival to the police station, the Tanzanian environmental rights defenders were taken into police custody. No arrest warrants were presented. The eight individuals were subsequently transferred to Mzuzu prison.

On 17 January 2017, the case was brought before the Karonga Magistrate Court, and the defenders were notified that they had been charged with “entering upon the premises of Kayekera Uranium Mine with intent to commit an offence” and “carrying out a reconnaissance operation without a licence.” The defenders were reportedly denied bail as they could not pay the requested bond of 400,000 kwacha (roughly USD 550) per person in addition to designating a credible, single custodian that would house the eight activists within an established period of time. The trial was adjourned until 26 January 2017, and then subsequently adjourned seven times until 13 February 2017.

The environmental human rights defenders are reportedly being held in overcrowded and unsanitary detention facilities in the Mzuzu prison. They have not been provided with sufficient food or water, and their requests to purchase additional food and water with their own money have been denied by prison authorities. All meetings with their lawyers, family, colleagues and friends have been monitored by armed guards.

On 13 and 14 February 2017, during a cross-examination of two of the prosecution’s witnesses, both witnesses admitted to inadvertently or intentionally being involved in a “trap” coordinated by the Malawian police force in order to arrest the eight Tanzanian environmental defenders. On 14 February 2017, the trial was adjourned for the eighth time and the next hearing was scheduled for 22 February 2017.

On 22 February 2017, during another cross-examination of witnesses, it was acknowledged that the environmental defenders did not require a licence to visit the Kayekera Uranium Mine and that they did not breach any national laws in the organization or execution of their cross-learning mission. It was also reported that witnesses for the prosecution further acknowledged that the arrest of the eight defenders was organized by Malawian authorities prior to the group’s departure from the lodge where they were staying.

The hearing was anticipated to continue on 23 February 2017. However, the magistrate adjourned the trial until 9 March 2017, affirming that they could not make a decision based on the presented evidence. Therefore, the trial was again

postponed and both the defence and the prosecution were given until 6 March 2017 to submit further evidence.

On 9 March 2017, the hearing was adjourned once again, with no reason provided, until 31 March 2017.

In addition, following the arrest and detention of the defenders, local media and social media reported that the Tanzanian environmental defenders were being held on suspicions of ‘criminal trespassing’, ‘spying’, and the defenders were reportedly subject to a smear campaign that suggested that the cross-learning visit was a ‘cover for an act of espionage’.

Concern is expressed at the arrest and detention of Mr. Briton Mateus Mgaya, Mr. Wakisa Elias Mwansangu, Mr. Majidi Nkota, Mr. Christandusi Ngowi, Ms. Ashura Kyula, Mr. Martin Guido Ndunguru, Mr. Wilbert Mahundi and Mr. Rainery Komba, as well as at the charges brought against them, which appear to be directly related to their legitimate activities as environmental rights defenders.

We express further concern regarding the continued adjournment of the case of the environmental rights defenders, which has led to the prolongation of their detention. Serious concern is expressed regarding allegations of malnutrition, poor sanitation and overcrowding within the detention facilities where the aforementioned environmental rights defenders are being held. Additional concern is expressed regarding the detainees’ lack of adequate opportunities to communicate and consult with their lawyers in full confidentiality.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency’s Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

Without expressing, at this stage, an opinion on the facts of the case and on whether the detention of the above-mentioned persons is arbitrary or not, we would like to appeal to your Excellency’s Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), to which your Excellency’s Government acceded to on 22 December 1993, and articles 9 and 10 of the Universal Declaration of Human Rights.

These allegations also appear to be in contravention with articles 19 and 22 of the ICCPR, which specify that everyone should have the right to freedom of expression and opinion and the right to freedom of association.

We would further like to bring to the attention of your Excellency’s Government General Comment No. 32 of the Human Rights Committee on the right to equality before

courts and tribunals and to a fair trial (article 14 of the ICCPR), which stipulates that counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications (para. 34). The right to have access to a lawyer in full confidentiality is also enshrined in the UN Basic Principles on the Role of Lawyers.

We wish to recall Human Rights Council Resolution 31/32, which recognizes the important and legitimate role of environmental rights defenders and reaffirms the urgent need to respect, protect, promote and facilitate the work of those defending economic, social and cultural rights as a vital factor contributing towards the realization of those rights, including as they relate to environmental issues.

We further refer to the report of the Special Rapporteur on the situation of human rights defenders presented at the 71st session of the United Nations General Assembly, which states that all States should reaffirm and recognize the role of environmental human rights defenders and respect, protect and fulfil their rights.

We moreover appeal to your Excellency's Government to take all necessary steps to ensure that the detention conditions of the aforementioned individuals adheres to rules 22, 35 and 114 of the United Nations Standard Minimum Rules for the Treatment of Prisoners ("Mandela Rules").

We would also like to refer to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, in particular articles 1, 2, 6 and 12.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please confirm the legal basis for the arrest and detention of Mr. Briton Mateus Mgaya, Mr. Wakisa Elias Mwansangu, Mr. Majidi Nkota, Mr. Christandusi Ngowi, Ms. Ashura Kyula, Mr. Martin Guido Ndunguru, Mr. Wilbert Mahundi and Mr. Rainery Komba, as well as for the charges

brought against them, and indicate how these measures are compatible with international human rights standards.

3. Please provide details on the judicial proceedings against the above-named persons, and indicate how they are compatible with international human rights norms and standards on fair trial.
4. Please indicate what measures have been taken to ensure that Mr. Briton Mateus Mgaya, Mr. Wakisa Elias Mwansangu, Mr. Majidi Nkota, Mr. Christandusi Ngowi, Ms. Ashura Kyula, Mr. Martin Guido Ndunguru, Mr. Wilbert Mahundi and Mr. Rainery Komba are provided with adequate food and drinking water, and that detention facilities meet international norms and standards for the treatment of prisoners.
5. Please indicate what measures have been taken to ensure that Mr. Briton Mateus Mgaya, Mr. Wakisa Elias Mwansangu, Mr. Majidi Nkota, Mr. Christandusi Ngowi, Ms. Ashura Kyula, Mr. Martin Guido Ndunguru, Mr. Wilbert Mahundi and Mr. Rainery Komba are provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality.
6. Please indicate what measures have been taken to ensure that human rights defenders in Malawi are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such urgent appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

Please accept, Excellency, the assurances of our highest consideration.

José Guevara
Vice Chair of the Working Group on Arbitrary Detention

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Special Rapporteur on the independence of judges and lawyers

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