

## **REPORT on the continuation of court case against 8 Tanzanians detained in Malawi, on 13. and 14. February 2017**

On Monday, 13. and Tuesday, 14. February 2017, the court case re: the 8 Tanzanians detained in Malawi was finally continued in Karonga, Magistrate court after a series of postponements.

The Defense Attorneys discussed with the state prosecutor; it was found out that the maximum penalty for 'criminal trespassing' is three months imprisonment or MK100,000 fine per head or both.

The Defense Attorneys lawyers observed that the suspects had already been in custody way beyond this maximum time of a conviction. [1]

Thus, the state prosecutor requested that we only dwell on the second count of the charges, "carrying out a reconnaissance operation without license".

The prosecution suggested to the defense attorneys that the suspects should plead 'guilty' to this second count so the case can be disposed of quickly. [2]

Defense lawyers and suspects turned down this suggestion since they are sure they have not done anything illegal.

When the court hearing resumed, the state paraded two witnesses. The first one was the min bus driver who had transported the group at the day of their arrest. During cross-examination, he disowned a statement recorded by Police upon arrest. In his testimony he implicated that a person from the Safari Annex Lodge (Gama) had been responsible for everything about the trip from there to Kayelekera.

In cross examination by the defense, he disclosed in detail how Malawi Police had set up the trap to arrest the detainees. He observed that he wonders why his passengers were 15 but only the 8 Tanzanians were targeted for prosecution.

Later in the afternoon, when court proceeding moved to the crime scene, the point of interception by Malawi police was identified, just 500 meters away after having been cleared by uniformed Malawi Police manning the barrier to enter the mining lease area. This was crucial as his narration was in line with what the suspects disclosed – and in complete contrast to the point of interception identified by witness No 2, a Police officer.

Then the state prosecutor paraded witness No. 2, a senior Malawi Police officer.

He informed the court that he interacted with the group from Safari Lodge on, as arranged by the person of Safari Lodge, undercover to monitor the intent of the visiting Tanzanians.

His verbal testimony was a complete departure from his written statement and, at times, he was visibly contradicting himself. He stated how he infiltrated the group at Safari Lodge and his role to lead the group to the trap.

The defense lawyers pinned him down in cross-examination on the differences between his written statement and his verbal disclosure. He stammered and stammered to recorrect himself on his ethical duty and responsibility. He alleged that he was sent by Deputy Director of Criminal Investigations Department to uncover what the Tanzanians were up to.

He disclosed that the instruction from the Deputy Director was two-fold: that he executes his role as guard of Kayelekera (he is already attached / seconded to the mine as guard), and then he should work as a undercover police man with the group.

In cross-examination he confessed to have been the one that proposed and engineered the breach of security details upon entry at the first barrier - not the suspects.

He could not substantiate whether the area he led the court to was Kayelekera land as there was no signs and markings to show that we were now in private land let alone restricted area for entry (local people were roving around the road, without any security checks, without any restrictions – the area was clearly not a 'restricted zone').

He could not substantiate the 'classified element' of the questions he alleged to have been posed by the suspects to him on their first day of encounter (when did prospecting for uranium at Kayelekera mine started; what are probable markets of processed uranium from Kayelekera; how much does uranium fetch on the market; how do uranium get utilized once processed; does the witness have a sample of uranium ore).

Finally, witness No. 2 could not tell the court why it took Malawi Police from Lilongwe to travel 844km to Kayelekera just to neutralize 'trespassing' while Police officers within Karonga are tolerating trespassing in the same zone involving community groups bordering the mine including the general populace. He could not support his statement that he was motivated to infiltrate the group as the suspects were "looking dangerous".

Two more state witnesses were paraded when court resumed hearing on 14 February and the Defense Attorneys equally nullified much of the disclosures. None of the witnesses paraded substantiated charges and none of the material evidence tendered on court thus far can provide reasonable grounds to stimulate a conviction.

The court proceedings have henceforth adjourned to 22 and 23 February 2017. Most likely the case will be disposed off by way of submissions by both the prosecution and defense attorneys. The defense has served the state with the CFJ-CRIIRAD report [IMPACT OF THE KAYELEKERA URANIUM MINE (MALAWI) CRIIRAD Report1 No. 14-40 / February 12th 2015 based on CRIIRAD and CFJ May 2012 mission (EJOLT Project) Author: Bruno Chareyron, nuclear physics engineer, head of the CRIIRAD laboratory].

[1] [Law provides for a full day in custody as 12 hours - meaning when you spend 24 hours in custody, that is counted as 2 days. Furthermore, the law provides for a waiver of one third of any particular sentence.]

[2] The law stipulates that the Chief Justice should prescribe rules for pre-bargaining (where prosecution and defence team can confer on pleas of convicts and strike a balance for lesser sentence, but until today the Chief Justice has not prescribed such rules, meaning the practice is unethical for now.

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