

OPINION No. 28/1999 (UNITED KINGDOM OF GREAT BRITAIN  
AND NORTHERN IRELAND)

Communication addressed to the Government on 11 June 1999

Concerning William Agyegyam

The United Kingdom is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.
2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time. The Government's reply was transmitted to the source, which did not transmit its comments.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
  - (i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);
  - (ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
  - (iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).
4. In the light of the allegations formulated, the Working Group welcomes the cooperation of the Government.
5. According to the source of the communication, William Agyegyam, a Ghanaian national, was sitting a college examination on 4 February 1999, when he was arrested for illegally overstaying in the United Kingdom. Mr. Agyegyam had arrived in the United Kingdom on 23 November 1988 and applied for political asylum; his request was denied in 1991. He reportedly was never informed that he would be deported.

6. According to the source, Mr. Agyegyam, who has resided in the United Kingdom for over 11 years, would face severe hardship if deported from the United Kingdom. He claims to have lost everything in Ghana, and has nothing to look forward to there. He argues that he started a new life in the United Kingdom, by pursuing higher education and developing social ties. There is no indication from the material submitted by the source that he has any prior criminal record. On the other hand, the information provided by the source does not contain any elements justifying the conclusion that he would face political or other persecution in Ghana, if deported.

7. In its reply, the Government of the United Kingdom provides a detailed explanation of the procedure that was followed in Mr. Agyegyam's case and which led to his arrest on 4 February 1999 and his deportation to Ghana, with his full consent, on 18 June 1999. The procedure was as follows:

- 12 November 1995: arrested for motoring offence and taken to a police station. Doubts arose as to his immigration status and he was interviewed by an immigration officer under caution, in the presence of a duty solicitor;
- 12 November 1995: served with a notice that he was an illegal entrant as defined in section 33 (1) of the 1971 Immigration Act;
- 13 November 1995: granted temporary admission to the United Kingdom under paragraph 21 of Schedule 2 to the Act. He was served with a notice requiring him to reside at a specific named address;
- 10 April 1996: Mr. Agyegyam's asylum application was refused, and he was served with notice of the decision and the reasons for it. He was advised of his right to appeal before his removal. The notice advised him how to exercise his right to appeal and of the availability of free legal advice from two voluntary organizations, independent of the Government;
- 26 September 1997: Mr. Agyegyam's appeal, under section 8 (4) of the 1993 Asylum and Immigration Appeals Act, was heard by an independent special adjudicator. He was represented by counsel and gave evidence through an official interpreter. The adjudicator determined that Mr. Agyegyam did not have a well-founded fear of persecution for any reason under the Convention relating to the Status of Refugees, if returned to Ghana. Mr. Agyegyam next contacted the Immigration Department in February 1998, when he applied for indefinite leave to remain outside of the Immigration Rules. On 16 September 1998, this application was refused;
- 4 February 1999: Mr. Agyegyam was arrested and detained pursuant to paragraph 16 (2) of Schedule 2 to the Immigration Act and served with notice advising him that directions had been given for his removal to Ghana on 7 February 1999. He was advised of his right of appeal, after removal, under section 16 (1) of the Act. Directions for removal were deferred until 12 February, because his representatives indicated that they wished to apply to the High Court for

leave to move for judicial review of the decision to remove him. The application having been lodged with the High Court, removal was deferred to allow the Court to consider it before Mr. Ayegyam's removal;

- 14 June 1999: Mr. Ayegyam signed a disclaimer, in which he stated that he was aware of the legal representations made on his behalf, but that he wished to leave the United Kingdom without waiting for the outcome of those representations. On the same day, he was served notice that directions had been given for his removal to Ghana on 18 June 1999. He was once again notified of his right of appeal, after removal. Mr. Ayegyam was duly removed in accordance with these directions.

8. The Working Group's mandate does not enable it to examine the procedure which preceded Mr. Ayegyam's detention or the procedure which resulted in the decision to remove Mr. Ayegyam from the territory of the United Kingdom. Pursuant to its methods of work, the Working Group can only examine the character of the deprivation of liberty of the individual concerned. Under article 17 (a) of its working methods, the Group may file a case if the individual concerned has been released; but its working methods also enable it to formulate an Opinion, on a case-by-case basis, on the arbitrary or non-arbitrary character of the deprivation of liberty, notwithstanding the release of the person concerned. The Working Group is in a position to do so in the case of Mr. Ayegyam.

9. In the light of the legal and procedural guarantees laid down in the relevant United Kingdom legislation (i.e. the Immigration Act of 1971 and Schedule 2 thereto; the 1993 Asylum and Immigration Appeals Act), the European Convention on Human Rights and Fundamental Freedoms (art. 5 (1) (b) and (f)) and the International Covenant on Civil and Political Rights and other relevant international instruments, and having concluded, after examination of the detailed reply of the Government, that the United Kingdom immigration authorities respected those legal and procedural guarantees in the case of Mr. Ayegyam, the Working Group renders the following opinion:

The deprivation of liberty of Mr. Ayegyam from 4 February 1999 to 18 June 1999 was not arbitrary.

Adopted on 1 December 1999