

OPINION No. 4/2002 (TOGO)

Communication addressed to the Government on 21 December 2001

Concerning: Mr. Yawowi Agboyibo

The State 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 and reconfirmed by resolution 2000/36. 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.

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, by 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 relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial 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 made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the Government's reply to the source and received the latter's comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case in question, in the light of the allegations made, the reply given by the Government and the source's comments.

5. Mr. Yawowi Agboyibo, lawyer, former parliamentarian, president of the political party Comité d'action pour le Renouveau (CAR - Action Committee for Renewal), was arrested on 3 August 2001 and sentenced to six months' imprisonment. He was imprisoned in the civil prison of Lomé, despite lodging an appeal.

6. Mr. Agboyibo signed a press release on 6 October 1998, in his capacity as president of the CAR, in which he criticized a number of criminal activities, including the murder of Mr. Koffi Kegbe, a member of CAR, by militiamen followers of Mr. Kodjo, then Director of the Port of Lomé and currently Prime Minister of Togo.

7. Mr. Kodjo then initiated defamation proceedings against Mr. Agboyibo. This suit was deemed inadmissible against Mr. Agboyibo on account of his parliamentary immunity.

8. Mr. Kodjo reinitiated his complaint on 23 February 2001, when the same allegations regarding his militiamen were made public in a joint report by two intergovernmental organizations. The Public Prosecutor then initiated criminal proceedings against Mr. Agboyibo, who no longer benefited from parliamentary immunity.

9. According to the source, Mr. Agboyibo was sentenced by a manifestly incompetent tribunal, which could be neither fair nor impartial, since the judge, close to the ruling party, did not apply the appropriate law, i.e. the Press and Communications Code, but the Penal Code instead. In addition, the judge disregarded both the parliamentary status of Mr. Agboyibo at the time the events of which he was accused occurred, which gave him immunity against criminal prosecution, and the fact that the statutory time limitation on the case had expired.

10. The Working Group welcomes the information provided, according to which Mr. Agboyibo is no longer deprived of liberty since 14 March 2002 and the defamation proceedings against him have been abandoned. This information was transmitted to the Working Group by the source. The Working Group therefore believes it is in a position to render an opinion on this case.

11. Having examined all the available information before it and without prejudging the arbitrary nature of the detention, the Working Group decides to file the case of Mr. Agboyibo, in accordance with paragraph 17 (a) of its methods of work.

Adopted on 20 June 2002