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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-fourth session, 29 August–2 September 2022

Opinion No. 47/2022 concerning George Nyakpo (Ghana)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.
2. In accordance with its methods of work,¹ on 18 February 2022, the Working Group transmitted to the Government of Ghana a communication concerning George Nyakpo. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
 - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

¹ [A/HRC/36/38](#).



Submissions

Communication from the source

4. George Nyakpo is a Ghanaian national born in 1987. He usually resides in Ho, Volta Region, Ghana. Mr. Nyakpo is a human rights defender and leading member of the Homeland Study Group Foundation, a non-violent civil society movement that has been openly working for the self-determination of the people of Western Togoland since 1994. The source explains that the Foundation considers that Western Togoland corresponds to the Volta Region of Ghana.

a. Context

5. According to the source, the Foundation is dedicated to working for self-determination solely through non-violent means. Its activities include printing and distributing materials promoting self-determination, engaging in non-violent symbolic acts, such as symbolic declarations of independence, and holding demonstrations, meetings and discussions regarding the path to self-determination. Reportedly, the Foundation has been very vocal about its commitment to non-violence and its opposition to any groups that use violence, including by calling for their investigation and prosecution.

6. The source reports that, in recent years, Ghanaian authorities have used the criminal justice system to target the Foundation's activities. A pattern appears to have arisen whereby members of the Foundation are arrested and detained based on allegations of serious crimes such as treason, but are then held without charge for prolonged periods and subsequently released before a court has had an opportunity to rule on the legality of the arrest or the length of the detention. These same individuals are then quickly rounded up and rearrested, restarting the procedural clock related to arrests and detentions. The source notes that, in 2017, seven members of the Foundation were arrested for wearing T-shirts with an inscription referring to a date on which a symbolic declaration of independence of Western Togoland was made. In May 2019, eight members of the Foundation were reportedly arrested in anticipation of a meeting to discuss self-determination and charged with conspiracy to commit treason, abetment of unlawful training, unlawful assembly and offensive conduct conducive to a breach of the peace. A large group of about 80 supporters were also allegedly arrested. Additionally, in November 2019, the Foundation reportedly made a symbolic declaration of independence, following which some 30 persons were arrested for either attending a gathering at a local radio station or planning a demonstration.

7. Furthermore, the source reports that Ghanaian authorities have increasingly used the Prohibited Organisations Act of 1976 to prosecute the Foundation's leaders. The source explains that the Act was issued by the military junta that ruled Ghana in the 1970s and has remained unused since the country's transition to democracy in 1992. According to the source, the Act prohibits any organization "whose objects include advocating and promoting the secession from the Republic of Ghana of the former British mandated territory of Togoland or part of that territory or the integration of that territory with a foreign territory". Reportedly, the decree does not similarly prohibit such organizations focused on any other territory of Ghana and makes no distinction between acts that are violent or criminal in nature and acts that will generally occur in any ordinary democracy.

8. The source notes that, in June 2020, the Volta Region was militarized ahead of the 2020 Ghanaian elections, a move that was condemned by opposition political parties in Ghana. According to the source, this militarization and the repeated arrests and detentions of the Foundation's members, which greatly restricted its ability to operate, opened a space for more violent groups to emerge. On 25 September 2020, a group calling itself the Western Togoland Restoration Front declared an independent State in the Volta Region, using armed road blockades and attacking police stations and personnel. Reportedly, the Foundation issued a press release making clear that it was not affiliated with the Restoration Front, and calling for non-violence and for the authorities to investigate and prosecute perpetrators.

9. Allegedly, some 60 members of the Foundation were arrested in connection with the events that took place in September. By late October, the courts reportedly expressed exasperation concerning the detention of these individuals without sufficient evidence and

they were released with all charges dropped against them. Despite requests from their defence lawyers, no formal reasons for their release were provided.

b. Arrest and detention

10. The source indicates that Mr. Nyakpo was arrested on 14 July 2021 in Ho as he was on his way to visit a friend. Reportedly, shortly before arriving at his friend's home, two cars with 10 men inside arrived, beat Mr. Nyakpo and drove away with him. The source notes that there were no witnesses and that the arrest was carried out by the Bureau of National Investigations.

11. According to the source, no arrest warrant or other decision by a public authority was shown to Mr. Nyakpo at the time of his arrest. He was immediately transferred to Accra, under the jurisdiction of the High Court of Ghana, some four-hour drive away from his home, further separating him from his family and life.

12. The source reports that Mr. Nyakpo was held for 56 days without being charged. A statement of offence was provided to him on 22 July 2021, eight days after his arrest, notwithstanding the legal requirement of a maximum of 48 hours. It was claimed in the statement that he had allegedly committed an act of treason by preparing "to carry out by unlawful means an enterprise to usurp the executive powers of the Republic" "on or before 25 September 2020 at the Volta Region", contrary to section 182 (b) of the Criminal Offences Act of 1960, and that he "participated in the campaign and activities of a prohibited organization, namely, Western Togoland Organization", contrary to article 2 (1) (d) of the Prohibited Organisations Act.

13. Allegedly, Mr. Nyakpo filed a motion for bail on 13 August 2021. On 27 August 2021, the presiding judge adjourned the hearing on the motion for bail as no charge sheet or statement of facts had been filed in the case. Adjournments were made in two further hearings for the same reason. Rather than being released for failure to bring charges against him, the source reports that Mr. Nyakpo was instead held in custody with repeated adjournments until the prosecutor brought charges.

14. On 8 September 2021, a separate case was reportedly opened in the Circuit Court of Ho against Mr. Nyakpo and eight other members of the Foundation. No charges cognizable under the ordinary criminal law were brought. Rather, the defendants were charged with violating the Prohibited Organisations Act by attending a meeting of 100 people on 16 November 2019 at which they symbolically declared an independent State for Western Togoland and then dispersed, with no further action taken at any stage beyond sharing the event on social media. The source considers that the authorities' failure to charge Mr. Nyakpo with any offence directly related to the actions of the Western Togoland Restoration Front, or with any offence before the High Court in Accra to which Mr. Nyakpo was transferred, constitutes an admission that he had no affiliation with the actions carried out by the Restoration Front and that his detention in Accra was without legal purpose.

15. The source reports that the prosecutor did not appear to have informed the High Court in Accra of the case against Mr. Nyakpo before the Circuit Court of Ho. It was left to Mr. Nyakpo, in an affidavit from his lawyer dated 6 October 2021, to notify the High Court of the case in Ho and to submit another request for his release. Allegedly, no immediate action was taken and Mr. Nyakpo remained in detention.

16. At the beginning of November 2021, Mr. Nyakpo was reportedly transferred back to Ho. On 17 December 2021, he was released on bail, marking 100 days in detention since the filing of charges in Ho on 8 September 2021, and 156 days since his original arrest on 14 July 2021.

17. The source reports that the decision to release Mr. Nyakpo was taken unilaterally by the prosecutor during the bail hearing, prior to the High Court deciding on the lawfulness of his arrest on the basis of the Prohibited Organisations Act or on the conditions of his release. As a result, Mr. Nyakpo was prevented from ever having a court rule on the legality of his detention or the terms of his release, and is at risk of being rearrested. In fact, immediately upon Mr. Nyakpo's release, the prosecutor threatened him with arrest, detention and

prosecution should he speak about self-determination in Western Togoland or attend any meetings or demonstrations related to it.

18. According to the source, no justification was formally given for Mr. Nyakpo's continued detention during the period between 8 September and 17 December 2021. Mr. Nyakpo was repeatedly denied a formal detention hearing and, during discussions with the prosecutor, his lawyers were informed that he was being held because of a need for additional investigation related to alleged violations of the Prohibited Organisations Act.

19. The source submits that the use of the Prohibited Organisations Act to prosecute Mr. Nyakpo is entirely arbitrary in so far as it appears to have been used by the prosecutor to justify the repeated arrests and detentions of Mr. Nyakpo and other leaders of the Foundation, in circumstances in which there were no grounds or evidence to arrest or prosecute them under the ordinary criminal law of Ghana. The source underlines that the Foundation has been openly engaging on the subject of Western Togoland since 1994 and that no action appears to have ever been taken to designate it as an organization, or to prosecute the Foundation's members, under the Act, despite the decree's existence since 1992. The source submits that the increasing use of the Act against the Foundation's members furthers the authorities' ultimate objective of silencing a non-violent movement seeking to uphold the right to self-determination in Western Togoland, as guaranteed by international law.

c. Legal analysis

20. The source alleges that Mr. Nyakpo's arrest and detention are arbitrary under categories I, II, III and V of the methods of work of the Working Group on Arbitrary Detention.

i. Category I

21. The source argues that Mr. Nyakpo's deprivation of liberty was not permitted by the Constitution or national law and is therefore arbitrary under category I.

22. According to the source, the Constitution of Ghana permits the deprivation of liberty upon reasonable suspicion of having committed a crime, the boundaries of which are established in the Criminal Procedure Code. Section 15 of the Criminal Procedure Code provides that a person arrested without a warrant may be held in custody for 48 hours. The source reports that Mr. Nyakpo was not advised of the reasons for his arrest until eight days after his arrest, on 22 July 2021. The source therefore submits that Mr. Nyakpo was unlawfully detained from 14 to 22 July 2021.

23. Under section 29 of the Criminal Procedure Code, an individual may be placed in pretrial detention during an investigation when it is "necessary for the prevention of a breach of the peace or disturbance of the public peace or the commission of any offence or for the public safety". The detainee must have been ordered and must have failed to execute a bond, and the detention must be ordered based on a written judicial decision and only for periods of up to 15 days. The source submits that, in the case at hand, no bond was set and Mr. Nyakpo's detention was not reviewed every 15 days. In fact, Mr. Nyakpo reportedly spent much of his pretrial detention seeking to have a hearing on his bail application.

24. The source further notes that Mr. Nyakpo continued to be held in custody for two months following the filing of charges against him in the Circuit Court of Ho. Given the nature of the conduct necessary to violate the Prohibited Organisations Act, the source finds it unreasonable to assume that any further investigations were necessary or were realistically being carried out by the prosecutor. Indeed, the source contends that the facts alleged against Mr. Nyakpo only required determining that the Foundation seeks self-determination for the people of Western Togoland and that Mr. Nyakpo attended a meeting that was filmed and broadcast on social media. The source argues that, given the lack of regular judicial review, the necessity of an investigation was not verified.

25. The source submits that the Prohibited Organisations Act is unconstitutional. Article 11 (6) of the Constitution of Ghana provides that laws in effect at the time of its enactment must be construed with "any modifications, adaptations, qualifications and exceptions necessary to bring it into conformity with the provisions of this Constitution". The source

argues that the Act appears to contravene *prima facie* multiple constitutional guarantees. In particular, article 17 of the Constitution guarantees equality before the law and prohibits discrimination, except in specific cases outlined under paragraph 4 of that article. The source contends that the Act contravenes the Constitution as it applies only to the people of the Volta Region and does not similarly prohibit other persons in other regions of Ghana from seeking self-determination. Additionally, the Act criminalizes any and all conduct related to self-determination for these people, including holding meetings, distributing materials, attending demonstrations or otherwise speaking about self-determination in the Volta Region.

26. Moreover, the source stresses that the Constitution guarantees basic human rights and fundamental freedoms, including the equal application of the law and the rights to freedom of opinion, speech, assembly and association. The source submits that the blanket restrictions contained in the Act violate basic principles underlying such rights and, therefore, at least from the time Mr. Nyakpo was indicted under the Act on 8 September 2021, his detention was arbitrary.

ii. Category II

27. According to the source, Mr. Nyakpo was charged with attending a Foundation meeting of around 100 people, during which a symbolic declaration of independence was made. Reportedly, the indictment makes clear that participants peacefully dispersed and that the only actions taken to give effect to the declaration were to spread news and videos on social media.

28. According to the charges against Mr. Nyakpo, the Foundation is a prohibited organization under the Act. The source recalls that the Foundation is a civil society movement dedicated to promoting the right to self-determination of the people of Western Togoland through non-violent means and in accordance with the law. The source notes that the right to self-determination is explicitly guaranteed under article 1 of the International Covenant on Civil and Political Rights, and belief in self-determination, speaking about it, or joining organizations or meetings about it are all protected actions under the Universal Declaration of Human Rights and the Covenant.

29. The source recalls the Working Group's finding that the right to freedom of opinion and expression includes the opportunity to express the way in which peoples may freely choose their political system, constitution or government, which points to the link with other human rights.² Furthermore, article 25 of the Covenant guarantees the right of individuals to participate in those processes that constitute the conduct of public affairs. In this regard, the Human Rights Committee has stated that the rights under article 25 of the Covenant are related to, but distinct from, the right of peoples to self-determination, including the right to freely determine their political status and to choose the form of their constitution or government.

30. The source submits that restrictions on the rights to opinion, speech, association and assembly must be necessary and proportional to achieve a legitimate aim. In its general comment No. 34 (2011), the Human Rights Committee highlighted that such restrictions "may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights".³ Moreover, it emphasized that States must take extreme care to ensure that treason laws and similar provisions relating to national security, whether described as official secrets or sedition laws or otherwise, were crafted and applied in a manner that conformed to the strict requirements of necessity.⁴

31. According to the source, Mr. Nyakpo was arrested and detained for a prolonged period of time for attending a peaceful meeting that the Government itself admits led to nothing more than some social media interest around a symbolic act. The source adds that Mr. Nyakpo was detained without charge or the possibility of release upon the execution of a bond, as required under Ghanaian law. The source notes that the crime for which Mr. Nyakpo is being prosecuted carries a five-year sentence and submits that the rights of the members

² The source refers to opinion No. 6/2019, para. 109.

³ Human Rights Committee, general comment No. 34 (2011), para. 23.

⁴ *Ibid.*, para. 30.

and supporters of the Foundation, including Mr. Nyakpo, are being restricted in a manner that does not conform with the principles of necessity or proportionality.

32. In addition, the source alleges that the Prohibited Organisations Act is not sufficiently narrowly tailored to fulfil the requirements of international human rights law as it provides a blanket ban on any exercise of fundamental freedoms related to Western Togoland. The source considers that the Act cannot be said to be necessary or proportionate to meet a legitimate aim. On the contrary, the source contends that the recent use of this law against an organization such as the Foundation and the more general attempts by the Government to silence the organization are both disproportionate, targeting all exercise of rights and freedoms, and ineffective as they have led to the creation of a space for more radical and dangerous groups to operate in Ghana.

iii. Category III

33. The source notes that, under article 9 (3) of the Covenant, detention should be exceptional and short-term, the accused person should be released if there are measures in place to guarantee that the individual will appear for trial and for the execution of the judgment, and the presumption in favour of bail should preferably be applied if the period of pretrial detention is prolonged.⁵

34. The source recalls that Ghanaian law requires that the reasons for the arrest be provided to the court within 48 hours and enshrines a presumption in favour of bail. It also requires that a bond for release be promptly established and that, where such bond cannot be executed, the legality of the detention be reviewed regularly.

35. In the case at hand, the source submits that the reasons for Mr. Nyakpo's arrest were not provided during the first eight days of his detention. In fact, hearings on Mr. Nyakpo's detention were reportedly adjourned for 56 days, pending the filing of the charge sheet and a hearing on his application for bail, which only occurred 156 days after the beginning of Mr. Nyakpo's detention.

36. The source stresses that Mr. Nyakpo was held for significantly longer than necessary, including for two months after the indictment was filed. At that point, there was no possible justification for his continued detention in light of the charges that he faced. In addition, the source contends that Mr. Nyakpo's release was conditional and restricted his free exercise of his basic rights to speech, assembly and association.

iv. Category V

37. The source argues that Mr. Nyakpo was arrested and deprived of his liberty on the basis of a discriminatory law, which restricts the right to opinion, speech, assembly and association only for the people of the Volta Region of Ghana. The source notes that no other people in Ghana are subject to a similar restriction and reiterates that, until recently, the Prohibited Organisations Act had not been used since the country's transition to democracy in 1992, including throughout the history of the Foundation, which was founded in 1994, since which time it has been openly pursuing its activities.

38. The source submits that the use of the Act provides a dangerous precedent, establishing the grounds upon which authorities may restrict the rights and freedoms guaranteed to all Ghanaians merely for people in the Volta Region of Ghana.

Response from the Government

39. On 18 February 2022, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 19 April 2022, detailed information about the current situation of Mr. Nyakpo and to clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of Ghana under international human rights law and, in particular, with regard to the treaties ratified by the State. Moreover,

⁵ The source refers to opinion No. 6/2019, para. 129.

the Working Group called upon the Government to ensure Mr. Nyakpo's physical and mental integrity.

40. The Working Group regrets that the Government did not submit a reply, nor did it seek an extension in accordance with paragraph 16 of the Working Group's methods of work.

Discussion

41. In the absence of a response from the Government, the Working Group has decided to render the present opinion in conformity with paragraph 15 of its methods of work.

42. In determining whether Mr. Nyakpo's detention was arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a *prima facie* case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.⁶ In the present case, the Government has chosen not to challenge the *prima facie* credible allegations made by the source.

43. As a preliminary issue, the Working Group notes that Mr. Nyakpo was released on bail on 17 December 2021. However, proceedings against him are ongoing and may result in deprivation of liberty. The source has also presented serious allegations of arbitrary deprivation of liberty prior to him being released on bail, which are not contested by the Government. Moreover, the Working Group notes the uncontested allegations that threats of rearrest were made by the prosecutor against Mr. Nyakpo (para. 17 above). In these circumstances, the Working Group shall proceed to examine the case in accordance with paragraph 15 of its methods of work.

a. Category I

44. The Working Group recalls that a detention is considered arbitrary under category I if it lacks legal basis. As it has previously stated, for a deprivation of liberty to have a legal basis, it is not sufficient that there is a law that may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant.⁷ Indeed, the international law on deprivation of liberty includes the right to be presented with an arrest warrant, which is procedurally inherent in the right to liberty and security of person and the prohibition of arbitrary deprivation, under articles 3 and 9 of the Universal Declaration of Human Rights, article 9 of the Covenant, as well as principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.⁸ Any form of detention or imprisonment should be ordered by or be subjected to the effective control of a judicial or other authority authorized by law, the status and tenure of which should afford the strongest possible guarantees of competence, impartiality and independence, in accordance with principle 4 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

45. In the present case, it is not contested that Mr. Nyakpo was arrested on 14 July 2021 without an arrest warrant, when two cars with some 10 officers from the Bureau of National Investigations arrived at his friend's house, where Mr. Nyakpo was present. Mr. Nyakpo was beaten and driven away by these officials. The Working Group considers that an arrest carried out in such a manner and in the absence of an arrest warrant violated Mr. Nyakpo's rights under article 9 (1) of the Covenant.

46. Moreover, the source has submitted that Mr. Nyakpo was held for some 56 days without any charges, although he was presented with a statement of offence some eight days after his arrest, on 22 July 2021. He then filed a motion for bail on 13 August 2021, which was due to be heard by the presiding judge on 27 August 2021. The hearing, however, was adjourned due to the prosecution's failure to bring charges. The same happened at two further hearings. These allegations were put to the Government, which chose not to address them.

⁶ A/HRC/19/57, para. 68.

⁷ See, for example, opinions No. 46/2017; No. 66/2017; No. 75/2017; No. 93/2017; No. 35/2018; No. 79/2018; No. 89/2020; and No. 72/2021.

⁸ Opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39.

47. The Working Group recalls that article 9 (2) of the Covenant requires that anyone who is arrested is not only informed of the reasons for arrest but also promptly informed of any charges against them. The right to be promptly informed of charges concerns notice of criminal charges and, as the Human Rights Committee has noted in its general comment No. 35 (2014), “that right applies in connection with ordinary criminal prosecutions and also in connection with military prosecutions or other special regimes directed at criminal punishment.”⁹

48. The Working Group notes that Mr. Nyakpo was arrested without a warrant, and it was only some eight days later that a statement of offence was provided, with charges following some 56 days after the original arrest. The Working Group therefore concludes that there has been a breach of article 9 (2) of the Covenant.

49. Moreover, according to article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge shall be brought promptly before a judge to exercise judicial power. As the Human Rights Committee has noted, 48 hours is ordinarily sufficient to satisfy the requirement of bringing a detainee “promptly” before a judge or other officer authorized by law following the individual’s arrest; any longer delay must remain absolutely exceptional and be justified under the circumstances.¹⁰ The Working Group finds that Mr. Nyakpo was not brought promptly before a judicial authority, in violation of article 9 (3) of the Covenant. The Working Group recalls that the prosecutorial body cannot be considered a judicial authority for the purposes of article 9 (3) of the Covenant.¹¹ As a result, the Working Group finds that the authorities failed to establish the legal basis for Mr. Nyakpo’s detention in accordance with the provisions of the Covenant.

50. Furthermore, the Working Group notes the uncontested allegations that Mr. Nyakpo was released by the prosecution on 17 December 2021, before the court was able to decide on the lawfulness of his arrest. While the Working Group in principle considers his release a positive step, it is seriously concerned that this release was done for the sole purpose of preventing the judiciary from ruling on the lawfulness of Mr. Nyakpo’s arrest. This ties in with the uncontested allegations made by the source regarding the practice of systemic arrests and rearrests by Ghanaian authorities, amounting to de facto “revolving doors” detentions effected to restart the procedural clock related to arrest and detentions (para. 6 above).

51. As the Working Group has consistently argued,¹² in order to establish that a detention is legal, anyone detained must be afforded the right to challenge the legality of their detention before a court, as envisaged by article 9 (4) of the Covenant. The Working Group wishes to recall that, according to the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society.¹³ This right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty,¹⁴ and to all situations of deprivation of liberty, including not only to detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including military detention, security detention, detention under counter-terrorism measures, involuntary confinement in medical or psychiatric facilities, migration detention, detention for extradition, arbitrary arrests, house arrest, solitary confinement, detention for vagrancy or drug addiction, and detention of children for educational purposes.¹⁵ The Working Group finds a breach of article 9 (4) of the Covenant as Mr. Nyakpo was prevented from exercising his right to challenge the legality of his detention.

⁹ Human Rights Committee, general comment No. 35 (2014), para. 29.

¹⁰ *Ibid.*, paras. 32–33.

¹¹ *Ibid.*, para. 32; opinions No. 14/2015, para. 28; No. 5/2020, para. 72; 6/2020, para. 47; and No. 41/2020, para. 60; and [A/HRC/45/16/Add.1](#), para. 35.

¹² See, for example, opinions No. 1/2017; No. 6/2017; No. 8/2017; No. 30/2017; No. 2/2018; No. 4/2018; No. 42/2018; No. 43/2018; and No. 79/2018.

¹³ [A/HRC/30/37](#), paras. 2–3.

¹⁴ *Ibid.*, para. 11.

¹⁵ *Ibid.*, para. 47 (a).

52. The Working Group further recalls that judicial oversight of detention is a fundamental safeguard of personal liberty¹⁶ and is essential in ensuring that detention has a legal basis. Given that Mr. Nyakpo was not able to challenge his continued detention, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant was also violated.

53. Noting all the above, the Working Group concludes that the arrest and subsequent detention of Mr. Nyakpo lacked legal basis and were therefore arbitrary under category I.

b. Category II

54. As regards the allegations under category II, the source claims that Mr. Nyakpo's detention is arbitrary because it deprived him of a series of rights, including the rights to freedom of association and freedom of expression, when he, along with others, attended a meeting of the Foundation, during which a symbolic declaration of independence was made. The source further alleges that the right to self-determination, which is explicitly guaranteed under article 1 of the Covenant, was violated. The source adds that Mr. Nyakpo's right to participate in the conduct of public affairs under article 25 of the Covenant was equally undermined. All these allegations were put to the Government, which chose not to address any of them.

55. In relation to the source's submissions on the right to self-determination, the Working Group recalls that the right to self-determination belongs to the peoples and, as such, is not an individual right.¹⁷ Consequently, the Working Group shall not examine this allegation in the remits of the present opinion.

56. Turning to the other submissions, the Working Group notes that the rights to freedom of opinion and expression and freedom of association are protected under articles 19 and 22 (1) of the Covenant and articles 19 and 20 (1) of the Universal Declaration of Human Rights.

57. The Working Group recalls Human Rights Council resolution 24/5, in which the Council reminded States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others. This echoes the principle enunciated in Human Rights Council resolution 12/16, in which the Council called on States to refrain from imposing restrictions that were not consistent with article 19 (3) of the Covenant, including on discussion of government policies and political debate; reporting on human rights; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief.

58. Indeed, the Working Group recalls that detention purely due to the peaceful exercise of the rights protected by the Covenant may be arbitrary.¹⁸ The Working Group notes that freedom of opinion and freedom of expression, as protected by article 19 of the Covenant, are indispensable conditions for the full development of the person; they are essential for any society and in fact constitute the foundation stone for every free and democratic society.¹⁹

59. Freedom of expression includes the right to seek, receive and impart information and ideas of all kinds regardless of frontiers and this right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others, including political opinions.²⁰ Moreover, article 19 (2) of the Covenant protects all forms of expression and the means of their dissemination, including all forms of audiovisual, as well as electronic and Internet-based, modes of expression.²¹

¹⁶ Ibid., para. 3.

¹⁷ Human Rights Committee, general comment No. 12 (1984). See also its general comment No. 23 (1994), para. 3.1.

¹⁸ Human Rights Committee, general comment No. 35 (2014), paras. 17 and 53.

¹⁹ Human Rights Committee, general comment No. 34 (2011), para. 2.

²⁰ Ibid., para. 11.

²¹ Ibid., para. 12.

60. In the present case, the Working Group notes the allegation that Mr. Nyakpo has been charged with violations of the Prohibited Organisations Act and for violating section 182 (b) of the Criminal Offences Act (para. 12 above), as well as for attending a peaceful meeting of some 100 people on 16 November 2019, during which they symbolically declared an independent State for Western Togoland and then dispersed, with no further action taken at any stage beyond sharing the event on social media (para. 14 above). This is not contested by the Government in the present case; nor has the Government presented any evidence that the permissible restrictions under articles 19 and 22 of the Covenant apply to the actions by Mr. Nyakpo. In fact, the source has specifically submitted that Mr. Nyakpo and the Foundation rejected any violence employed by other entities (para. 8 above), a submission that has not been contested by the Government.

61. In these circumstances, the Working Group concludes that the detention of Mr. Nyakpo resulted from his peaceful exercise of the freedoms of expression and opinion, and freedom of association, as protected by articles 19 and 22 of the Covenant and articles 19 and 20 of the Universal Declaration of Human Rights.

62. Furthermore, turning to the allegations that Mr. Nyakpo's right to take part in the conduct of public affairs under article 25 of the Covenant was violated, the Working Group notes the source's uncontested allegation that Mr. Nyakpo's arrest was directly linked to his engagement in the movement for self-determination of Western Togoland. The Working Group recalls that the Human Rights Committee emphasized, in its general comment No. 25 (1996), that citizens also took part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. That participation is supported by ensuring freedom of expression, assembly and association. Noting the essential link between the rights to freedom of expression, assembly and association, the Human Rights Committee also emphasized, again in general comment No. 25 (1996), that the right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, was an essential adjunct to the rights protected by article 25.²² The Working Group therefore also finds the arrest of Mr. Nyakpo to be the result of his exercise of rights under article 25 of the Covenant.

63. Finally, the source has argued that the Prohibited Organisations Act is formulated in overly broad and vague terms, allowing its provisions to be used to silence legitimate expressions of opinion, such as in the case of Mr. Nyakpo. These submissions were put to the Government, which has chosen not to address them.

64. The Working Group recalls that charges involving vague and imprecise offences jeopardize the ability of individuals to exercise their fundamental rights. Laws that are vaguely and broadly worded may have a deterrent effect on the exercise of the rights to freedom of thought, conscience and religion, freedom of opinion and expression, freedom of peaceful assembly and association, participation in political and public affairs, equality and non-discrimination, and protection of persons belonging to ethnic, religious or linguistic minorities, as they have the potential for abuse, including the arbitrary deprivation of liberty.²³ The Working Group considers that this is precisely what has happened in the case of Mr. Nyakpo and notes the uncontested allegations that there exists a pattern of such cases in Ghana (paras. 6–7 above).

65. The Working Group urges the Government to define any crimes in precise terms and to take legislative measures to introduce an exemption from criminal responsibility for those who peacefully exercise their rights guaranteed by the Universal Declaration of Human Rights and the Covenant.

66. Noting all the above, the Working Group finds that the arrest and detention of Mr. Nyakpo was arbitrary under category II. The Working Group refers this case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and

²² General comment No. 25 (1996), para. 26.

²³ Opinion No. 10/2018, para. 55.

expression, for further consideration of the circumstances of the case and, if necessary, appropriate action.

c. Category III

67. Given its finding that the deprivation of liberty of Mr. Nyakpo was arbitrary under category II, the Working Group wishes to emphasize that no trial of Mr. Nyakpo should take place. Indeed, while Mr. Nyakpo has been released, it remains unclear whether all charges against him have been duly dismissed. The source has made submissions under category III and the Working Group shall proceed to examine these.

68. The source claims that the deprivation of liberty of Mr. Nyakpo falls within category III since he was detained for an unnecessarily long period, contrary to article 9 (3) of the Covenant. According to the source, the reasons for Mr. Nyakpo's arrest were not provided during the first eight days of his detention, no charges were presented for 56 days following his arrest and hearings on his detention were adjourned three times, pending the filing of the charge sheet. These allegations were put to the Government, which chose not to address them.

69. The Working Group recalls that article 14 (3) (a) of the Covenant entitles everyone to be promptly informed of the charges against them. In the present case, while Mr. Nyakpo was provided with the statement of offence eight days after the arrest, the charges were not brought until some 56 days later. The Government has provided no explanation for this delay and the Working Group therefore finds a breach of article 14 (3) (a) of the Covenant and article 10 of the Universal Declaration of Human Rights. Moreover, noting that it is essential for detained persons to know the charges in order to enable those persons to both challenge the legality of their detention and to prepare their defence, as well as noting its findings under category II above, the Working Group considers that the violation of Mr. Nyakpo's fair trial rights was of such gravity as to render his detention arbitrary under category III.

d. Category V

70. The source has submitted, and the Government has chosen not to contest, that the deprivation of liberty of Mr. Nyakpo falls under category V, namely that it was discriminatory as it was based on a law that restricts the right to opinion, speech, assembly and association only for the people of the Volta Region of Ghana when no other people in Ghana are subject to a similar restriction.

71. The Working Group observes that Mr. Nyakpo belongs to the Homeland Study Group Foundation, an organization that has been openly engaging on the subject of Western Togoland since 1994 and that no action appears to have ever been taken to designate the Foundation as a prohibited organization or to prosecute its members under the Prohibited Organisations Act (para. 19 above) until relatively recently, when they were reportedly targeted under the provisions of national criminal law for peaceful expression of their political views. The source provides examples of members being arrested in anticipation of a meeting to discuss self-determination and charged with conspiracy to commit treason; for wearing T-shirts with an inscription relating to a date on which a symbolic declaration of independence of Western Togoland was made; and for taking part in such a symbolic declaration of independence (para. 6 above). The source has argued that individuals often get rounded up, arrested, detained for periods and released before the court hearings take place only to be rearrested repeatedly afterwards.

72. On the facts as narrated by the source and uncontested by the Government, the arrest and detention of Mr. Nyakpo follows the same pattern. The Working Group is particularly mindful of the threats by the prosecutor to arrest him again, should he continue with his activism, and observes that this follows the pattern of harassment suffered by members of the Foundation. The Working Group considers that Mr. Nyakpo was targeted because of his peaceful activities and recalls that, when a detention results from the active exercise of civil and political rights, there is a strong presumption that the detention also constitutes a violation of international law on the grounds of discrimination based on political or other views.²⁴ In particular, noting the absence of any explanation by the Government, the Working Group

²⁴ Opinions No. 88/2017, para. 43; No. 13/2018, para. 34; and No. 59/2019, para. 79.

finds that Mr. Nyakpo was deprived of his liberty on discriminatory grounds, namely on the basis of his political or other opinion. His arrest and detention thus violated articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant, and were arbitrary under category V.

73. The Working Group wishes to emphasize that the present opinion concerns solely the deprivation of liberty of Mr. Nyakpo and is adopted without prejudice to the legal status of the Western Togoland.

Disposition

74. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of George Nyakpo, being in contravention of articles 2, 3, 7, 8, 9, 10, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 2, 9, 14, 19, 22, 25 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

75. The Working Group requests the Government of Ghana to take the steps necessary to remedy the situation of Mr. Nyakpo without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

76. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to unconditionally release Mr. Nyakpo immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

77. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Nyakpo and to take appropriate measures against those responsible for the violation of his rights.

78. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, for appropriate action.

79. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

Follow-up procedure

80. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Nyakpo has been unconditionally released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Nyakpo;
- (c) Whether an investigation has been conducted into the violation of Mr. Nyakpo's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Ghana with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

81. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

82. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion.

However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

83. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.²⁵

[Adopted on 30 August 2022]

²⁵ See Human Rights Council resolution 42/22, paras. 3 and 7.