

Decision No. 15/1994 (South Africa)

Communication addressed to the Government of South Africa
on 22 April 1994.

Concerning: Nathaniel Ngakantsi and Johannes Setlae, on the one
hand, and the Republic of South Africa, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days from the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 10/1994.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of South Africa. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. According to the communication, a summary of which has been transmitted to the Government:

(a) Nathaniel Ngakantsi, executive member of the African National Congress, was allegedly arrested without charge in Bophuthatswana and had been held in incommunicado detention following his arrest on 31 December 1993. According to the source, the detention is part of a pattern of harassment of non-violent political activists involved in voter education work prior to South Africa's first non-racial elections in April 1994. It was reported that the lawyers for the detainee were informed by the police that the detainee would appear at the magistrates' court on the morning of 5 January 1994, but his lawyers failed to find him that morning. However, they were informed that the detainee had made a confession to the magistrate the previous day. The police apparently left the court shortly thereafter with the detainee, who in fact had not made a statement to the magistrate. It was reported that Nathaniel Ngakantsi was being held under the terms of Section 25 of Bophuthatswana's Internal Security Act which allows police to hold a detainee for at least 14 days or for a further period of up to 90 days with higher authorization. The police have the right to deny lawyers or anyone else access to the detainee.

(b) Johannes Setlae, aged 26, member of the African National Congress, was reportedly arrested by the Bophuthatswana police on 12 January 1994. He

was believed to be detained incommunicado at Mmabatho police station under Section 25 of Boputhatswana's Internal Security Act. According to the source Johannes Setlae was detained after the police broke up a voter education meeting arranged by the members of the local ANC youth league. One policeman reportedly hit the mother of Ofentse Kogotsitse, the local president of the south league and she fell down. This apparently prompted Johannes Setlae to throw an empty bottle at the police. Then Johannes was reportedly assaulted and arrested by the police. According to the source his lawyer had been denied so far the right to visit him and no information was available about his state of health following his alleged beatings. The source expressed fears the he may be denied proper medical care and may be further assaulted while he remained in incommunicado detention. The concerns were increased by a report that, earlier on 12 January, the Bophuthatswana security police threatened to "eliminate" one of the meeting organizers and others involved in political activities.

6. The facts set out above show that the detention of Nathaniel Ngakantsi and Johannes Setlae is based solely on that fact that as non-violent political activists and members of ANC, they had become involved in voter education work leading up to the first non-racial elections in South Africa in April 1994, whereas these actions constituted no more than the free and peaceful exercise of their right to freedom of opinion, expression and assembly. To this is added the fact that no charges have been brought against them since their arrest, apparently under section 25 of the Bophuthatswana Internal Security Act, authorizing the police to deny lawyers and all other persons access to those under arrest. Lastly, it will be noted that, according to the source, pressure has been brought to bear on Nathaniel Ngakantsi to prompt him to confess, and that the state of health of Johannes Setlae, who was ill-treated by the police at the time of his arrest, offers grounds for serious concern, the more so since, having been held incommunicado, he has never been able to receive appropriate care.

7. In the light of the above the Working Group decides:

The detention of Nathaniel Ngakantsi and Johannes Setlae is declared to be arbitrary being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights, and articles 14-3 (a), (b) and (c), 19 and 21 of the International Covenant on Civil and Political Rights and falling within categories II and III of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of Nathaniel Ngakantsi and Johannes Setlae to be arbitrary, the Working Group requests the popular Government now in place since April 1994, to take note of this decision, in the light of the fact that the detentions occurred prior to the formation of the popular Government, and take such appropriate steps as it considers necessary to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 28 September 1994.