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File Number(s): Report No. 45/82; Case No. 3096
Session: Fifty-Fifth Session (1 – 9 March 1982)
Title/Style of Cause: Franel Jean v. Haiti
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Decided by: Chairman: Mr. Tom J. Farer;
First Vice Chairman: Marco Gerardo Monroy Cabra;
Second Vice Chairman: Francisco Bertrand Galindo;
Members: Andres Aguilar; Carlos A. Dunshee de Abranches; Luis Demetrio Tinoco Castro; César Sepúlveda.
Dated: 09 March 1982
Citation: Jean v. Haiti, Case 3096, Inter-Am. C.H.R., Report No. 45/82, OEA/Ser.L/V/II.61, doc. 22 rev. 1 (1982-1983)
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BACKGROUND:

1. On December 13, 1977, the Inter-American Commission on Human Rights received the following petition:

Franel Jean, an engineer and attorney, was arrested in Saint Marc, Haiti, in October, 1966, and since then has not been set free. Each year many prisoners of conscience and political prisoners are released but Franel Jean remains a "disappeared" person. These are some of the facts relating to his case: first and foremost, he was arrested by the military and civil forces of Saint Marc without any court order. There have been no charges presented given by the Haitian Government for his incarceration. In my opinion, the reasons for his incarceration are political in nature. Mr. Franel Jean has not been allowed to see any member of his family or his defense attorney since being put in jail. He has not been tried, there is no case pending, there is no court sentence that is known. He was tortured during his detention.

2. In a note dated September 14, 1978, the Commission transmitted the pertinent parts of the petition to the Haitian Government and requested it to furnish information that it considered appropriate.

3. Since no reply to this communication has been received, the request for information was repeated in a note sent to the Government of Haiti on September 28, 1981, which mentioned the eventual application of Article 39. No reply to this communication has been received.

WHEREAS:

1. The term provided for in Article 31 of the Regulations of the Commission has lapsed and to date the Government of Haiti has not replied to repeated requests for information made by the IACHR in its note of September 14, 1978, and reiterated in its communication of September 28, 1981, making it necessary to presume that there are no further remedies under domestic law which must be exhausted

(Article 46 of the American Convention) in accordance with the procedures established in the same Convention.

2. Article 39 of the Regulations of the Commission reads:

Article 39

The facts reported in the petition whose pertinent parts have been transmitted to the government of the state in reference shall be presumed to be true if, during the maximum term set by the Commission under the provisions of Article 31 paragraph 5, the government has not provided the pertinent information, as long as the other evidence does not lead to a different conclusion.

3. Article 1 of the American Convention on Human Rights reads:

Article 1. Obligation to Respect Rights

a. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth or any other social condition.

4. The Republic of Haiti is a State Party to the American Convention on Human Rights. Therefore, in view of the foregoing information and the considerations made, and since the Commission does not have other information that would lead it to conclude otherwise, on the grounds of Article 39 of its Regulations,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLVES:

1. To presume to be true the facts denounced in the communication of November 24, 1977, relating to the arbitrary arrest, torture and lack of due process of Mr. Franel Jean.

2. To declare that these facts constitute a grave violation of the rights to humane treatment, personal liberty and fair trial, Articles 5, 7 and 8, respectively, of the American Convention on Human Rights.

3. To recommend to the Government of Haiti:

- a) that it provide for the immediate release of Mr. Franel Jean;
- b) that it provide for a full and impartial investigation to determine who is responsible for the violation;
- c) that in accordance with Haitian laws it punish those responsible for the facts denounced;
- d) that it inform the Commission within a term of ninety days of the measures it has taken to put the foregoing recommendations into practice.

4. To communicate this resolution to the Government of Haiti and to the petitioner.

5. To include this resolution in its Annual Report to the General Assembly of the Organization of American States.