

OPINION No. 24/1999 (HAITI)

Communication addressed to the Government on 14 January 1999

Concerning Frantz Henry Jean Louis and Thomas Asabath

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, which extended and clarified its mandate in resolution 1997/50. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.
2. The Working Group regrets that the Government did not reply within the 90-day time limit.
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 made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.
5. According to the source, two Haitian nationals, Frantz Henry Jean Louis and Thomas Asabath, were arrested on the night of 23 July 1998, without an arrest warrant and without being caught in flagrante. They were taken to the Petionville police station and then to the Petionville civil prison.

6. Mr. Jean Louis and Mr. Asabath were held in custody until 9 October 1998, without being brought before an examining magistrate, in violation of article 26 of the Haitian Constitution. Pursuant to an order issued by Commissioner J.-A. Brutus on 31 July 1998, or eight days after their arrest, they were imprisoned on charges of illegal possession of firearms and conspiracy. The source doubts the authenticity of the order, as no arrest warrant had been issued against them, and suspects it to have been “made up after the event” to justify the arrest.

7. In an order dated 5 August 1998, the senior judge of the Port-au-Prince court of first instance stated that the arrest of Mr. Jean Louis and Mr. Asabath had been “illegal” and their detention “improper and arbitrary”, and ordered their immediate release. Commissioner Brutus refused, however, to carry out the order. On 12 August 1998, he was served notice to comply with the order. Finally, on 9 October 1998, or two months and four days later, the public prosecutor’s office authorized the order to be carried out.

8. As soon as they were released Mr. Jean Louis and Mr. Asabath were re-arrested, while they were still on the premises of the Petionville police station. This time they were charged with “illicit drug-trafficking on Haitian territory”, according to an arrest warrant which was issued by an examining magistrate, but of which they were never informed, contrary to the provisions of article 24.3 of the Constitution.

9. On 30 November 1998, the arrest warrant against them was again withdrawn by the examining magistrate. The same day, the Secretary of Public Security, Mr. Robert Manuel, again intervening directly in matters within the exclusive remit of the judiciary, summoned the examining magistrate and the Government commissioner and ordered them not to carry out the decision to withdraw the arrest warrant. According to the source, the decision to re-arrest them had been taken by Mr. Manuel, and it had been agreed to make a pretence of releasing them and then detain them on other grounds.

10. According to the source, the Secretary’s interference in the execution of judicial decisions seriously undermines the independence of the judiciary and encroaches on its authority. According to the source, by assuming powers not vested in him the Secretary deliberately violated Haitian constitutional and legal norms and the fundamental norms and principles of the international human rights conventions ratified by the Haitian Government.

11. Based on the foregoing, the Working Group concludes that the above-mentioned individuals were arrested without a warrant on 23 July 1998 and remanded in prison custody for a period which lasted until 9 October 1998, without being brought before a judicial authority, in violation of article 26 of the Haitian Constitution, which stipulates that “No one may be kept under arrest more than forty-eight (48) hours unless he has appeared before a judge asked to rule on the legality of the arrest and the judge has confirmed the arrest by a well-founded decision.” The detention is also contrary to article 10 of the Universal Declaration of Human Rights, article 9, paragraph 4, of the International Covenant on Civil and Political Rights and Principles 9, 10 and 11 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment. In the opinion of the Working Group, there has been a non-observance of the international standards relating to a fair trial which is of such gravity as to confer on the deprivation of liberty of Frantz Henry Jean Louis and Thomas Asabath an arbitrary character (category III).

12. In addition, the above-mentioned individuals remained in detention despite a decision by a judicial authority to release them, on two occasions: the first, from 5 August 1998 to 9 October 1998 and the second, from 30 November 1998 onwards. In both cases their detention is also arbitrary because it cannot be justified on any legal basis (category I).

13. Having rendered this opinion, the Working Group requests the Government to take the necessary steps to remedy the situation, in conformity with the standards and principles set forth in the Universal Declaration of Human Rights, and to put an end to the impunity enjoyed by those responsible for the deliberately arbitrary detentions mentioned above (Commission on Human Rights resolution 1999/34).

Adopted on 26 November 1999