

BACKGROUND PAPER

INTER-AMERICAN COURT OF HUMAN RIGHTS DECISION REGARDING FORMER PRIME MINISTER YVON NEPTUNE'S "JUDICIAL INSECURITY" IN HAITI

Decision gives Haiti deadline to bring its inhumane prisons up to international human rights standards

The Inter-American Court of Human Rights ("IACHR"), an autonomous judicial institution of the Organization of American States, recently ruled that the State of Haiti violated 11 different provisions of the American Convention on Human Rights by illegally imprisoning former Prime Minister Yvon Neptune for two years and allowing the case to drag on in the courts for almost two more. The IACHR ordered Haiti to end what it calls Mr. Neptune's continuing "judicial insecurity" and to pay him \$95,000 in damages and costs. The Court also ordered Haiti to start bringing its inhumane prisons in line with minimum international standards within two years.

"From the beginning, the State failed its obligation to protect Mr. Neptune's right to be heard by a court competent to hear the charges against him...as well as to an effective recourse," the IACHR said in a 60-page judgment issued publicly on June 6. The Court denounced the State's continued failure to bring Mr. Neptune before a qualified judge, thereby leaving him in a situation of "absolute legal uncertainty."

The Court criticized nearly every aspect of Haiti's prosecution of Mr. Neptune, which began in June 2004 and continues today. It found Mr. Neptune's 25-month-long detention illegal, and the prison conditions he endured to be inhumane and degrading. Although Mr. Neptune has been out of prison since July 2006, the IACHR found that the violations of his rights continue because the case has not been dismissed, and he could be returned to prison at any time. The Court also condemned the State's ongoing failure to provide Mr. Neptune a fair hearing. The numerous and ongoing violations amount to "an unjustifiable delay in access to justice," the Court decided.

Mr. Neptune served as Prime Minister of Haiti from 2002-2004 in the government of former President Jean-Bertrand Aristide. After Haiti's February 29, 2004 coup d'état, the Interim Government of Haiti (IGH) assumed power for two years. The IGH imprisoned hundreds of political opponents, especially officials and supporters of the Lavalas party.

Mr. Neptune turned himself into the police on June 27, 2004, when he heard of an arrest warrant against him on the radio. He was accused of participating in the "La Scierie Massacre," an alleged attack by Lavalas supporters in the La Scierie neighborhood of St. Marc. Subsequent investigations, including by the United Nations, revealed the massacre to be a struggle between two armed groups, with casualties on both sides. The Haitian Appeals Court prosecutor found that there was no credible evidence of Mr. Neptune's involvement. Still, Mr. Neptune spent 25 months in prison, including nearly a year in the squalid and overcrowded National Penitentiary.

Mr. Neptune was given provisional release for health reasons on July 27, 2006, two months after a constitutional government was restored to Haiti, headed by President René Préal. Although the current government has not returned Mr. Neptune to prison, for 15 months it has refused to serve an Appeals Court order that would end the case against him, and the charges against him are still in force.

The Inter-American Court denounced the State's repeated failure to provide Mr. Neptune due process. Mr. Neptune was not brought before any court until 11 months after his arrest, and no formal charges were levied against him until September 2005, 14 months after his imprisonment. When the charges did appear, they were so vague that Mr. Neptune could not have adequately defended himself against them, according to lawyers at the Inter-American Commission on Human Rights, which had referred Mr. Neptune's case to the Inter-American Court. "[The statement of charges contains] no indication that Mr. Neptune directly perpetuated the crimes alleged against him nor is there a clearly defined connection between Mr. Neptune and those who are alleged to have perpetrated the crimes," the Commission concluded. "The mental and factual elements necessary to establish Mr. Neptune's responsibility...remain entirely unclear."

During Mr. Neptune's imprisonment, Amnesty International declared he and other Lavalas detainees "prisoners of conscience," and numerous international organizations, including United Nations and the Organization of American States, condemned the IGH's use of the justice system to imprison and intimidate political opponents. Although many of the Lavalas detainees were freed following Haiti's 2006 restoration of democracy, some remain in prison without having been tried, four years or more after their arrests. Others, like Mr. Neptune, are out on provisional release, but continue to have cases hanging over their heads. Despite the lack of credible evidence against Mr. Neptune and other defendants in the La Scierie Case, it is still pending after four years, and one of Mr. Neptune's co-defendants is still languishing in prison.

In April 2007, the Appeals Court of Gonaives ordered the case against Mr. Neptune dismissed for lack of jurisdiction. Under Haiti's Constitution, regular courts in Haiti cannot try high public officials unless they have been previously convicted by the High Court of Justice, a special court formed by the legislature, similar to impeachment in the United States. In its judgment, the IACHR found it "unreasonable" that the State subjected Mr. Neptune to legal proceedings in regular courts, while keeping him imprisoned for more than two years, without determining whether the forum it chose was proper.

The IACHR also condemned Haiti's refusal to serve the Appeals Court order that would dismiss Mr. Neptune's case, now 15 months old. Until the decision is served and the parties are given a chance to appeal, it is not final. In the meantime Mr. Neptune's legal status is uncertain, and he risks being returned to prison. The Inter-American Court found that the failure to serve the Appeals Court order "causes and perpetuates an unjustifiable delay in access to justice."

During a hearing before the IACHR, the State's representative claimed that the State has no power to serve the Appeals Court order, and that the delay was caused by a justice system with which it shouldn't interfere. The Court rejected that argument, saying that the government has the obligation to ensure that its justice system complies with the law.

The Inter-American Court's opinion found numerous other violations of Mr. Neptune's human rights. Given the trial courts' lack of jurisdiction, Mr. Neptune's rights against illegal imprisonment and arbitrary detention were violated. Because Mr. Neptune was jailed for 14 months before receiving a statement of the charges against him, the State violated his right to be informed within a reasonable time of the charges against him. And because the case against him has still not been resolved—more than four years after Mr. Neptune was imprisoned—the State stands in violation of Mr. Neptune's right to be judged within a reasonable amount of time.

Haiti also violated Mr. Neptune's rights by subjecting him to inhumane prison conditions, the IACHR found. The Court singled out the National Penitentiary's overcrowding, squalor, and lack of general security, as well as multiple threats to Mr. Neptune's life during his incarceration.

In total, the State violated 11 different provisions of the American Convention on Human Rights, the Court found. These are:

- Article 1.1, on the State's duty to respect and ensure human rights
- Articles 5.1, 5.2, and 5.4, concerning the right to humane treatment
- Articles 7.1, 7.2, 7.3, 7.4, and 7.5, concerning the right to personal liberty
- Article 8.1, in conjunction with Art. 25, on the right to a fair trial and the right to judicial protection

The Inter-American Court ordered Haiti to pay Mr. Neptune \$50,000 for lost wages due to his imprisonment and his current inability to work because of the case hanging over his head. The Court also ordered \$30,000 for pain and suffering, \$10,000 to compensate him for other financial losses due to the proceedings against him, and \$5,000 in legal costs, for a total of \$95,000. In addition, the Court ordered the State to adopt judicial or other necessary measures to resolve the charges against Mr. Neptune as soon as possible. It also ordered the State to publish portions of its opinion in a national journal or newspapers. Finally, the Court ordered Haiti to adopt a plan within two years to substantially improve its inhumane prison conditions, and bring the conditions up to international standards.

The Inter-American Court of Human Rights is located in San José, Costa Rica, and its judgments are binding over 22 countries, including Haiti. The Court has jurisdiction only over claims of human rights abuse committed by states. Neptune v. The State of Haiti is the first case concerning Haiti the Court has heard.

Mr. Neptune was represented before the Inter-American Court by the U.S.-based Institute for Justice & Democracy in Haiti (IJDH). The original complaint in the case was filed in April 2005 before the Inter-American Commission on Human Rights by IJDH, the Haiti-based *Bureau des Avocats Internationaux* and the Hastings Human Rights Project for Haiti.

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