

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
PETITION OF YVON NEPTUNE

**AFFIDAVIT OF MARIO JOSEPH IN SUPPORT OF CONTENTION THAT
DOMESTIC REMEDIES IN HAITI ARE NOT AVAILABLE FOR PETITIONER**

I, **MARIO JOSEPH** hereby declare that the following statements are true to the best of my knowledge:

1. I am a citizen of the Republic of Haiti and a member of the bars of St. Marc and Port-au-Prince. I am the managing attorney for the Bureau des Avocats Internationaux (BAI), in Port-au-Prince, Haiti. In that capacity, I defend and assist victims of human rights abuses, including political prisoners. I represent, among others, the Groupe de Défense des Droits du Prisonniers Politiques (GDP).

2. I know Petitioner Yvon Neptune ("Petitioner"), and have provided him legal advice and assistance since his illegal detention began on June 27, 2004. I do not, however, officially represent him at this time before the Haitian courts. I am familiar with Petitioner's attempts to seek redress for his illegal detention through: a) study of the legal file; b) discussions with Petitioner and other lawyers who have represented him; and c) discussions with Haitian judicial officials involved in the case.

3. My knowledge of Petitioner's case and my experience representing other political prisoners over the last year leads me to the conclusion that Petitioner does not have an adequate and effective domestic remedy available under the Interim Government of Haiti (IGH), because: 1) the IGH has systematically denied Petitioner due process of law in his case over the last nine months, and there is no indication of a change in this policy; 2) if Petitioner spends much more time in prison, it is likely that he will be killed, rendering any remedy moot; 3) the IGH has systematically denied other political prisoners due process of law since March 2004; 4) even if Petitioner obtains a valid liberation order from a judge, the experience of other political prisoners shows that it is unlikely that the IGH will execute the order; 5) the IGH has systematically attacked the independence of judges, especially in political prisoner cases, making it unlikely that a judge would dare to rule against the government in such a high-profile case; and 6) the IGH has intimidated lawyers representing political prisoners, making it harder for Petitioner to find adequate counsel. Requiring Petitioner to continue to pursue his case in Haitian courts under these circumstances would be a senseless formality.

4. Petitioner turned himself into police on June 27, 2004, when he heard that a warrant had been issued for his arrest. Article 26 of Haiti's Constitution requires that arrestees must be released if they are not brought before a judge who confirms the arrest's legality

within 48 hours.¹ Nine months after Petitioner's arrest, this requirement has still not been fulfilled.

5. Petitioner's lawyers filed a motion on his behalf on July 9, 2004, seeking the recusal of the judges of the St. Marc jurisdiction, on the grounds that their political sympathies prevented Petitioner from receiving a fair hearing. Although such motions involving pre-trial detainees are usually decided within a week or two, a month at the longest, the Cour de Cassation took six months to decide Petitioner's motion, then it dismissed it on a minor technicality, the failure to pay a filing fee of 200 gourdes (\$5.40US).

6. IGH officials have invoked Petitioner's recusal motion to justify the failure to comply with Constitution Article 26. But the IGH held Petitioner illegally for twelve days before he even filed the motion, and three months have passed since the Court denied the motion on January 17, 2005. In addition, the inordinate and unexplained delay in deciding the motion can be attributed to the government's failure to pursue the case. Furthermore, Article 26 is categorical: it declares that "no one can be maintained in detention if he has not appeared with the 48 hours following his detention before a judge....." The article places a direct obligation on the government to ensure judicial approval of all detentions, and the obligation is not contingent on the detainee pursuing or not pursuing a particular procedural route.

7. IGH officials have invoked the risk of transporting Petitioner from the National Penitentiary in Port-au-Prince to St. Marc and Petitioner's health since he started a hunger strike in February, to justify the failure to comply with Constitution Article 26. But Haitian law and practice allow the judge of St. Marc to travel to Port-au-Prince to conduct a hearing, in the Penitentiary, the hospital, or other suitable place. In fact, the judge handling the case, Judge Clunie Pierre Jules, is often criticized by lawyers in St. Marc for spending much of her time in Port-au-Prince, where she maintains her principal residence. If the judge refuses to hold a hearing in Port-au-Prince, and adequate provisions are not made for a hearing in St. Marc, within 48 hours of arrest, Article 26 requires Petitioner's immediate release.

8. Haiti's Code of Criminal Procedure, *le Code d'Instruction Criminelle*, as amended by Article 7 of the Law of 26 July 1979 Regarding Orders by Investigating Magistrates, limits investigating magistrates to two months for their investigation, and an additional month to prepare the final order. It allows the judge additional time only if the judge issues a special order to the Chief Judge and the Prosecutor.² Even subtracting the time

¹ Constitution de la République d'Haïti, March 29, 1987, Art. 26. "Nul ne peut être maintenu en détention s'il n'a comparu dans les quarantes huit (48) heures qui suivent son arrestation, par devant un juge appelé à statuer sur la légalité de l'arrestation et si ce juge n'a confirmé la détention par décision motivée. »

² Loi Du 26 Juillet 1979 Sur Des Ordonnances Du Juge D'Instruction, Art. 7: Le juge instructeur saisi d'une affaire a un délai de deux mois pour en mener l'instruction et communiquer les pièces de l'information au Ministère public et un délai d'un mois pour l'émission de l'ordonnance de clôture, ce, sous peine de prise à partie.... Faute par le juge instructeur de pouvoir se conformer au délai imparti, il devra justifier son retard par une ordonnance spéciale à communiquer dans les vingt-quatre heures au Doyen du tribunal civil et au Ministère public.

spent considering Petitioner's motion for recusal, more than three months have elapsed since Petitioner's arrest, and the pre-trial proceedings have not, apparently, even begun. Nor has the Investigating Magistrate taken any action to request additional time.

9. If Petitioner is required to continue pursuing domestic remedies in Haiti, it is highly possible that he could be killed while waiting. Haiti's prisons are dangerous places for all prisoners: disease is rampant and healthcare almost non-existent, lethal violence by prison guards, police and intruders has become routine. On December 1, police and prison guards responded to a non-violent prison demonstration by shooting prisoners with automatic weapons in the cellblock where Petitioner was held. The IGH reported 10 prisoners killed in the massacre, but witness report several times that number, while the IGH has blocked all independent investigations.

10. Petitioner is particularly at risk in prison. Before his arrest, U.S. forces in Haiti reported several attempts to kill Petitioner by armed groups allied with the IGH. At least two attempts to kill Petitioner have been reported since his arrest. In a bizarre incident on February 19, 2005, five armed men were able to take control of the Penitentiary. Over four hundred prisoners were set free, and Petitioner was forced out of the prison and into a car at gunpoint. Petitioner managed to get to a safe house, and as soon as he could he called the United Nations Stabilization Force in Haiti (MINUSTAH) and turned himself in. One of his fellow prisoners told journalists that the IGH paid him to kill Petitioner during the prison break.

11. The cases of other political prisoners demonstrate that the IGH pursues a policy and practice of intimidation and obstruction of judicial procedures with respect to political dissidents, which prevents the effective resort to domestic remedies. The IGH routinely refuses to allow arrestees to appear before a judge for their Article 26 hearing. This practice has been criticized by human rights groups, the UN Security council and the Commission. Political prisoners who have never been brought before a judge include former Minister of the Interior Jocelerme Privert (arrested in March 2004), and Amanus Mayette (arrested on March 19, 2004). Other dissidents were afforded an initial hearing, but after that there have been no further proceedings in their cases, in violation of Article 7 of the Law of 26 July 1979. For example, grassroots activist and folksinger Annette Auguste was arrested illegally on May 10, and brought before a judge within 48 hours. She has never been called back to court on that case since, and there is no apparent movement in the case.

12. When political detainees are allowed before a judge, the IGH often ignores orders for their release. Grassroots activist Jean-Marie Samedi was arrested in October 2004 for planning a September 30 demonstration. On November 24, a judge found his detention illegal and arbitrary, and ordered him freed. The government never allowed him out, although he escaped during the February 19 prison break, and has not turned himself in. Political prisoners Harold Sévère and Anthony Nazaire were ordered free by another judge on December 23, after ten months of illegal detention. In those cases the prosecutor even agreed to execute the order, but both are still in prison under an illegal order from the Minister of Justice.

A judge in Les Cayes, Haiti, indicated in a hearing in July 2004 that he would release former local official Jacques Mathelier for lack of evidence. Before the order could be issued, the IGH transferred Mathelier to the National Penitentiary, out of the judge's jurisdiction.

13. The IGH has systematically intimidated judges, especially in high profile political prisoner cases, to discourage release orders. In July, 2004, the Haitian Judges' Association, ANAMAH, issued a press release deploring the increase in the politicization of justice and illegal arrests over the previous four months. Later that month, the IGH transferred Jacques Mathelier away from the judge who began the process to free him. On November 24, 2004, Judge Jean Sénat Fleury, one of Haiti's most respected judges, ordered the liberation of Rev. Gérard Jean-Juste, a Catholic Priest and political dissident, who had spent a month in jail without seeing a judge. The IGH eventually gave in to international pressure and released Fr. Jean-Juste. Just before Christmas, Judge Brédy Fabien, ordered the release of six more dissidents, including Harold Sévère and Anthony Nazaire, for lack of evidence. On December 30, Minister of Justice Bernard Gousse instructed the chief judge of the Port-au-Prince Trial Court to immediately take all cases from Judges Fleury and Fabien. This was a clear violation of the principle of judicial independence, enshrined in Haiti's Constitution. Judge Fleury, unwilling to serve in such a corrupt system, resigned.

14. Although lawyers are permitted to represent political prisoners, they are subject to intimidation by both the IGH and armed groups. On October 2, 2004, attorney Axène Joseph went to Radio Caraïbes to represent three current and former members of Parliament that the police were trying to arrest without a warrant, following a radio debate. The police arrested attorney Joseph, and held him until the next day, even though there were never any accusations made against him in the police file. Human rights defenders, including me, have been subject to intimidation through telephone calls and other means. Amnesty International issued an urgent action alert on October 11, 2004 for my safety and that of lawyer Renan Hédouville. When American human rights lawyer Ira Kurzban traveled to Haiti on March 7 to visit Petitioner and document his health and the conditions of his detention, he was not allowed to enter the country. All these attacks do not make finding a lawyer impossible, but they do greatly decrease lawyers' ability and willingness to zealously defend political prisoners.

15. For the foregoing reasons, I conclude that adequate and effective domestic remedies are not available to Petitioner in the Haitian courts.

Mario Joseph, Av.
Bureau des Avocats Internationaux

April 13, 2005

