

PETITION

Inter-American Commission on Human Rights

I. PETITIONERS

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4. PETITIONERS HEREBY MAKE AN URGENT REQUEST FOR PROVISIONAL MEASURES BASED ON GRAVE THREATS TO THE LIFE OF YVON NEPTUNE.¹

II. NAME OF THE PERSON OR PERSONS AFFECTED BY THE HUMAN RIGHTS VIOLATIONS

5. Yvon Neptune, Former Prime Minister of Haiti
National Penitentiary, Port-au-Prince, Haiti

III. OAS MEMBER STATE AGAINST WHICH THE COMPLAINT IS BROUGHT

6. Republic of Haiti

IV. FACTS DENOUNCED

7. Yvon Neptune, an architect by trade, was elected to Haiti's Senate in May 2000. After serving as the Senate's President, he resigned his post to serve as Prime Minister in 2002.

¹ See *infra*, Part VI(A).

8. In early February 2004, civil disorder broke out in the town of Gonaives, Haiti. Armed gangs attacked the police station, killed several police officers, and released all the prisoners from the local jail. Members of Haiti's demobilized army, who had been training in the neighboring Dominican Republic, crossed the border and attacked government facilities and supporters in the Central Plateau area. The rebellion soon spread to other towns, especially in Haiti's north.

9. On February 7, 2004, after days of fighting, the armed, anti-government group *RAMICOS* took control of the police station in the city of St. Marc. St. Marc is about 100 kilometers from Port-au-Prince, on the road from Gonaives to the capitol. The city's police station was abandoned the day before *RAMICOS* took control, leading to speculation of complicity between the St. Marc police and *RAMICOS*.

10. On February 9, 2004, the St. Marc police, aided by a pro-government force called *Bale Wouze*, regained control of the St. Marc police station. The same day, Prime Minister Neptune flew to St. Marc, via helicopter, to encourage the police to establish order in the city and to encourage the police to defend the city from gangs marching south, through St. Marc, to Port-au-Prince. This visit was widely reported in the press.

11. Two days after Minister Neptune's visit, Haitian police and civilians reported to be *Bale Wouze* members, entered the La Scierie neighborhood, a *RAMICOS* stronghold. According to many reports, in the ensuing confrontation between government forces and *RAMICOS*, at least three people were killed and many were wounded. Members of *RAMICOS* retaliated against suspected supporters of the constitutional government. Both the police and *RAMICOS* burned and ransacked houses and cars in St. Marc. Some witnesses stated that a few people were deliberately burned to death in their homes. Mr. Neptune has no personal knowledge of this operation. He never received a report from the police or any other government body.

12. After the events in La Scierie, the National Coalition for Haitian Rights-Haiti ("NCHR-Haiti") claimed that government forces killed at least 50 people. NCHR-Haiti began referring to the confrontation as the "La Scierie Massacre." However, journalists and human rights workers who visited the area after the alleged events found only a few bodies.

13. On February 29, 2004, a United States government plane took Haiti's elected President, Jean-Bertrand Aristide, out of Haiti, to the Central African Republic. Chief Justice Boniface Alexandre was installed as the Interim President of Haiti.

14. On March 12, 2004, Mr. Alexandre proclaimed Gerard Latortue Prime Minister of Haiti. The former Prime Minister, Yvon Neptune, cooperated with the transition and the Interim Government of Haiti ("IGH"). Shortly thereafter, threats against his life forced Mr. Neptune into hiding.

15. NCHR-Haiti called for the arrest and prosecution of Prime Minister Neptune in a press release dated March 2, 2004. On March 6, the Port-au-Prince prosecutor's office made an agreement with NCHR-Haiti to file criminal charges against anyone denounced by NCHR-Haiti and other human rights groups.

16. New York based NCHR no longer supports the positions of NCHR-Haiti, a former field office launched by NCHR in 1992. In a press release dated March 11, 2005, NCHR distanced itself from NCHR-Haiti and publicly rejected NCHR-Haiti's support of the IGH's treatment of Mr. Neptune. Jocelyn McCalla, Executive Director of NCHR has acknowledged that the Haitian judicial system has failed Mr. Neptune, stating that "The sum total of the lack of action by Haitian government authorities on this case because of inertia, incompetence, omission or ill will amounts to a travesty of justice."²

17. On March 27, 2004, the IGH issued an order banning Mr. Neptune from leaving Haiti. On March 25, Judge Clunie Pierre Jules, an investigating magistrate in St. Marc, who investigated the La Scierie case, issued an arrest warrant against Mr. Neptune. The warrant was kept secret and Mr. Neptune did not hear about it until June 27, 2004 through an announcement on the radio. Hoping to set an example of supporting the rule of law, Mr. Neptune turned himself in to the Haitian police on June 27, 2004. The police detained Mr. Neptune in the Haitian National Penitentiary ("*Penitencier National*") in Port-au-Prince.

18. Article 26 of the Haitian Constitution prohibits holding a detainee unless a judge has ruled on the legality of the arrest and legally justified the detention within 48 hours. Although Mr. Neptune has been in custody for nine months, he has not been brought before a judge and no judge has ruled on the legality of his detention.

19. On July 17, 2004, Judge Bredy Fabien of Port-au-Prince questioned Mr. Neptune about a December 5, 2003 incident at the National University of Haiti, in which student protestors and the University's rector were injured. At that time, Judge Fabien only questioned Mr. Neptune as a witness to the incident at the National University. He did not rule on the legality of Mr. Neptune's detention, and had no authority to do so.

20. In defense of the Haitian government's failure to bring Mr. Neptune before a judge within 48 hours, government officials have argued that the filing of a motion to recuse prevents a hearing. Although Mr. Neptune's former lawyers filed a motion to recuse the judges in St. Marc, on the grounds that they were unable to fairly judge his case, the motion was not filed until July 9, 2004, long after the 48 hour period expired. Furthermore, Haiti's *Cour de Cassation*, or Supreme Court, which has jurisdiction over motions to recuse, usually decides recusal motions related to incarcerated defendants within a few weeks at most. In this instance, the *Cour de Cassation* did not decide Mr. Neptune's motion until January 17, 2005, over six months after it was filed. In January, the *Cour de Cassation* rejected the recusal motion on a technicality (failure to pay a small filing fee). On the day this petition was filed, over three months after the *Cour de Cassation* decided the motion to recuse, Mr. Neptune still has not been brought before a judge.

² Press Release, *NCHR-Haiti Does Not Speak for the National Coalition for Haitian Rights (NCHR)*, National Coalition for Haitian Rights, March 11, 2005.

21. For most of the time since June 27, 2004 Mr. Neptune has been held in a cement cell in Haiti's *Penitencier National*, with no water, toilet or electricity. Conditions in the *Penitencier* are so willfully wretched that the United Nations Development Program official assigned to help improve prison conditions quit in November 2004, when the government refused international offers of help. The UN official's successor warned the Haitian government that the conditions were so inhuman that violence by prisoners was inevitable. Pre-trial detainees are not separated from convicted prisoners in the *Penitencier*.

22. On December 1, 2004, police and prison officials responded to a non-lethal protest by prisoners in the *Penitencier National* by firing automatic weapons at prisoners. The IGH confirms that ten people were killed, although the government refused to notify family members for several weeks. Journalists, human rights groups, and witnesses inside the prison claim that several dozen people were killed. The IGH has blocked independent investigations of the event.

23. On February 19, 2005, five to six armed men stormed the *Penitencier* without encountering resistance from police or prison officials. Over four hundred prisoners escaped. Mr. Neptune was forced, at gunpoint, to leave the prison and get into a car. His abductors released him in Port-au-Prince and he managed to get to the house of another prisoner. Mr. Neptune immediately called the offices of the United Nations Stabilization Mission in Haiti ("MINUSTAH"), and asked for an escort back to the prison. MINUSTAH complied with the request and Mr. Neptune returned to the *Penitencier*.

24. On February 20, Mr. Neptune began a hunger strike to protest his illegal detention. On March 10, Mr. Neptune collapsed and was taken to a military hospital run by MINUSTAH. As of April 20, Mr. Neptune is still receiving treatment at the hospital. He has still never been brought before a judge.

A. Available Evidence

25.
 - A. Declaration of Mario Joseph, Attorney, Bureau des Avocats Internationaux, In Support of Contention That Domestic Remedies in Haiti are Not Available for Petitioner, April 13, 2005;
 - B. Declaration of William P. Quigley, Esq., Janet Mary Riley Professor of Law, Loyola University New Orleans School of Law, Regarding Threats to Petitioner's Life, Integrity and Health, April 4, 2005;
 - C. Letter from Justice Minister Bernard Gousse to Chief Judge of the Trial Court of Port-au-Prince, December 30, 2005 (original in French);
 - D. Letter from Judge Jean Senat Fleury to Justice Minister Bernard Gousse, January 10, 2005 (original French and English translation);
 - E. Letter from Congresswoman Maxine Waters to U.S. Secretary of State Colin Powell, February 13, 2004;
 - F. Letter from Congresswoman Maxine Waters to U.S. President George W. Bush, March 11, 2005;
 - G. Letter from Congresswoman Maxine Waters and 15 other Members of

- Congress to U.S. President George W. Bush, March 11, 2005;
- H. Letter from Yvon Neptune to foreign ambassadors and U.N. Representatives, March 4, 2005;
 - I. Press Release, *NCHR-Haiti Does Not Speak for the National Coalition for Haitian Rights (NCHR)*, National Coalition for Haitian Rights, March 11, 2005;
 - J. *Massacre in the "Titanic,"* The Toronto Star, December 20, 2004;
 - K. *Haiti's Most Famous Political Prisoners Announce Hunger Strike*, Haiti Action Committee, February 22, 2005;
 - L. Thomas M. Griffin, Esq., *Haiti: Human Rights Investigation: November 11-21, 2004*, Center for the Study of Human Rights, University of Miami School of Law, February 9, 2005;
 - M. *Report on December 1 Massacre in the Haitian National Penitentiary*, Institute for Justice & Democracy in Haiti, December 20, 2004.

B. Witnesses to Violations Denounced

- 26. Mario Joseph, Attorney, Bureau des Avocats Internationaux, Haiti.
- 27. William P. Quigley, Esq., Janet Mary Riley Professor of Law, Loyola University New Orleans School of Law, U.S.A.

C. Authorities Responsible for the Facts Denounced

- 28. Interim Government of the Republic of Haiti.

V. HUMAN RIGHTS VIOLATED

29. The Republic of Haiti violated Articles 5, 7 and 8 of the American Convention on Human Rights.

A. Article 5 of the American Convention on Human Rights guarantees the Right to Humane Treatment.

30. **Article 5 § 1** states that "Every person has the right to have his physical, mental, and moral integrity respected." The State's treatment of Mr. Neptune has compromised his physical, mental, and moral integrity. The State has detained Mr. Neptune in a cement cell with no running water, no bathroom, and no electricity. The State has exposed Mr. Neptune to additional dangers by failing to protect him from violence inside the prison, as evidenced by the December 1, 2004 prison massacre and the February 19, 2005 attack on the prison, during which armed men abducted him. Although Mr. Neptune has been publicly accused of grave crimes, the State has neither presented evidence against him, nor provided Mr. Neptune a chance to rebut the charge, confront his accusers or clear his name.

31. **Article 5 § 2** states that "No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with

respect for the inherent dignity of the human person.” The State has placed Mr. Neptune in a situation where his life and physical safety have been threatened. These threats include: an assassination plot confirmed by the National Police, the December 1, 2004 prison massacre, and the February 19, 2005 breach of the *Penitencier National*.

32. **Article 5 § 4** states that “Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.” The State has imprisoned Mr. Neptune and not provided separate treatment as appropriate to his status as an unconvicted person. He has been imprisoned with violent criminals in an insecure environment.

B. Article 7 of the American Convention on Human Rights guarantees the Right to Personal Liberty

33. **Article 7 § 1** states that “Every person has the right to personal liberty and security.” The State has violated Mr. Neptune’s right to personal liberty and security by imprisoning him. The State has failed to provide adequate protection, thereby further endangering Mr. Neptune’s life.

34. **Article 7 § 2** states that “No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.” The State has deprived Mr. Neptune of his physical liberty without providing due process as required by Articles 24 (1) and 26 of the Haitian Constitution. The rights and remedies guaranteed by the Haitian Constitution are discussed further in Part VI of this petition.

35. **Article 7 § 3** states that “No one shall be subject to arbitrary arrest or imprisonment.” The State has detained Mr. Neptune for over nine months without allowing him to respond to the charges against him, without providing any evidence to support those charges, and without even initiating proceedings against him, all in violation of his due process rights under Articles 24(1) and 26 of the Haitian Constitution as discussed in Part VI of this petition. Therefore, Mr. Neptune’s arrest and imprisonment are arbitrary.

36. **Article 7 § 4** states that “Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.” The State has not made formal charges against Mr. Neptune or brought him before a judge in accordance with due process rights guaranteed in Article 26 of the Haitian Constitution as discussed in Part VI.

37. **Article 7 § 5** states that “Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.” The State has not brought Mr. Neptune before a judge or given him a trial, as required by the Haitian Constitution, in over nine months. To date, no court date has been set.

38. **Article 7 § 6** states that “Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In State Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person on his behalf is entitled to seek these remedies.” The judicial system within Haiti is currently incapable of providing fair and adequate adjudication of Mr. Neptune’s case as will be further discussed in Part VI. The State has not provided Mr. Neptune recourse to a competent court, nor has it ordered Mr. Neptune’s release.

C. Article 8 of the American Convention on Human Rights guarantees the Right to a Fair Trial

39. **Article 8 § 1** states that “Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.” The State has failed to provide Mr. Neptune any hearing. The State has denied Mr. Neptune every right guaranteed in Article 8 § 1.

40. **Article 8 § 2** states that “Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees . . . prior notification in detail to the accused of the charges against him . . .” The State failed to provide Mr. Neptune with prior detailed notification of the charges against him.

VI. LEGAL REMEDIES TO REDRESS THE CONSEQUENCES OF THE FACTS DENOUNCED

A. Urgent Request for Provisional Measures.

41. Mr. Neptune requests that the Commission request the Inter-American Court of Human Rights to take provisional measures to prevent irreparable injury to himself, as provided in Article 19 of the Statute of the Inter-American Commission on Human Rights, and Article 63 of the American Convention on Human Rights.³ Mr. Neptune’s health is in grave danger as a

³ See Statute of the Inter-American Commission on Human Rights, Approved by Resolution N° 447, taken by the General Assembly of the OAS at its ninth regular session, held in La Paz, Bolivia, October 1979:

Article 19. With respect to the States Parties to the American Convention on Human Rights, the Commission shall discharge its duties in conformity with the powers granted under the Convention and in the present Statute, and shall have the following powers in addition to those designated in Article 18: . . .
c. *to request the Inter-American Court of Human Rights to take such provisional measures as it considers appropriate in serious and urgent cases which have not yet been submitted to it for consideration, whenever this becomes necessary to prevent irreparable injury to persons . . .*

result of the violation of his rights under the Convention. Mr. Neptune has sustained multiple threats to his life and physical integrity.⁴ Mr. Neptune is seeking immediate action on the part of the Commission and the Court to prevent further endangerment of his life and physical integrity, including, but not limited to his immediate release by the IGH from detention and international oversight and supervision of prisons where officials of the previous regime are being held, in order to improve dismal prison conditions.

B. The Haitian Legal System is Ineffective.

42. The Haitian government has systematically denied other political prisoners effective access to the courts. Even when political prisoners are brought before a judge, the IGH frequently ignores judicial orders that favor the political prisoners. 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. 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.

43. 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 *Penitencier National*, out of the judge's jurisdiction. The Catholic Church's Justice and Peace Commission estimated that there were over 700 political prisoners in Haitian jails last summer.

44. Judges who have decided political prisoner cases in compliance with the Haitian Constitution have been pressured by the IGH. For example, in January, Justice Minister Bernard

(emphasis added).

See also American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, *entered into force* July 18, 1978, *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992) [hereinafter American Convention on Human Rights]:

Article 63 (1) If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party. . . . (2) *In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.*

(emphasis added).

⁴ Declaration of William P. Quigley, Esq., Janet Mary Riley Professor of Law, Loyola University New Orleans School of Law, Regarding Threats to Petitioner's Life, Integrity and Health, April 4, 2005 [hereinafter Declaration of William P. Quigley].

Gousse pressured the Chief Judge of the Port-au-Prince trial court to remove cases from two judges who had liberated political prisoners under the auspices that these judges were “slow.”⁵

C. Haitian Courts denied Yvon Neptune Legal Remedies Guaranteed by the Haitian Constitution.

45. The Haitian Constitution confers to all citizens of Haiti the rights specified in ¶¶ 46 through 49 below. The Haitian government violated all of these provisions in its treatment of Mr. Neptune, evidencing the futility of pursuing domestic remedies under the current Haitian government.

46. Article 26 of the Haitian Constitution mandates that "no one may be kept in detention more than forty-eight (48) hours unless he has appeared before a judge called to rule on the legality of the arrest and the judge has confirmed the arrest by a well-founded decision." Mr. Neptune was arrested on June 27, 2004, and has yet to be brought before a Haitian judge to determine the validity of his arrest.

47. Article 19 of the Haitian Constitution confers to the State "the absolute obligation to guarantee the right to life, health, and respect of the human person for all citizens without distinction, in conformity with the Universal Declaration of Human Rights." Mr. Neptune's right to life has been threatened multiple times by actions and omissions of government forces. His right to health has been compromised by abject conditions of confinement. His cell has no water, no toilet, and no electricity.

48. Article 24 of the Haitian Constitution obliges the State to guarantee and protect the individual liberty of its citizens. Mr. Neptune's arbitrary detention and lack of access to a court of justice violated his liberty.

49. Article 27 of the Haitian Constitution states that "any violation of the provisions on individual liberty are arbitrary acts. Injured parties may, without prior authorization, appeal to the competent courts to pursue the authors and perpetrators of these arbitrary acts, regardless of their rank or the body to which they belong."

50. Mr. Neptune's former 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 Mr. Neptune from receiving a fair hearing. Motions involving pre-trial detainees are usually decided within a week or two or a month at the longest. However, the *Cour de Cassation* took six months to decide Mr. Neptune's motion to recuse, and then dismissed it on a minor technicality, the failure to pay a small filing fee.⁶

⁵ Letter from Judge Jean Senat Fleury to Justice Minister Bernard Gousse, January 10, 2005.

⁶ Declaration of Mario Joseph, Attorney, *Bureau des Avocats Internationaux*, In Support of Contention That Domestic Remedies in Haiti are Not Available for Petitioner, April 13, 2005, ¶ 5 [hereinafter Declaration of Mario Joseph].

51. IGH officials invoked Mr. Neptune's motion to recuse to justify their failure to comply with Article 26 of the Haitian Constitution. However, before Mr. Neptune filed the motion to recuse, the IGH had already illegally detained him for eleven days. Since the court's dismissal of the motion to recuse on January 17, 2005, Mr. Neptune has been in custody for an additional three months. The inordinate and unexplained delay in deciding the motion can be attributed to the government's failure to pursue the case.⁷

D. Any Further Attempts to pursue Legal Remedies in Domestic Courts are Futile and Endanger Yvon Neptune's Life.

52. Mr. Neptune has repeatedly attempted to challenge his detention in the domestic court system.⁸ Article 46(2) of the American Convention on Human Rights provides that the exhaustion requirement of Article 46(1) of the Convention may be waived when the Petitioner has been prevented from exhausting remedies, or when there has been undue delay in rendering a final judgment.⁹ Mr. Neptune has been prevented from exhausting his remedies, due to his continued and prolonged detention without access to counsel or due process.¹⁰ Mr. Neptune has also suffered undue delay in his attempts to have his case adjudicated within the Haitian legal system.¹¹

53. The jurisprudence of the Inter-American Court of Human Rights provides that the Commission may review the exhaustion issues and the merits of a case simultaneously. In cases where the available domestic remedies may be ineffective, the Commission may consider the exhaustion of said remedies as related to their effectiveness and decide to review them jointly.¹²

⁷ *Id.* at ¶ 6.

⁸ *Id.* at ¶¶ 5–7.

⁹ *See* American Convention on Human Rights, *supra* note 3, at Article 46:

- (1) Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:
 - (a) that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law; . . .
 - (2) The provisions of paragraphs 1.a and 1.b of this article shall not be applicable when: . . .
 - (b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
 - (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

¹⁰ *See* Part V, *supra*. *See also* Declaration of Mario Joseph, *supra* note 6, at ¶¶ 4–7.

¹¹ *See* Part V, *supra*. *See also* Declaration of Mario Joseph, *supra* note 6, at ¶¶ 5–6.

¹² *See* Inter-American Commission on Human Rights, Diniz Bento Da Silva v. Brazil, Case 11.517, Report No. 23/02, Inter-Am. C.H.R., Doc. 5 rev. 1 at 551 (February 28, 2002) at ¶ 26 (*citing* Inter-American Court of Human Rights, Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, ¶ 91; Fairén Garbí and Solís Corrales Case, Preliminary Objections, Judgment of June 26, 1987, ¶ 90) [hereinafter Diniz Bento Da Silva Case].

For that reason, when some exceptions to the rule of non-exhaustion of domestic remedies are evoked, such as the ineffectiveness of such remedies, or the non-existence of due process, it is alleged that the petitioner is not required to pursue such remedies and the State is indirectly implicated in another violation of

Here, Mr. Neptune argues that the Haitian legal system is ineffective, especially with regard to cases of arbitrary and prolonged detention.¹³ Therefore, any exhaustion issues should be considered simultaneously with the merits of the case.

54. Moreover, the Commission has stated that the exhaustion requirement should not be evoked to the detriment of a defenseless victim where considerations of timeliness and delay may advise consideration of the exhaustion requirement simultaneously with the merits of the case.¹⁴ Here, Mr. Neptune argues that the Haitian legal system is unduly slow in responding to cases of political prisoners.¹⁵ In combination with the life-threatening conditions encountered in the *Penitencier National*, this undue delay supports Mr. Neptune's request for immediate action on his case notwithstanding any unresolved exhaustion issues.

VII. PLEASE INDICATE WHETHER THE VICTIM'S LIFE, INTEGRITY OR HEALTH IS IN JEOPARDY. WAS THE ASSISTANCE OF THE AUTHORITIES REQUESTED, AND IF SO, WHAT WAS THE RESPONSE?

55. Immediate action is required to protect Mr. Neptune's life, health, and well-being. Mr. Neptune is not secure in the prison because he has been subject to assassination attempts and other mortal hazards. On February 19, 2005, armed gunmen stormed the *Penitencier National* of Haiti, jeopardizing the life and physical integrity of Mr. Neptune. Chaos ensued, during which one guard was killed and over 400 inmates escaped. After the incident, Mr. Neptune voluntarily returned to the *Penitencier National* where he was held in a concrete cell before his transport to the hospital.

56. As a result of the abhorrent and detrimental conditions suffered by Mr. Neptune in the *Penitencier National*, Mr. Neptune's health has become extremely weak. On March 11, 2005, after twenty days on hunger strike in protest of his illegal and prolonged detention, Mr.

obligations assumed under the Convention. In such circumstances, the question of domestic remedies can be equated with the substance of the case.

¹³ See *supra*, Part VI(B).

¹⁴ See *Diniz Bento Da Silva Case*, *supra* note 12, at ¶ 26 (*citing* Inter-American Court of Human Rights, *Velásquez Rodríguez Case*, Preliminary Objections, Judgment of June 26, 1987, ¶ 93; *Fairén Garbí and Solís Corrales Case*, Preliminary Objections, Judgment of June 26, 1987, ¶ 92).

Under no circumstances should the rule of prior exhaustion of domestic remedies defer or delay to the point of futility international action in support of defenseless victims. This is the reason why Article 46.2 establishes exemptions to the requirement to use domestic remedies before resorting to international protection, precisely in situations where, for various reasons, these remedies are not effective. Naturally, if the State's intervention is timely, this exception should be considered and settled, but the relationship between the judgment on applicability of the rule and the need for timely international action in the absence of effective domestic remedies may frequently advise consideration of questions regarding that rule together with the substance of the claim, to prevent preliminary objection procedures from delaying the process unnecessarily.

¹⁵ See *supra*, Part VI(B).

Neptune collapsed, lost consciousness and was hospitalized.¹⁶ As of April 20, Mr. Neptune remains hospitalized and in the custody of the IGH and the United Nations peacekeepers.¹⁷ Mr. Neptune has still not appeared for his initial hearing.

57. Speaking from a cement cell with no water, no toilet, and no electricity, Mr. Neptune stated, “My life has been in real danger since the elected President of our country was removed in February of 2004. This is the third time my life has been put in danger in prison. There was an assassination plot against me in the fall confirmed by the National Police. Then there was the prison massacre on December 1, 2004, in which unknown numbers of prisoners were killed. When the prison was attacked this weekend, my life was again clearly and seriously in danger. I could easily have been killed by people inside or outside of the prison. Who is it that keeps putting me in situations where I might be killed?”¹⁸

58. Mr. Neptune concluded, “We have been patient for over eight months. We have given time for the government and the international community to act. Enough is enough.”¹⁹

VIII. PLEASE INDICATE WHETHER THE CLAIM CONTAINED IN THE PETITION HAS BEEN FILED WITH THE UNITED NATIONS HUMAN RIGHTS COMMITTEE OR ANY OTHER INTERNATIONAL ORGANIZATION

59. No.

¹⁶ See Declaration of William P. Quigley, *supra* note 4, at ¶¶ 13–14.

¹⁷ *Id.*

¹⁸ William P. Quigley, *Haiti’s Most Famous Political Prisoners Announce Hunger Strike*, Haiti Action Committee, February 22, 2005; See also Reed Lindsay, *Massacre in the “Titanic,”* The Toronto Star, December 20, 2004.

¹⁹ William P. Quigley, *Haiti’s Most Famous Political Prisoners Announce Hunger Strike*, February 22, 2005.

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