

Yvon Neptune v. Haiti

ABSTRACT¹

Mr. Yvon Neptune, a Haitian politician and former Prime Minister, was accused of ordering and participating in a massacre. As a result of these allegations, Mr. Neptune was wrongly incarcerated, inhumanely treated while in detention, and denied a fair trial.

I. FACTS

A. Chronology of Events

May 21, 2000: Haiti holds local and legislative elections.² Mr. Yvon Neptune wins a seat in the Senate.³ The elections arouse criticism from opposing parties and the international community due to electoral irregularities.⁴ The controversy polarizes Haiti's political parties and sparks intense feelings of public insecurity.⁵

November 26, 2000: Jean-Bertrand Aristide wins Haiti's presidential election.⁶

March 2002: President Aristide appoints Mr. Neptune as Prime Minister of Haiti.⁷ Mr. Neptune resigns from his senatorial seat in order to assume the position.⁸

Unrest stirs the State as protesters call for the resignation of President Aristide.⁹ For months, tensions increase as acts of political

1. Raya Marinova, Author; Jennifer Barrera, Elise Cossart-Daly, Sarah Frost, Erika Green, Melissa Kurata, and Shamin Rostami, Editors; Laura Ybarra, Chief Articles Editor; Cesare Romano, Faculty Advisor.

2. *Yvon Neptune v. Haiti*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 180, ¶ 5 (May 6, 2008).

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.* ¶ 6.

protest and government repression become violent.¹⁰

2003 – 2004: The political crisis intensifies.¹¹

February 4, 2004: Celebrations of the bicentennial of Haiti's independence precipitate an uprising in the town of Gonaïves, which quickly spreads to other cities.¹² A local anti-Aristide militia captures the city and drives out the police.¹³

February 7, 2004: Rassemblement des Militants Consequents de la Commune de St. Marc ("RAMICOS") is an armed group opposed to the government in Haiti.¹⁴ In St. Marc, a town located to the south of Gonaïves and 100 kilometers north of Haiti's capital of Port-au-Prince, RAMICOS takes control of the police station.¹⁵

February 9, 2004: The St. Marc police and Bale Wouze, a pro-government group, quickly regain control of the police station.¹⁶ Fire destroys the St. Marc courthouse.¹⁷

The same day amidst much publicity, Mr. Neptune visits St. Marc by helicopter.¹⁸ He calls upon the police to defend the city from the "gangs" moving towards Port-au-Prince.¹⁹

February 11, 2004: In the La Scierie neighborhood of St. Marc, several people die in a violent clash between Bale Wouze and RAMICOS members.²⁰ St. Marc police and RAMICOS members allegedly ransack and burn houses in retaliation.²¹ Some are killed in the house fires.²²

February 22, 2004: Cap-Haïtien, Haiti's second-largest city, is captured

10. *Id.*

11. *Id.* ¶ 7.

12. *Id.*; *Timeline: Haiti*, BBC NEWS, Mar. 6, 2012, http://news.bbc.co.uk/2/mobile/americas/country_profiles/1202857.stm.

13. HAITI TIMELINE: HAITI IN 2004, <http://www.haititimeline.com/a/2004.html> (last visited Mar. 16, 2012).

14. Yvon Neptune v. Haiti, Merits, Reparations and Costs, ¶ 8.

15. *Id.*

16. *Id.*; Anne Fuller, *The La Scierie Massacre*, LE NOUVELLISTE, Apr. 17, 2005, reprinted in HAITI DEMOCRACY PROJECT, available at <http://www.haitipolicy.org/content/2938.htm>.

17. Michael Norton, *Anarchy Takes Hold in Haiti*, THE GUARDIAN, Feb. 9, 2004, <http://www.guardian.co.uk/world/2004/feb/09/2>.

18. Yvon Neptune v. Haiti, Merits, Reparations and Costs, ¶ 8.

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

by rebels.²³ The rebellion is said to have been triggered by Aristide's use of police and militants to stifle dissent and the corruption of officials.²⁴ In the streets, people shout, "Down with Aristide!"²⁵

February 29, 2004: With opposition forces nearing the capital, President Aristide is forced into exile.²⁶ He flies to the Central African Republic on a U.S. government plane.²⁷

Boniface Alexandre is sworn in as acting President.²⁸ Gérard Latortue becomes Prime Minister of the transition government.²⁹ The United Nations Security Council adopts Resolution 1529 to establish a Multinational Interim Force.³⁰ The Multinational Interim Force is immediately deployed to Haiti.³¹

Aristide is later granted permanent asylum in South Africa, where he remains until his return to Haiti on March 18, 2011.³²

March 12, 2004: Mr. Neptune's term as Prime Minister ends.³³ He begins receiving death threats which force him to go into hiding.³⁴

March 25, 2004: The investigating magistrate of the Court of First Instance of St. Marc issues an arrest warrant against Mr. Neptune.³⁵ The warrant accuses Mr. Neptune of having ordered and participated in the deaths and burning of homes in La Scierie in February 2004.³⁶

March 27, 2004: The interim Government issues an order prohibiting

23. Alyson Brodsky & Paisley Dodds, *Anti-Aristide Rebels Capture Second-Largest City: Insurgents Met "Little Resistance,"* INDIANA DAILY STUDENT, Feb. 23, 2004, <http://www.idsnews.com/news/story.aspx?id=33455&search=forces§ion=search>.

24. Brodsky & Dodds, *supra* note 22.

25. *Id.*

26. Yvon Neptune v. Haiti, Merits, Reparations and Costs, ¶ 9; *Timeline: Haiti, supra* note 11.

27. Yvon Neptune v. Haiti, Merits, Reparations and Costs, ¶ 9.

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. Robyn Dixon & Carol J. Williams, *Aristide to Be South Africa's Guest*, L.A. TIMES, May 15, 2004, <http://articles.latimes.com/2004/may/15/world/fg-aristide15>; Haiti Ex-Leader Jean-Bertrand Aristide Back After Exile, BBC News, Mar. 18, 2011, <http://www.bbc.co.uk/news/world-latin-america-12777005>; *South Africa Agrees to Temporary Asylum for Ousted Haitian President Aristide*, Associated Press, May 12, 2004, reprinted in Haiti Info, <http://www.haiti-info.com/?South-Africa-agrees-to-temporary>.

33. Yvon Neptune v. Haiti, Merits, Reparations and Costs, ¶ 9.

34. *Id.* ¶ 10.

35. *Id.* ¶ 9.

36. *Id.*

Mr. Neptune from leaving Haiti.³⁷

April 30, 2004: The United Nations Security Council adopts Resolution 1542 establishing the United Nations Stabilization Mission (“MINUSTAH”) in Haiti in order to create a stable environment for the political process to function.³⁸ The Security Council also orders the Multinational Interim Force to be transferred to MINUSTAH on June 1, 2004.³⁹

June 27, 2004: After hearing about the warrant for his arrest on the radio, Mr. Neptune turns himself into the police and is detained.⁴⁰ He is shown the arrest warrant.⁴¹

Mr. Neptune is imprisoned at the National Penitentiary from June 27, 2004 to March 10, 2005. During that time he lives in a 4.5- by 2.5-meter windowless cement cell.⁴² The cell is poorly ventilated and the walls are stained with human excrement.⁴³ Mr. Neptune sometimes witnesses prisoners being violently beaten outside his cell.⁴⁴

Fearing someone might poison his food, Mr. Neptune only consumes the food and water brought by his family each day.⁴⁵ Having been harassed and attacked by other inmates, he rarely leaves his cell, even in the daytime.⁴⁶ Mr. Neptune is not separated from convicted criminals.⁴⁷ Due to his prominence as a member of Aristide’s government, Mr. Neptune receives death threats and suffers an attempt on his life.⁴⁸

July 17, 2004: Appearing before a judge in Port-au-Prince, Mr. Neptune responds to questions regarding an incident that had occurred at the National University of Haiti in December 2003.⁴⁹ The judge did not have the authority to question Mr. Neptune about the incident at La

37. *Id.* ¶ 52; Yvon Neptune v. Haiti, Petition to the Court, Inter-Am. Comm’n H.R., Case 12.514, ¶ 30 (Dec. 14, 2006).

38. Yvon Neptune v. Haiti, Merits, Reparations and Costs, ¶ 9.

39. *Id.*

40. *Id.* ¶ 52.

41. *Id.*

42. *Id.* ¶ 132.

43. *Id.*

44. *Id.*

45. *Id.* ¶ 133.

46. *Id.*

47. *Id.* ¶¶ 148-149; Yvon Neptune v. Haiti, Petition to the Court, Inter-Am. Comm’n H.R., Case 12.514, ¶ 50 (Dec. 14, 2006).

48. Yvon Neptune v. Haiti, Merits, Reparations and Costs, ¶¶ 128, 134.

49. *Id.* ¶ 54 n. 78.

Scierie or the lawfulness of his detention.⁵⁰

December 1, 2004: In response to a protest at the prison, the police and prison guards fire shots and kill several prisoners in close proximity to Mr. Neptune's cell.⁵¹

February 19, 2005: Armed men storm the prison and four hundred prisoners escape.⁵² Mr. Neptune is forced into a car and taken to Port-au-Prince where he is released.⁵³ Frightened of being killed, he goes to the house of another prisoner and calls MINUSTAH.⁵⁴ MINUSTAH escorts him back to the National Penitentiary.⁵⁵

Conditions grow worse as Mr. Neptune is moved to another cell he must share with two other prisoners.⁵⁶ He is locked in the cell for more than twenty-four hours.⁵⁷ When he is returned to his usual cell, he begins a hunger strike to protest his detention.⁵⁸

March 10, 2005: Mr. Neptune is transferred to a MINUSTAH military hospital because he is in critical condition due to his deteriorated health.⁵⁹

April 17, 2005: Mr. Neptune begins a new hunger strike.⁶⁰ The strike continues until his release from prison on July 27, 2006.⁶¹

April 21, 2005: Mr. Neptune is transferred from the MINUSTAH military hospital to the Annex of the National Penitentiary.⁶² Conditions at the Annex are "more tolerable" than they were at the National Penitentiary; however, Mr. Neptune continues to receive threats from prison guards.⁶³

50. *Id.*

51. *Id.* ¶ 134; Yvon Neptune v. Haiti, Petition to the Court, ¶ 44.

52. Yvon Neptune v. Haiti, Merits, Reparations and Costs, ¶ 134.

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.* ¶ 135.

57. *Id.*

58. *Id.*; Yvon Neptune v. Haiti, Petition to the Court, Inter-Am. Comm'n H.R., Case 12.514, ¶ 47 (Dec. 14, 2006).

59. Yvon Neptune v. Haiti, Merits, Reparations and Costs, ¶ 135.

60. *Id.* ¶ 136.

61. *Id.*

62. *Id.* ¶ 135.

63. *Id.*

April 22, 2005: Guards enter Mr. Neptune's cell.⁶⁴ He resists, afraid they have come to abduct, torture, or kill him.⁶⁵ They take Mr. Neptune to the Court of First Instance of St. Marc for questioning.⁶⁶ The investigating magistrate, not having been advised of the hearing, does not appear.⁶⁷

May 1, 2005: The interim Government offers to release Mr. Neptune and transfer him to another state in the region.⁶⁸ He refuses, stating he wishes to clear his name and to be released without conditions.⁶⁹

May 15, 2005: Mr. Neptune continues to refuse to eat.⁷⁰ He receives water, vitamins, salt, and sugar under medical supervision.⁷¹

May 25, 2005: Mr. Neptune appears before the investigating magistrate of the Court of First Instance of St. Marc to determine the lawfulness of his detention.⁷²

September 14, 2005: The investigating magistrate of the Court of First Instance of St. Marc issues the closing order in the La Scierie case.⁷³ The closing order indicates there are "sufficient charges and evidence" to charge Mr. Neptune as an accomplice in the "Scierie Massacre of February 11, 2004."⁷⁴ Specifically, the closing order charges Mr. Neptune with the arson of houses and vehicles, the rapes of two women, and the assault and battery of two people.⁷⁵

October 2005: Some of Mr. Neptune's co-defendants file an appeal with the Gonaïves Court of Appeal after the closing order is issued.⁷⁶ Those who do not appeal and those who appeal inappropriately, which include Mr. Neptune, benefit from the appeal under the principle of "indivisibility of the appeal."⁷⁷

64. *Id.* ¶ 136.

65. *Id.*

66. *Id.* ¶¶ 54 n.78, 136.

67. *Id.* ¶¶ 54, 78.

68. *Id.* ¶ 53.

69. *Id.*

70. *Id.* ¶ 136.

71. *Id.*

72. *Id.* ¶ 54.

73. *Id.* ¶ 55.

74. *Id.*

75. *Id.*

76. *Id.* ¶ 56.

77. *Id.*

May 8, 2006: Due to lack of evidence and procedural irregularities, the prosecutor recommends withdrawing the charges against Mr. Neptune.⁷⁸ A request for Mr. Neptune's release on bail is filed, but the Gonaïves Court of Appeal denies the request because Mr. Neptune himself had not filed an appeal.⁷⁹

May 2006: Newly re-elected President René Prével takes office.⁸⁰

July 27, 2006: By order of the Gonaïves Court of Appeal, Mr. Neptune is released provisionally on "humanitarian grounds."⁸¹ His release is conditioned by the requirement that he remain available to the court for matters related to the charges against him.⁸²

Though released from prison, Mr. Neptune never receives any official documents in relation to his release.⁸³ He still faces accusations of serious crimes proceedings, and his liberty can be revoked at any time.⁸⁴

April 13, 2007: The Gonaïves Court of Appeal considers Mr. Neptune's case. Mr. Neptune's position as Prime Minister when the facts of the case arose is an important consideration for the court.⁸⁵ Articles 185 to 190 of the Constitution regulate how the Prime Minister and other high officials may be indicted for crimes committed in the discharge of their duties.⁸⁶ The Senate in such a case constitutes the High Court of Justice.⁸⁷

For those reasons, the Gonaïves Court of Appeal considers that it can merely decide whether it is competent to try Mr. Neptune and other former State officials facing criminal charges.⁸⁸ The court declares itself incompetent *ratione personae*.⁸⁹

B. Other Relevant Facts

Prison conditions at the National Penitentiary, the Annex, and in

78. *Id.*

79. *Id.*

80. *Id.* ¶ 57.

81. *Id.*

82. *Id.*

83. *Id.* ¶ 71.

84. *Id.*

85. *Id.* ¶ 58.

86. HAITI CONST., 1987, art. 185-190.

87. HAITI CONST., 1987, art. 185.

88. Yvon Neptune v. Haiti, Merits, Reparations and Costs, ¶ 58.

89. *Id.*

Haiti generally during the time of Mr. Neptune's detention are lacking.⁹⁰ The prisons are overcrowded and unsanitary, without proper ventilation or clean and healthy water and food.⁹¹ Unhygienic conditions and lack of medical services lead to illness and bacterial disease among detainees.⁹² The prisons are also marked by a lack of proper security, which often results in violent outbreaks by guards and prisoners.⁹³

II. PROCEDURAL HISTORY

A. *Before the Commission*

April 20, 2005: Brian Concannon Jr., Mario Joseph, and the Hastings Human Rights Project for Haiti present a petition on behalf of Mr. Neptune to the Inter-American Commission on Human Rights.⁹⁴

October 12, 2005: The Commission declares the petition admissible.⁹⁵ The State does not challenge the admissibility of the petition.⁹⁶

July 20, 2006: The Commission adopts its Report on Merits.⁹⁷ The Commission finds violations of Articles 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(4) (Right of Accused to Be Segregated from Convicted Persons), in relation to Article 1(1) of the American Convention, due to the poor conditions of the National Penitentiary and the treatment Mr. Neptune experienced there.⁹⁸ The State also failed to segregate Mr. Neptune from convicted prisoners.⁹⁹

The Commission finds that the State violated Article 7(4) (Right to Be Informed of Reasons of Arrest and Charges) because Mr. Neptune was not promptly notified of the charges being brought against him.¹⁰⁰ The State's failure to bring Mr. Neptune before a judge constituted a violation of Article 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time). Similarly, the State's

90. *Id.* ¶ 137.

91. *Id.*

92. *Id.*

93. *Id.* ¶ 138.

94. *Yvon Neptune v. Haiti*, Petition No. 445/05, Inter-Am. Comm'n H.R., ¶ 1 (Apr. 20, 2005).

95. *Yvon Neptune v. Haiti*, Admissibility Report, Report No. 64/05, Inter-Am. Comm'n H.R., Case 12.514 (Oct. 12, 2005).

96. *Id.* ¶ 23.

97. *Yvon Neptune v. Haiti*, Report on Merits, Report No. 62/06, Inter-Am. Comm'n H.R., Case 12.514 (July 20, 2006); *Yvon Neptune*, Merits, Reparations and Costs, ¶ 1 n.1.

98. *Yvon Neptune*, Merits, Reparations and Costs, ¶1 n.1.

99. *Id.*

100. *Id.*

failure to provide prompt recourse to a competent court to decide on the lawfulness of Mr. Neptune's arrest and detention constituted a violation of Article 7(6) (Right to Have Recourse Before a Competent Court).¹⁰¹ These delays also violated his right to judicial protection under Article 25 (Right to Judicial Protection), in relation to Article 1(1) of the American Convention.¹⁰²

The Commission finds that the State's failure to give Mr. Neptune prior notification of the charges against him and to provide him adequate time and means to prepare his defense constituted a violation of Articles 8(2)(b) (Right to Have Prior Notification of Charges) and (c) (Right to Adequate Time and Means to Prepare Defense) of the American Convention.¹⁰³

The Commission also finds that the deficiencies in the charges ordered against Mr. Neptune violated his right to freedom from *ex post facto* laws under Article 9 (Freedom from *Ex Post Facto* Laws), in relation to Article 1(1) of the American Convention.¹⁰⁴

Lastly, the Commission concludes that the State did not violate his right to be tried within a reasonable time under Article 8 (Right to a Fair Trial) of the American Convention.¹⁰⁵

The Commission considers that reparation measures are necessary to restore the affected rights and to make amends to Mr. Neptune.¹⁰⁶ Full reparation would also serve to send a message condemning impunity.¹⁰⁷

To guarantee non-repetition, the Commission recommends that the State take steps to ensure that any person detained is brought promptly before a judge or other officer legally authorized to exercise judicial power.¹⁰⁸ The State should also modernize its prison system so that it meets international standards.¹⁰⁹

To acknowledge the commission of the illegal act, the Commission recommends that the State acknowledge responsibility, prosecute and punish the guilty actors, and adopt measures to prevent the harm from recurring.¹¹⁰

The Commission also recommends that the State pay the costs incurred by the Mr. Neptune and his representatives incurred pursuing

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. Yvon Neptune v. Haiti, Petition to the Court, Inter-Am. Comm'n H.R., Case 12.514, ¶ 136 (Dec. 14, 2006).

107. *Id.* ¶ 144.

108. *Id.* ¶ 146.

109. *Id.* ¶ 147.

110. *Id.* ¶ 148.

judicial processes at national and international levels.¹¹¹

B. Before the Court

December 14, 2006: The Commission submits the case to the Court, after the State failed to adopt its recommendations.¹¹²

1. Violations Alleged by Commission¹¹³

To the detriment of Mr. Neptune:

Article 5(1) (Right to Physical, Mental and Moral Integrity)

Article 5(2) (Prohibition of Torture, Cruel, Inhuman or Degrading Treatment)

Article 5(4) (Right of Accused to Be Segregated from Convicted Persons)

Article 7(4) (Right to Be Informed of Reasons of Arrest and Charges)

Article 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time)

Article 7(6) (Right to Have Recourse to a Competent Court)

Article 8(1) (Right to a Hearing within Reasonable Time by Competent and Independent Tribunal)

Article 8(2)(b) (Right to Have Prior Notification of Charges)

Article 8(2)(c) (Right to Adequate Time and Means to Prepare Defense)

Article 9 (Right Not to Be Subject to *Ex Post Facto* Laws)

Article 25.1 (Right of Recourse Before a Competent Court)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.

2. Violations Alleged by Representatives of the Victims¹¹⁴

Same violations alleged by the Commission.

III. MERITS

A. Composition of the Court

Cecilia Medina Quiroga, President

111. *Id.* ¶¶ 151-53.

112. Yvon Neptune v. Haiti, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 180, ¶ 1 (May 6, 2008).

113. *Id.* ¶ 2.

114. *Id.* ¶ 3. Brian Concannon Jr. from the Institute for Justice and Democracy in Haiti represented the Mr. Neptune.

Diego García-Sayán, Vice President
Sergio García Ramírez, Judge
Manuel E. Ventura Robles, Judge
Leonardo A. Franco, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

May 6, 2008: The Court issues its Judgment on Merits, Reparations and Costs.¹¹⁵

The Court found unanimously that Haiti had violated:

Article 8(1) (Right to a Hearing within Reasonable Time by Competent and Independent Tribunal) and Article 25 (Right to Judicial Protection), in relation to Article 1(1) of the Convention, to the detriment of Mr. Neptune,¹¹⁶ because:

Articles 185 to 190 of the State Constitution required that State officials, such as Mr. Neptune, who were accused of crimes be tried before the High Court of Justice.¹¹⁷ The High Court of Justice, however, had never been established and it was unclear when one would be established in the future.¹¹⁸ Thus, the High Court of Justice procedures and guarantees for those who can be tried before it had not yet been determined.¹¹⁹

Although Mr. Neptune was released from prison, the charges against him had not been officially abandoned and new proceedings could be initiated against him at any time, leaving him in an “absolute judicial uncertainty,” particularly because he had no access to the High Court of Justice procedures and constitutional guarantees.¹²⁰

Mr. Neptune’s due process rights were violated when he was prosecuted

115. *Id.*

116. *Id.* ¶ 86.

117. *Id.* ¶ 69.

118. *Id.*

119. *Id.*

120. *Id.* ¶ 76.

*and imprisoned for more than two years by order of a court that lacked jurisdiction.*¹²¹

*Mr. Neptune never received notice of the Gonaïves Court of Appeal's decision, which stated that the Court had no jurisdiction to try Mr. Neptune.*¹²² *Because the decision is not final until Mr. Neptune receives notice of it, the decision cannot be implemented, causing perpetual unjustified delay in justice.*¹²³

*The State violated Mr. Neptune's right to a fair trial as it failed to provide him access to a court of proper jurisdiction within a reasonable time.*¹²⁴

Article 7 (Right to Personal Liberty), in relation to Article 1(1) of the Convention, to the detriment of Mr. Neptune,¹²⁵ because:

*Mr. Neptune was at all times unlawfully and arbitrarily detained, and the Gonaïves Court of Appeal lacked jurisdiction to deprive him of his liberty.*¹²⁶

*The charges against Mr. Neptune were formulated fourteen months after his detention, therefore, the State had violated Mr. Neptune's right to be promptly notified of the charges against him.*¹²⁷

*The decision to release Mr. Neptune from prison was not taken to protect his human rights, but was taken on humanitarian grounds due to his poor health.*¹²⁸

*The State violated Mr. Neptune's right to be heard by a competent judge within reasonable time*¹²⁹ *and his right to personal liberty.*¹³⁰

Article 5 (Right to Humane Treatment), in relation to Article 1(1) of the Convention, to the detriment of Mr. Neptune,¹³¹ because:

121. *Id.* ¶¶ 78-79.

122. *Id.* ¶¶ 60, 81.

123. *Id.* ¶ 81.

124. *Id.* ¶ 84.

125. *Id.* ¶ 192(2).

126. *Id.* ¶¶ 86, 100.

127. *Id.* ¶ 109.

128. *Id.* ¶ 110.

129. *Id.* ¶ 111.

130. *Id.* ¶ 122.

131. *Id.* ¶ 192(4).

*The State violated Mr. Neptune's right to personal integrity because he was detained in overcrowded conditions with lack of ventilation, natural light, beds or adequately hygienic conditions, as well as in isolation with undue restrictions on visitations.*¹³²

*In addition, Mr. Neptune received threats of violence from the guards and other prisoners, with a lack of a general policy to prevent escalation of violence.*¹³³ *The prison riot endangered Mr. Neptune's life, and there were no measures to protect his physical integrity.*¹³⁴

*The State also violated Mr. Neptune's right to be separated from convicted criminals as he awaited proceedings.*¹³⁵

The Court found unanimously that Haiti had *not* violated:

Article 9 (Right Not to be Subject to *Ex Post Facto* Laws), in relation to Article 1(1) of the Convention, to the detriment of Mr. Neptune,¹³⁶ because:

*The Court considered that the right not to be subject to ex post facto laws is a central element of lawful criminal prosecutions.*¹³⁷ *Yet the crime of "massacre," of which Mr. Neptune was accused, was not included in domestic criminal law.*¹³⁸ *The Court held it was unclear whether the use of the term "massacre" in the closing order referred to a specific crime, or was merely a general description of the events that took place on February 11, 2004.*¹³⁹ *Since Mr. Neptune had not been tried or convicted of a massacre and since a court that lacked competence issued the closing order, the Court found it had not been provided with the elements necessary to find the State internationally responsible.*¹⁴⁰

C. Dissenting and Concurring Opinions

[None]

132. *Id.* ¶ 131.

133. *Id.* ¶ 138.

134. *Id.*

135. *Id.* ¶¶ 149, 150.

136. *Id.* ¶ 192(3).

137. *Id.* ¶ 125.

138. *Id.* ¶ 124.

139. *Id.* ¶ 126.

140. *Id.*

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)

1. Obligation to Provide Mr. Neptune with an Effective Recourse

In order to guarantee Mr. Neptune's right to a fair trial, the State must adopt judicial and other measures necessary to define his juridical status regarding the criminal accusations he still faces.¹⁴¹

2. Obligation to Implement the Constitutional Norms Relating to the High Court of Justice

The State should adopt any legislative or other measures relating to the High Court of Justice in order to regulate and define jurisdiction, procedural norms, and minimum guarantees of due process to regulate procedures for senior public officials and to avoid human rights violations.¹⁴²

3. Publication of the Judgment

The State must publish the operative paragraphs and certain portions of the Court's judgment in *Le Moniteur*, Haiti's official gazette, as well as in a national newspaper with widespread circulation.¹⁴³

4. Prison Conditions

The State must ensure that living conditions for prisoners comply with international human rights norms.¹⁴⁴

The State must also adopt any necessary legislative, administrative, political, and economic measures to address the problems with overcrowding, deficient sanitation and physical infrastructure, deficient security systems, and the lack of contingency plans.¹⁴⁵

141. *Id.* ¶¶ 173-74, 177.

142. *Id.* ¶ 179.

143. *Id.* ¶ 180. The State must publish the following paragraphs of the Court's judgment: 1-10, 16-21, 36-155, 161, 163, 167, 168, and 170-183, in addition to the operative paragraphs.

144. *Id.* ¶¶ 181-83.

145. *Id.* ¶ 183.

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court awarded \$10,000 to Mr. Neptune for expenses related to arbitrary detention.¹⁴⁶ The Court also awarded \$50,000 to Mr. Neptune for loss of income.¹⁴⁷

2. Non-Pecuniary Damages

The Court awarded \$30,000 to Mr. Neptune for physical and mental suffering.¹⁴⁸

3. Costs and Expenses

Lastly, the Court awarded \$5,000 to Mr. Neptune to cover costs and expenses incurred by his representatives, and go towards monitoring compliance with the judgment.¹⁴⁹

4. Total Compensation (including Costs and Expenses ordered):

\$95,000

C. Deadlines

The State must publish the pertinent sections of the judgment within one year of notice of the judgment.¹⁵⁰

Within a reasonable time, the State must improve prison conditions.¹⁵¹ It should establish a plan and an action program, as well as a timetable of activities as related to compliance with this order within two years.¹⁵²

With respect to the compensation ordered by the Court, the State must pay the pecuniary damages within two years of notice of the judgment.¹⁵³ It must pay the non-pecuniary damages within one year of notice of the judgment.¹⁵⁴ Lastly, it must pay the costs and expenses within one year of notice of the judgment.¹⁵⁵

146. *Id.* ¶ 161.

147. *Id.* ¶ 163.

148. *Id.* ¶ 168.

149. *Id.* ¶ 186.

150. *Id.* ¶ 180.

151. *Id.* ¶ 192(9).

152. *Id.* ¶ 183.

153. *Id.* ¶ 164.

154. *Id.* ¶ 169.

155. *Id.* ¶ 186.

The State must comply with all other measures as soon as possible.¹⁵⁶

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

September 2009: The State formally dropped all charges against Mr. Neptune.¹⁵⁷

2009: Although the State had begun revising outdated legislation such as the Penal and Criminal Procedure Codes, the proposed judicial reforms were not yet finalized and the judicial system remained dysfunctional.¹⁵⁸ The majority of the population still had limited access to justice.¹⁵⁹

October 2011: The State had not yet developed a prison reform plan within the two-year period set by the Court, had not paid compensation to Mr. Neptune, and had not published the pertinent parts of the Court's decision.¹⁶⁰

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[None]

156. *Id.* ¶ 192(6)-(7).

157. *Yvon Neptune*, INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI, <http://ijdh.org/projects/political-prisoners/yvon-neptune> (last visited Jan. 15, 2012).

158. *Keeping Haiti Safe: Justice Reform*, Latin America/Caribbean Briefing No. 27, INTERNATIONAL CRISIS GROUP (Oct. 27, 2011), available at <http://www.crisisgroup.org/~media/Files/latin-america/haiti/B27%20Keeping%20Haiti%20Safe%20-%20Justice%20Reform.pdf>.

159. *Id.*

160. Alternative Chance et al., *Haiti: Submission to the United Nations Universal Periodic Review*, ¶ 17, 12th Session of the Working Group on the UPR Human Rights Council (2011), available at <http://ccrjustice.org/files/UPR-Prisons-SR-English-Final-1.pdf>.

2. Decisions on Merits, Reparations and Costs

[Yvon Neptune v. Haiti, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 180 \(May 6, 2008\).](#) ▯

3. Provisional Measures

[None]

4. Compliance Monitoring

[None]

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

Yvon Neptune v. Haiti, Petition No. 445-05, Inter-Am. Comm'n H.R. (Apr. 20, 2005).

2. Report on Admissibility

[Yvon Neptune v. Haiti, Admissibility Report, Report No. 64/05, Inter-Am. Comm'n H.R., Case No. 12.514 \(Oct. 12, 2005\) \(Available only in French\).](#)

3. Provisional Measures

[None]

4. Report on Merits

Yvon Neptune v. Haiti, Report on Merits, Report No. 62/06, Inter-Am. Comm'n H.R., Case No. 12.514 (July 20, 2006).

5. Application to the Court

[Yvon Neptune v. Haiti, Petition to the Court, Inter-Am. Comm'n H.R., Case 12.514 \(Dec. 14, 2006\).](#)

VIII. BIBLIOGRAPHY

LAURENCE BURGORGUE-LARSEN & AMAYA ÚBEDA DE TORRES, THE

INTER-AMERICAN COURT OF HUMAN RIGHTS, CASE LAW AND COMMENTARY 486, 489, 493 (Rosalind Greenstein trans., 2011).

Thomas M. Griffin, *Haiti Human Rights Investigation: November 11-21, 2004*, CTR. FOR THE STUDY OF HUM. RTS. UNIV. OF MIAMI SCHOOL OF LAW, 26 (Jan. 14, 2005), available at <http://ijdh.org/CSHRhaitireport.pdf>.

Haiti: Failed Justice or the Rule of Law? Challenges Ahead for Haiti and the International Community, Inter-Am. Comm'n H.R. OEA/Ser/L/V/II.123, doc.6 rev. 1, ¶¶ 4, 21 (Oct. 26, 2005).

Jens Iverson, *Eight Perspectives on Yvon Neptune v. Haiti*, 32 HASTINGS INT'L & COMP. L. REV. 611 (2009), available at <http://ijdh.org/pdf/headline5-14-09.pdf>.

Inter-American Court of Human Rights Decision Regarding Former Prime Minister Yvon Neptune's "Judicial Insecurity" in Haiti: Background Paper, INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI (July 10, 2008), <http://ijdh.org/wordpress/wp-content/uploads/2009/12/IACHR-Neptune-Decision.pdf>.

David R. Kolker, *Imprisoned Without Charge: Yvon Neptune and Haiti's Political Prisoners*, POLITICAL AFFAIRS (Mar. 16, 2005), <http://www.politicalaffairs.net/imprisoned-without-charge-yvon-neptune-and-haiti-s-political-prisoners/>.