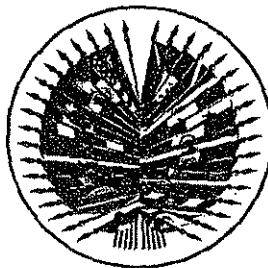


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**ORGANIZATION OF AMERICAN STATES****Inter-American Commission on Human Rights**

**Application filed with the Inter-American Court on Human Rights
in the Case of**

***Yvon Neptune*
(Case 12.514)**

Against the Republic of Haiti

DELEGATES:

CLARE K. ROBERTS (COMMISSIONER)
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000004

I. INTRODUCTION	3
II. PURPOSE OF THE APPLICATION	4
III. REPRESENTATION	5
IV. JURISDICTION OF THE COURT	5
V. PROCESSING BY THE COMMISSION	6
VI. THE FACTS	8
A. THE VICTIM	8
B. BACKGROUND	8
C. ARREST OF MR. YVON NEPTUNE	10
D. JUDICIAL PROCESS AGAINST MR. YVON NEPTUNE	10
E. CONDITIONS OF DETENTION ENDURED BY MR. YVON NEPTUNE	12
VII. CONSIDERATIONS OF LAW	15
A. PRELIMINARY CONSIDERATIONS	15
B. RIGHT TO HUMANE TREATMENT	16
C. RIGHT TO PERSONAL LIBERTY AND TO JUDICIAL PROTECTION	22
D. RIGHT TO A FAIR TRIAL	27
E. PRINCIPLE OF LEGALITY	31
F. THE STATE'S NONCOMPLIANCE WITH THE OBLIGATION ESTABLISHED IN ARTICLE 1(1) OF THE AMERICAN CONVENTION (OBLIGATION TO RESPECT AND ENSURE HUMAN RIGHTS)	32
VIII. REPARATIONS AND COSTS	33
A. OBLIGATION TO MAKE REPARATIONS	34
B. BENEFICIARY	36
C. REPARATION MEASURES	36
1. MEASURES OF CESSATION AND GUARANTEES OF NON-REPETITION	37
2. MEASURES OF SATISFACTION	38
D. COSTS AND EXPENSES	38
IX. CONCLUSIONS	39
X. PETITION	39
XI. EVIDENCE	40
A. DOCUMENTARY EVIDENCE	40
APPENDICES	40
ANNEXES	40
B. TESTIMONIAL AND EXPERT EVIDENCE	43
WITNESSES	43
EXPERT WITNESSES	43
XII. DATA ON THE ORIGINAL PETITIONERS, THE VICTIM AND REPRESENTATIVES	43

000005

**APPLICATION FILED BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS WITH
THE INTER-AMERICAN COURT OF HUMAN RIGHTS IN CASE 12.514, YVON NEPTUNE**

I. INTRODUCTION

1. The Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") submits to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") an application in Case 12.514, Yvon Neptune (hereinafter "the victim"), against the Republic of Haiti (hereinafter "the Haitian State", "Haiti", or "the State") pursuant to the terms of Article 51 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention").

2. The Commission asks the Court to determine the international responsibility of Haiti for the violation of Articles 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 9 (Principle of Legality) and 25(1) (Right to Judicial Protection), and for its non-compliance with Article 1(1) of the American Convention (Obligation to Respect Rights). These violations were the result of Haiti's failure to notify the victim of the charges against him; failure to bring him promptly before a judge or other officer authorized by law to exercise judicial power; failure to provide him with a recourse to a competent court which could review the lawfulness of his arrest; failure to guarantee Mr. Neptune's physical, mental and moral integrity and his right to be segregated from convicted prisoners; the conditions and treatment of detention when he was held at the National Penitentiary; failure to provide him adequate time and means for the preparation of his defense; and for having accused the victim of an act which is not codified as a crime under Haitian Law.

3. The instant Case has been processed pursuant to the American Convention and is submitted before the Court according to Article 33 of the Rules of Procedure of the Court. A copy of Report on Merits No. 62/06¹, drawn up in compliance with the terms of Articles 50 of the American Convention and Article 37(5) of the Commission's Rules of Procedure, is attached to this application as Appendix 1, in keeping with Article 33 of the Rules of Procedure of the Court.

4. The impact of a judgment by the Court in this case is considered extremely important in terms of its capacity to resolve the situation presented and thus promote broad reaching institutional reform of the Haitian judicial system through a judgment that obligates the state to ensure the rights protected in the American Convention. In particular, this case will be the first contentious case to be brought against the state of Haiti before this Court. In relation to the particular rights at issue here, the Commission indicated in its study of the administration of justice in Haiti in 2005 that the problems of arbitrary arrest, prolonged pre-trial detention and due process violations are long standing in Haiti, and

¹ IACHR, Report No. 62/06 (Merits), Case 12.514, Yvon Neptune, Haiti, 20 July 2006. Appendix 1.

000006

further found that the majority of the prison population in Haiti suffers from these abuses.² Accordingly, the Commission recommended that the State, "immediately address the situation of individuals in the justice system who have been detained for prolonged periods without having been brought before a judge or tried, through independent and impartial reviews conducted by judges or other officers authorized by law to exercise judicial power, and through the establishment of an effective system of legal aid or public defenders."³ Consequently, in line with the Commission's prior conclusions, a Court judgment in this case will not only seek to redress the violations against Mr. Neptune, who was detained without judgment for months and subject to poor prison conditions, but also has the potential to improve the situation of all detainees in Haiti suffering from similar circumstances of arbitrary arrest, prolonged pretrial detention, due process irregularities and poor prison conditions through the implementation of necessary and appropriate reforms of the Haitian judicial system.

5. It may be noted that Mr. Neptune went on a hunger strike to protest his detention and prosecution. At the time he filed his petition, he had reportedly been on a hunger strike for two months, and by the Commission decision on the merits, for one year and five months.

II. PURPOSE OF THE APPLICATION

6. The purpose of this application is to respectfully request the Court to conclude and declare that

- a) Haiti is responsible for failing to guarantee Mr. Neptune's right to respect for his physical, mental and moral integrity under Article 5(1) and (2) of the Convention and his right under Article 5(4) to be segregated from convicted prisoners, in conjunction with Article 1(1) of the Convention, based upon his conditions of detention and the treatment to which he was subjected when he was held in the National Penitentiary;
- b) Haiti is responsible for violating Mr. Neptune's rights under Article 7(4) of the Convention to be promptly notified of the charge or charges against him, Article 7(5) of the Convention to be brought promptly before a judge or other officer authorized by law to exercise judicial power, and Article 7(6) of the Convention to recourse to a competent court to decide without delay on the lawfulness of his arrest or detention, together with his right to judicial protection under Article 25 of the Convention, in conjunction with Article 1(1) of the Convention, based upon the delay in bringing Mr. Neptune before a competent court or tribunal following his arrest; and
- c) Haiti is responsible for violating Mr. Neptune's rights under Article 8(2)(b) of the Convention to prior notification in detail of the charges against him and Article 8(2)(c) of the Convention to adequate time and means for the preparation of his defense as well as his right to freedom from *ex post facto* laws under Article 9

² IACHR, *HAÏTI: JUSTICE EN DEROUTE OU L'ÉTAT DE DROIT? DEFIS POUR HAÏTI ET LA COMMUNAUTE INTERNATIONALE*, OEA/Ser/L/V/II.123 /Doc. 6 rev. 1, 26 October 2005, para. 138, available at <http://www.cidh.org/countryrep/HAITI%20FRENCH7X10%20FINAL.pdf> Annex 11.

³ IACHR, *HAÏTI: id.* Annex 11.

000007

of the Convention, in conjunction with Article 1(1) of the Convention, based upon deficiencies in the criminal charges ordered against him.

7. The Inter-American Commission is therefore asking the Court to order the State to

- a) grant an effective remedy to Mr. Neptune, which includes taking the measures necessary to ensure that any criminal charges pursued against him are consistent with the fair trial protections under Articles 8 and 9 of the American Convention;
- b) take the measures necessary to ensure that the right under national law and Article 7 of the American Convention of any person detained to be brought promptly before a judge or other officer authorized by law to exercise judicial power is given effect in Haiti;
- c) take the measures necessary to ensure that conditions of detention facilities in Haiti comply with the standards of humane treatment under Article 5 of the American Convention;
- d) take all legal, administrative and other measures necessary to avoid a recurrence of similar events in the future, in compliance with the duties to prevent the violation of and ensure the exercise of the human rights recognized in the American Convention; and
- e) pay the legal costs and expenses that the victim incurred in processing the case at the domestic level, and those incurred in bringing the present case to the inter-American system.

III. REPRESENTATION

8. Pursuant to the provisions of Articles 22 and 33 of the Court's Rules of Procedure, the Commission appoints Commissioner Clare Kamau Roberts and Executive Secretary Santiago A. Canton as the delegates in this case; and Deputy Executive Secretary Ariel E. Dulitzky, and attorneys Elizabeth Abi-Mershed, Ismene Zarifis and Juan Pablo Albán Alencastro as legal advisors.

IV. JURISDICTION OF THE COURT

9. Under Article 62(3) of the American Convention, the jurisdiction of the Inter-American Court comprises all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction.

10. The Court has jurisdiction to adjudicate the present case. The Haitian State ratified the American Convention on 27 September 1977, and accepted the contentious jurisdiction of the Court on 20 March 1998.

000008

V. PROCESSING BY THE COMMISSION⁴

11. On 20 April 2005, the Commission received the complaint sent by the petitioners, which also included a request for precautionary measures.

12. On 4 May 2005, the Commission transmitted the petition to the Haitian State and, in light of the potential risk to Mr. Neptune's life and physical integrity posed by his hunger strike, requested a response from the Haitian State within an abbreviated time frame of 5 days, in accordance with Article 30(4) of the Commission's Rules of Procedure.

13. The State did not provide any information in response to the petition, therefore, the Commission declared it formally admissible on 12 October 2005⁵.

14. The Commission transmitted the Admissibility Report to the Petitioners and to the State by notes dated 1 November 2005 and requested that any additional observations on the merits of the case be provided to the Commission within two months. The Commission also placed itself at the disposal of the parties in accordance with Article 48(1)(f) of the Convention with a view to reaching a friendly settlement of the matter.

15. In a letter dated 22 December 2005 and received by the Commission on 28 December 2005, the Petitioners submitted additional arguments on the merits of the case. In addition, the Petitioners indicated that they were amenable to friendly settlement procedures but only on the condition that such procedures would not delay a final decision in the case. The Commission transmitted the pertinent parts of the Petitioners' additional observations to the State by note dated 6 January 2006 with a request for any additional observations within two months.

16. By note dated 21 February 2006 and received by the Commission on 24 March 2006, the State acknowledged receipt of the pertinent parts of the Petitioners' 22 December 2005 observations and informed the Commission that the file had been transmitted to the Minister of Justice and Public Security for necessary action. As of the date of the merits report, the Commission had not received any observations from the State in the matter.

17. On 20 July 2006, during its 125th extraordinary session, the IACHR considered the information presented and approved the merits report 62/06, pursuant to Article 50 of the American Convention. In its report, the IACHR concluded that

- (a) The State is responsible for failing to guarantee Mr. Neptune's right to respect for his physical, mental and moral integrity under Article 5(1) of the Convention and his right under Article 5(4) to be segregated from convicted prisoners, in conjunction with Article 1(1) of the Convention, based upon his conditions and treatment of detention when he was held in the National Penitentiary.

⁴ Representations referenced in this section can be found at the Commission's Case file. Appendix 3.

⁵ IACHR, Report No. 64/05 (Admissibility), Case 12.514, *Yvon Neptune*, Haiti, 12 October 2005. Appendix 2

000009

(b) The State is responsible for violating Mr. Neptune's rights under Article 7(4) of the Convention to be promptly notified of the charge or charges against him, Article 7(5) of the Convention to be brought promptly before a judge or other officer authorized by law to exercise judicial power, and Article 7(6) of the Convention to recourse to a competent court to decide without delay on the lawfulness of his arrest or detention, together with his right to judicial protection under Article 25 of the Convention, in conjunction with Article 1(1) of the Convention, based upon the delay in bringing Mr. Neptune before a competent court or tribunal following his arrest.

(c) The State is responsible for violating Mr. Neptune's rights under Article 8(2)(b) of the Convention to prior notification in detail of the charges against him and Article 8(2)(c) of the Convention to adequate time and means for the preparation of his defense as well as his right to freedom from *ex post facto* laws under Article 9 of the Convention, in conjunction with Article 1(1) of the Convention, based upon deficiencies in the criminal charges ordered against him.

(d) The State is not responsible for violating Mr. Neptune's right under Article 8 of the Convention to be tried within a reasonable time.

18. In accordance with the analysis and conclusions contained in the said report, the Commission recommended that the State

1. Grant an effective remedy to Yvon Neptune, which includes taking the measures necessary to ensure that criminal charges pursued against Mr. Neptune are consistent with the fair trial protections under Articles 8 and 9 of the American Convention and that Mr. Neptune is afforded without delay his right to recourse to a competent court in order that the court decide on the lawfulness of his arrest and detention and order his release if the arrest or detention is unlawful.

2. Take the measures necessary to ensure that the right under national law and Article 7 of the American Convention of any person detained to be brought promptly before a judge or other officer authorized by law to exercise judicial power is given effect generally in Haiti.

3. Take the measures necessary to ensure that conditions of detention facilities in general in Haiti comply with the standards of humane treatment under Article 5 of the American Convention.

19. On 14 September 2006 the Commission, pursuant to the terms of Article 43(2) of its Rules of Procedure, forwarded the State the Report issued and requested that it report back, within two months, on the steps taken to comply with the recommendations. On that same date, in compliance with Article 43(3) of its Rules of Procedure, the Commission notified the petitioners that a report had been adopted and transmitted to the State, and asked them to provide, within the following month, their position regarding whether or not to refer the case to the Court.

20. On 8 November 2006, the Petitioners informed the Commission that they considered that the case should be sent to the Court and submitted the information and documentation requested by the Commission.

000010

21. Considering that the State did not reply or adopt its recommendations, following the terms of Articles 51(1) of the Convention and 44 of the Rules of Procedure of the IACHR, and taking into account the position of the Petitioners, on 14 December 2006 the Inter-American Commission decided to submit the case to the jurisdiction of the Inter-American Court.

VI. THE FACTS

A. The Victim

22. Mr. Yvon Neptune was born on 8 November 1946 at Cavaillon, Haiti. An architect by profession, he was elected to Haiti's Senate in May 2000. After serving as the Senate's President, Mr. Neptune resigned his post to serve as Prime Minister of Haiti in the administration of former President Jean-Bertrand Aristide⁶.

23. He was the Prime Minister of Haiti from March 15, 2002 until early February 2004⁷.

B. Background

24. In early February 2004, civil disorder broke out in the town of Gonaïves, Haiti, during which armed gangs attacked the police station, killed several police officers, and released all of the prisoners from the local jail⁸. Members of Haiti's demobilized army who had been training in the neighbouring Dominican Republic crossed the border and attacked government facilities and supporters in the Central Plateau region and that the rebellion soon spread to other towns, especially in the northern part of Haiti⁹.

25. On 7 February 2004, after days of fighting, the armed, anti-government group RAMICOS took control of the police station in the city of St. Marc, located approximately 100 kilometers north of Port-au-Prince on the road from Gonaïves to the

⁶ See, *Profil de Yvon Neptune, ancien premier ministre*, available at <http://www.haiti-reference.com/histoire/notables/neptune.html> Annex 1.1.

⁷ See, *Profil de Yvon Neptune, ancien premier ministre*, available at <http://www.haiti-reference.com/histoire/notables/neptune.html> Annex 1.1; see also, *Yvon Neptune démissionne mais assure les affaires courantes*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=4542> Annex 1.2.

⁸ See, *Le Front de résistance au contrôle des Gonaïves*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=4341> Annex 1.3. See also, *10 morts et une vingtaine de blessés lors de la prise des Gonaïves par des rebelles*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=4354> Annex 1.4. See also, *14 tués dans les rangs de la police aux Gonaïves, tension à Saint-Marc*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=4360> Annex 1.5. See also, *Gonaïves : 18 ans après les Duvalier, 3 ans après la seconde investiture d'Aristide*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=4367> Annex 1.6.

⁹ IACHR, *HAÏTI: JUSTICE EN DEROUTE OU L'ÉTAT DE DROIT? DEFIS POUR HAÏTI ET LA COMMUNAUTE INTERNATIONALE*, OEA/Ser/L/V/II.123 /Doc. 6 rev. 1, 26 October 2005, para. 16, available at <http://www.cidh.org/countryrep/HAITI%20FRENCH7X10%20FINAL.pdf> Annex 11; IACHR, Press Release 1/04: LA CIDH SE DIT GRAVEMENT PRÉOCCUPÉE PAR LA VIOLENCE EN HAÏTI, 11 February 2004, available at <http://www.cidh.org/Comunicados/French/1.04.htm> Annex 13.

000011

capital¹⁰. On 9 February 2004, the St. Marc police, aided by a pro-government force named Bale Wouze, regained control of the St. Marc police station¹¹.

26. On 9 February 2004, Mr. Neptune made a widely-publicized visit to St. Marc via helicopter to encourage the police to establish order in the city and called upon the police to defend the city from gangs that were marching through St. Marc south to the capital of Port-au-Prince¹².

27. Two days after Mr. Neptune's visit, Haitian police and civilians reported to be Bale Wouze members entered the La Scierie neighborhood of St. Marc, which was also considered a RAMICOS stronghold. According to reports, several people were killed and many were wounded in the ensuing confrontation between government forces and RAMICOS. In addition, both the police and RAMICOS members are alleged to have burned and ransacked houses and cars in St. Marc in retaliation. According to witnesses, some people were deliberately burned in their homes¹³.

28. After the events in La Scerie, the nongovernmental organization in Haiti then known as the National Coalition for Haitian Rights claimed that government forces had killed at least 50 people and, in a subsequent press release dated 2 March 2004, called for the arrest and prosecution of Prime Minister Neptune¹⁴.

29. On 29 February 2004, a United States government plane transported former President Aristide from Haiti to the Central African Republic¹⁵, following which Supreme Court Chief Justice Boniface Alexandre was installed as the interim Prime Minister and an

¹⁰ See, *La ville de Saint-Marc aux mains d'une organisation proche de l'opposition*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=4361> Annex 1.7. See also, *Bulletin special - Situation générale dans les grandes villes*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=4368> Annex 1.8.

¹¹ See, *La police entre à Saint-Marc*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=4377> Annex 1.9. See also, *Saint-Marc : la police intervient dans la ville*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=4373> Annex 1.10. See also, *La PNH tente de reprendre la ville côtière de Saint-Marc*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=4375> Annex 1.11.

¹² See, *La PNH tente de reprendre la ville côtière de Saint-Marc*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=4375> Annex 1.11.

¹³ See, *Requiem pour la Scierie*, available at <http://www.alterpresse.org/spip.php?article1374>. See also, *Yvon Neptune, un os dans la gorge du Gouvernement de fact*, available at <http://www.hayti.net/tribune/index.php?mod=articles&ac=commentaires&id=155> Annex 1.12. See also, *Deux à six morts à Saint-Marc dans des affrontements*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=4388> Annex 1.13. See also, *Saint-Marc : 9 morts, de nombreux blessés et des maisons incendiées*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=4408> Annex 1.14.

¹⁴ See, RNDH, Communiqué de Presse, 2 mars 2004: *Massacre de la Scierie (Saint-Marc) : trois (3) présumés génocidaires sous les verrous*, available at http://www.rnddh.org/article.php3?id_article=147&var_recherche=neptune. Annex 2.

¹⁵ See, *Départ d'Aristide : objectif Palais national*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=4487> Annex 1.15.

interim or transitional government was established in Haiti¹⁶. The Petitioners also claimed before the Commission that, shortly thereafter, threats made against Mr. Neptune's life forced him into hiding.

C. Arrest of Mr. Yvon Neptune

30. On 25 March 2004 Judge Clunie Pierre Jules, an investigating magistrate with the Court of First Instance of St. Marc who was responsible for investigating the La Scierie case, issued an arrest warrant against Mr. Neptune¹⁷ and on 26 March 2004 the Haitian Government issued an order banning Mr. Neptune from leaving the country¹⁸. The Petitioners alleged during the proceedings before the Commission that the warrant was kept secret and that Mr. Neptune did not hear about it until 27 June 2004 through an announcement on the radio, following which he turned himself into the police on 27 June 2004 and was subsequently detained in the National Penitentiary in Port-au-Prince¹⁹.

31. Although 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, as of April 20, 2005, the date that his petition was filed with the Commission, Mr. Neptune had not been brought before a judge and no judge had ruled on the legality of his detention²⁰.

32. On 9 July 2004, Mr. Neptune's former attorneys filed a motion before the highest instance "Cour de Cassation", or Supreme Court, to remove the case from the court of St. Marc, arguing that the influence of the surrounding population might have an effect on the independence of the judiciary²¹. The Supreme Court did not rule on the motion until six months later, on 17 January 2005, when it rejected the recusal motion on the basis of a minor technicality, namely the failure to pay the processing fee²².

D. Judicial process against Mr. Yvon Neptune

33. On 17 July 2004, Judge Bready Fabien of Port-au-Prince questioned Mr. Neptune about a December 2003 incident that occurred at the National University of Haiti in which a student protestor and the University's rector were injured. At that time, the

¹⁶ See, *Le nouveau Président haïtien se présente en rassembleur, sans étiquette politique*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=4501>. Annex 1.16.

¹⁷ Order issued by the Court of First Instance of St. Marc, 25 March 2004. Annex 3.

¹⁸ See, *Mesures d'interdiction de départ à l'encontre de certains dirigeants lavalas*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=4625> Annex 1.17.

¹⁹ See, *Arrestation de Neptune : l'ambassade des Etats-Unis réclame une enquête rapide*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=4998> Annex 1.18.

²⁰ See, *Yvon Neptune comparait à Saint-Marc*, available at <http://www.haitipressnetwork.com/presse/presseprint.cfm?pressID=951> Annex 1.19.

²¹ *Forum non conveniens* motion, 9 July 2004. Annex 4.

²² Haitian Supreme Court decision on the *forum non conveniens* motion, 17 January 2005. Annex 5.

000013

judge only questioned the victim as a witness to the incident at the National University and did not rule on the legality of the victim's detention and indeed had no authority to do so²³.

34. On 22 April 2005, Mr. Neptune was transported to the Court of First Instance of St. Marc to be interrogated by the investigating magistrate Clunie Pierre-Jules. However, the hearing did not take place due to the absence of the magistrate²⁴, as she was not previously informed that Mr. Neptune would be brought before her. According to applicable provisions of Haitian law, it falls to the investigating magistrate to order the appearance and interrogation of an accused and therefore the manner in which Mr. Neptune's appearance was handled did not comply with national law²⁵.

35. Subsequently, on 25 May 2005, Mr. Neptune appeared on one occasion before the investigating magistrate²⁶.

36. On 14 September 2005, the Investigating Chamber of the Court of First Instance of St. Marc, under the signature of magistrate Clunie Pierre-Jules, issued a 72-page "ordonnance de clôture"²⁷, or closing order (hereinafter the "Order"), in which the Court indicated that there were sufficient charges and evidence to proceed against Mr. Neptune as a "complice", or accomplice, in connection with the following crimes:

- 1) du massacre de la Scierie survenu le 11 février 2004 ayant cause la mort a plusieurs personnes dont (the Scierie Massacre of February 11, 2004 that caused the deaths of several persons including): Brice Kener PIERRE-LOUIS; Francky DIMANCHE, Leroy JOSPEH, Kenold SAINT-GILLES, Stanley FORTUNE; Bosquet FAUSTIN, Jonas NELSON;
- 2) d'assassinat sur la personne de (the killing of) Yveto MORENCY, Anserme PETIT-FRERE, Wilguens PETIT-FRERE, Jean-Louis JOSEPH, Guernel JOSEPH, Marc-Antoine CIVIL, Florette SOLIDE, Fanes DORJEAN, Laureste GUILLAUME, Nixon FRANOIS;
- 3) d'incendies de maisons au préjudice des époux (arson of houses to the detriment of spouses) Luc PAULTRE, Belton DEJEAN, Sointette DIEUJUSTE, Marie-Paule LACOURT, Midelais VAUDREUIL, Emmanuel ALCIME, Ginette ANECHARLES, Andriel LOUIS, Francky EDOUARD, Siantalien THELOT, Patrick JASMIN, André LAMARRE, edith AMBROISE, Bélèbe O. FRANCOIS, Céline MANASSE, Jérôme BERTHO, Taty RODRIGUE, Thérèse DUROGENE, Marcocelle PIERRE.

²³ Tribunal Civil de Port au Prince, Cabinet d'instruction, Interrogatoire d'Yvon Neptune, 16 juillet 2004. Annex 6. See also, *Comparution d'Yvon Neptune. Qui veut le garder en prison?*, available at <http://www.haitiprogres.com/2004/sm040721/bottom07-21.html> Annex 1.20. See also, *Comparution de l'ancien Premier Ministre Neptune devant un juge d'Instruction*, available at <http://www.alterpresse.org/spip.php?article1507>.

²⁴ See, *Yvon Neptune comparait a St-Marc*, published in the daily newspaper *Le Nouvelliste*, on 24 April 2005, Annex 1.21. See also, *L'ex Premier ministre Neptune au cabinet d'instruction à Saint-Marc*, available at http://www.alterpresse.org/article.php3?id_article=2444.

²⁵ See, Code d'instruction criminelle d'Haïti. CHAPITRE VII - DES MANDATS DE COMPARUTION, D'AMENER, DE DÉPÔT ET D'ARRÊT.

²⁶ See, *Yvon Neptune comparait à Saint-Marc*, available at <http://www.haitipressnetwork.com/presse/presseprint.cfm?pressID=951> Annex 1.19.

²⁷ Ordonnance de cloture, 14 September 2005. Annex 7.

- 4) d'incendies de vehicules au prejudice de (arson of vehicles to the detriment of) Alain BELLEFLEUR, Wilson MATHURIN, Alcy LACROSSE, Ironte BLAISE;
- 5) de viol commis sur (rape committed upon) Kétia PAUL et Anne PAUL;
- 6) de coups et blessures sur les personnes de (assault and battery upon the persons of) Franck PHILIPPE, Carlo ESTIME (IACHR translation).

37. The Order also referred the matter to the Criminal Court of St. Marc to be heard without a jury²⁸. It must be noted in this regard that Article 50 of the Constitution of Haiti guarantees a jury trial for "crimes of blood" as well as for political offenses.

38. While a separate Haitian Law of 29 March 1928 provides in Article 3 that in the case of "délits connexes" (multiple but related crimes), the court will sit without a jury²⁹, the Constitution is the supreme law of the land and is therefore superior to and should take precedence over the 1928 law to the extent that the two laws might conflict.

39. The order does not provide details of specific incidents such as the burning of houses and vehicles and others in which Mr. Neptune is alleged to have been an accomplice, nor does it indicate how he could have known about these incidents or how he could have prevented them.

40. The order uses the term "massacre" in respect to the charges against Mr. Neptune which is not a term that is included among the crimes under the Haitian Penal Code.

41. Mr. Neptune, to the present time, has not had a just and impartial proceeding through the Haitian justice system.

E. Conditions of detention endured by Mr. Yvon Neptune

42. With respect to the specific circumstances of Mr. Neptune, for most of the time between his initial detention on 27 June 2004 and the filing of his petition, he was held in a cement cell in the National Penitentiary with no water, toilet or electricity. Mr. Neptune was kept in a cell by himself but in close proximity to other prisoners. His cell was open most of the day by the authorities to allow prisoners access to facilities. However, Mr. Neptune never tried to leave his cell out of fear for his physical safety from possible harassment and attack from other prisoners³⁰.

43. The petitioners alleged in the proceeding before the Commission that during his time in the National Penitentiary, Mr. Neptune was the victim of several serious threats to his life and physical safety.

²⁸ Ordonnance de cloture, 14 September 2005. Annex 7. See also, *Haiti-Justice: Massacre de la Scierie : L'ancien Premier Ministre Neptune officiellement inculpé*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=6682> Annex 1.27.

²⁹ Réquisitoire du Ministère Public sur l'audience du mardi 9 mai 2006, pres la Cour d'Appel des Gonaïves. Annex 8.

³⁰ Declaration of Professor William P. Quigley dated April 4, 2005, paras. 7, 8, Annex 9.

000015

44. On 1 December 2004, police and prison guards fired shots during a protest at the National Penitentiary, and during the course of the shooting, guards and police killed several prisoners³¹. The riot began in a cell block called "Titanic" which was located approximately 200 feet away from Mr. Neptune's cell; during this riot his life was placed in danger.

45. On 19 February 2005, armed men stormed the National Penitentiary and as a result, near 400 prisoners escaped³². During the incident, Mr. Neptune was forced, at gunpoint, to leave the prison and get into a car. His abductors then released him in Port-au-Prince. Mr. Neptune managed to reach the house of another prisoner and immediately called the offices of the United Nations Stabilization Mission in Haiti (hereinafter "MINUSTAH") to request an escort back to the prison, because he was afraid he would be shot and killed. MINUSTAH accommodated his request³³.

46. After the 19 February 2005 prison break, Mr. Neptune allegedly was cursed at and threatened by guards and was moved to another cell in the National Penitentiary that was less protected and less isolated from the other prisoners. Mr. Neptune shared this cell with two other prisoners and was immediately locked in for more than 24 hours with no toilet, running water, food or electricity³⁴.

47. On 20 February 2005 Mr. Neptune began a hunger strike to protest against his detention and on 10 March 2005 he collapsed due to his poor state of health and was taken to a military hospital run by MINUSTAH³⁵.

48. On 21 April 2005, Mr. Neptune was transferred from the MINUSTAH military hospital to the Annex of the National Penitentiary where he was detained in an isolated cell where he could receive visitors with the prior approval of the Minister of Justice. The Petitioners also indicated in the processing before the Commission that Mr. Neptune's state of health has remained critical³⁶, as he started a new hunger strike on 17 April 2005 and, from 29 April 2005 until 27 July 2006, refused solid food and only accepted water.

³¹ See, *7 morts et environ 50 blessés au pénitencier national : les défenseurs des droits de l'homme exigent*, available at <http://www.haitipressnetwork.com/presse/index.cfm?pressID=849> Annex 1.22.

³² See, *Yvon Neptune et Jocelerme Privert de nouveau derrière les barreaux*, available at <http://www.haitipressnetwork.com/newsprint.cfm?articleID=5989> Annex 1.23. See also, *Au moins 17 détenus retournent au pénitencier national*, available at <http://www.haitipressnetwork.com/newsprint.cfm?articleID=5992> Annex 1.24.

³³ Declaration of Mario Joseph dated April 13, 2005, para. 10. Annex 10; Declaration of Professor William P. Quigley dated April 4, 2005, paras. 9, 11. Annex 9. See also, *Au moins 17 détenus retournent au pénitencier national*, available at <http://www.haitipressnetwork.com/newsprint.cfm?articleID=5992> Annex 1.24.

³⁴ Declaration of Professor William P. Quigley dated April 4, 2005, para. 12. Annex 9.

³⁵ IACHR, Press Release 19/05: IACHR EXPRIME SA PREOCCUPATION POUR LA SITUATION D'YVON NEPTUNE, 6 May 2005, available at <http://www.cidh.org/Comunicados/French/19.05.htm>, Annex 14; Declaration of Professor William P. Quigley dated April 4, 2005, paras. 13-14. Annex 9. See also, *Haïti : l'ancien Premier ministre Neptune soigné dans un hôpital militaire*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=6089> Annex 1.25.

³⁶ IACHR, Press Release 19/05: IACHR EXPRIME SA PREOCCUPATION POUR LA SITUATION D'YVON NEPTUNE, 6 May 2005, available at <http://www.cidh.org/Comunicados/French/19.05.htm>.

On 15 May 2005 he began receiving vitamins, salt and sugar orally under medical supervision³⁷.

49. Mr. Neptune was released on humanitarian grounds on 27 July 2006 and transferred to a hospital³⁸.

50. The National Penitentiary, where Mr. Neptune was detained until 21 April 2005, holds between 800 and 1,200 prisoners at any given time³⁹. The prison includes individuals who are mentally ill, political prisoners, rapists and accused murderers; prisoners are not segregated according to the gravity of the crime for which they are accused or convicted; and pre-trial detainees are not separated from convicted criminals⁴⁰. Further, access to food is limited and of poor quality, such that prisoners must rely on donations from friends and family⁴¹.

51. Haiti's prisons are dangerous places for all prisoners, where disease is rampant and access to healthcare is almost nonexistent⁴², and lethal violence by prison guards, police and intruders has become almost a routine⁴³.

³⁷ Medical report signed by Jean Pierre Elie, MD, Annex 15.

³⁸ Medical report signed by Jean Pierre Elie, MD, Annex 15. See, *Yvon Neptune libéré par la justice et soigné dans un hôpital de l'ONU*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=3244> Annex 1.26.

³⁹ IACHR, *HAÏTI: JUSTICE EN DEROUTE OU L'ÉTAT DE DROIT? DEFIS POUR HAÏTI ET LA COMMUNAUTE INTERNATIONALE*, OEA/Ser/L/V/II.123 /Doc. 6 rev. 1, 26 October 2005, para. 206, available at <http://www.cidh.org/countryrep/HAITI%20FRENCH7X10%20FINAL.pdf> Annex 11.

⁴⁰ RESEAU NATIONAL DE DEFENSE DES DROITS HUMAINS, *Le RNDDH fait le point autour de la détention préventive prolongée et des conditions de détention des détenus*, October 2006, available at http://www.rnddh.org/IMG/pdf/La_Journee_internationale_des_prisonniers_-_octobre_2006.pdf Annex 12. See also, MINUSTHA, *DDR and Police, Judicial and Correctional Reform in Haiti: Recommendations for change*, July 2006, available at <http://www.actionaid.org/wps/content/documents/ActionAid%20Minustah%20Haiti%20Report%20July%202006.pdf>.

⁴¹ IACHR, *HAÏTI: JUSTICE EN DEROUTE OU L'ÉTAT DE DROIT? DEFIS POUR HAÏTI ET LA COMMUNAUTE INTERNATIONALE*, OEA/Ser/L/V/II.123 /Doc. 6 rev. 1, 26 October 2005, para. 206 and following, available at <http://www.cidh.org/countryrep/HAITI%20FRENCH7X10%20FINAL.pdf> Annex 11. See also, RESEAU NATIONAL DE DEFENSE DES DROITS HUMAINS, *Le RNDDH fait le point autour de la détention préventive prolongée et des conditions de détention des détenus*, October 2006, available at http://www.rnddh.org/IMG/pdf/La_Journee_internationale_des_prisonniers_-_octobre_2006.pdf Annex 12. See also, MINUSTHA, *DDR and Police, Judicial and Correctional Reform in Haiti: Recommendations for change*, July 2006, available at <http://www.actionaid.org/wps/content/documents/ActionAid%20Minustah%20Haiti%20Report%20July%202006.pdf>.

⁴² IACHR, *HAÏTI: JUSTICE EN DEROUTE OU L'ÉTAT DE DROIT? DEFIS POUR HAÏTI ET LA COMMUNAUTE INTERNATIONALE*, OEA/Ser/L/V/II.123 /Doc. 6 rev. 1, 26 October 2005, para. 209, available at <http://www.cidh.org/countryrep/HAITI%20FRENCH7X10%20FINAL.pdf> Annex 11. See also, RESEAU NATIONAL DE DEFENSE DES DROITS HUMAINS, *Le RNDDH fait le point autour de la détention préventive prolongée et des conditions de détention des détenus*, October 2006, available at http://www.rnddh.org/IMG/pdf/La_Journee_internationale_des_prisonniers_-_octobre_2006.pdf Annex 12. See also, MINUSTHA, *DDR and Police, Judicial and Correctional Reform in Haiti: Recommendations for change*, July 2006, available at <http://www.actionaid.org/wps/content/documents/ActionAid%20Minustah%20Haiti%20Report%20July%202006.pdf>.

000017

VII. CONSIDERATIONS OF LAW

A. Preliminary considerations

52. The Commission wishes to address the State's failure to provide the Commission with information or other observations on the merits of the Petitioners' petition. As the Commission noted in its merits report in this matter, Haiti is responsible for the international obligations it assumed under the terms of the American Convention of Human Rights, including in particular Article 48(1)(a) and (e) of the Convention which empowers the Commission to request information from a state party when a petition is lodged with the Commission against that state. Haiti's obligations in this respect include not only responding to the Commission's requests for information, but providing such information that may facilitate the Commission's ability to fully and fairly adjudicate upon the claims in a petition. The Inter-American Court has observed in this connection that

[i]n contrast to domestic criminal law, in proceedings to determine human rights violations the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation. The State controls the means to verify acts occurring within its territory. Although the Commission has investigatory powers, it cannot exercise them within a States jurisdiction unless it has the cooperation of that State⁴⁴.

53. Further, the Commission and the Inter-American Court of Human Rights have stated that "the silence of the defendant or elusive or ambiguous answers on its part may be interpreted as an acknowledgment of the truth of the allegations so long the contrary is not indicated by the record or is not compelled as a matter of law"⁴⁵. This presumption has been explicitly recognized in Rule 39 of the Commission's Rules of Procedure⁴⁶ as well as Article 38(2) of the Rules of Procedure of the Inter-American Court⁴⁷.

⁴³ Declaration of Mario Joseph dated April 13, 2005, para. 9. Annex 10. See also, RESEAU NATIONAL DE DEFENSE DES DROITS HUMAINS, *Le RNDDH fait le point autour de la détention préventive prolongée et des conditions de détention des détenus*, October 2006, available at http://www.rnddh.org/IMG/pdf/La_Journee_internationale_des_prisonniers_-_octobre_2006.pdf Annex 12. See also, MINUSTHA, *DDR and Police, Judicial and Correctional Reform in Haiti: Recommendations for change*, July 2006, available at <http://www.actionaid.org/wps/content/documents/ActionAid%20Minustah%20Haiti%20Report%20July%202006.pdf>.

⁴⁴ I/A Court H.R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C, N°4, §135 and 136.

⁴⁵ I/A Court H.R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C, N°4, §138. IACHR, Report N°28/96, Case n°11.297, *Juan Hernández* (Guatemala), October 16, 1996, §45.

⁴⁶ Inter-American Commission on Human Rights, Rules of Procedure, Art. 39 (providing that "The facts alleged in the petition, the pertinent parts of which have been transmitted to the State in question, shall be presumed to be true if the State has not provided responsive information during the maximum period set by the Commission under the provisions of Article 38 of these Rules of Procedure, as long as other evidence does not lead to a different conclusion").

⁴⁷ Inter-American Court of Human Rights, Rules of Procedure, Art. 38(2) (providing that "In its answer, the respondent must state whether it accepts the facts and claims or whether it contradicts them, and the Court may consider accepted those facts that have not been expressly denied and the claims that have not been expressly contested").

000018

B. Right to humane treatment

54. The Commission will now set forth its legal arguments concerning the violation of the right to humane treatment.

55. As stated *supra* for most of the time between his initial detention since 27 June 2004 and the filing of his petition, Mr Neptune was held in a cement cell in the National Penitentiary with no water, toilet or electricity. Mr. Neptune was kept in a cell by himself but in close proximity to other prisoners and without a toilet or running water, his cell was open most of the day by the authorities to allow prisoners access to facilities. However, Mr. Neptune never tried to leave his cell out of fear for his physical safety from possible harassment and attack from other prisoners⁴⁸.

56. After the 19 February 2005 prison break, Mr. Neptune was cursed at and threatened by guards and was moved to another cell in the National Penitentiary that was less protected and less isolated from the other prisoners. Mr. Neptune shared this cell with two other prisoners and was immediately locked in for more than 24 hours with no toilet, running water, food or electricity⁴⁹.

57. The National Penitentiary, where Mr. Neptune was detained until 21 April 2005, holds between 800 and 1,200 prisoners at any given time⁵⁰. The prison includes individuals who are mentally ill, political prisoners, rapists and accused murderers; prisoners are not segregated according to the gravity of the crime for which they are accused or convicted; and pre-trial detainees are not separated from convicted criminals⁵¹.

58. Concerning the Republic of Haiti in particular, the Commission and other international authorities have long criticized the general conditions of prisons and other places of detention in the country. Most recently, in its October 2005 Report on the Administration of Justice in Haiti, the Commission expressed concern regarding both the general conditions and treatment of prisoners in prisons and other detention facilities in Haiti as well as the lack of adequate security at those facilities. The Commission's observations were based in part upon several on-site visits that it conducted in Haiti during the years 2004 and 2005. Concerning prison conditions, for example, the Commission made the following observations

⁴⁸ Declaration of Professor William P. Quigley dated April 4, 2005, paras. 7, 8. Annex 9.

⁴⁹ Declaration of Professor William P. Quigley dated April 4, 2005, para. 12. Annex 9.

⁵⁰ IACHR, *HAÏTI: JUSTICE EN DEROUTE OU L'ÉTAT DE DROIT? DEFIS POUR HAÏTI ET LA COMMUNAUTE INTERNATIONALE*, OEA/Ser/L/V/II.123 /Doc. 6 rev. 1, 26 October 2005, para. 206, available at <http://www.cidh.org/countryrep/HAITI%20FRENCH7X10%20FINAL.pdf> Annex 11.

⁵¹ RESEAU NATIONAL DE DEFENSE DES DROITS HUMAINS, *Le RNDDH fait le point autour de la détention préventive prolongée et des conditions de détention des détenus*, October 2006, available at http://www.rnddh.org/IMG/pdf/La_Journee_internationale_des_prisonniers_-_octobre_2006.pdf Annex 12. See also, MINUSTHA, *DDR and Police, Judicial and Correctional Reform in Haiti: Recommendations for change*, July 2006, available at <http://www.actionaid.org/wps/content/documents/ActionAid%20Minustah%20Haiti%20Report%20July%202006.pdf>.

000019

[m]ost prisons lack access to potable water and adequate sanitation, and cells are poorly constructed therefore preventing air circulation and affecting the quality of the air. There is also a lack of effective access to medical facilities, social workers or legal assistance in many of the prisons. Several cells within each of the prisons are non-functional, there is a lack of beds for detainees and in some prisons there is an absence of sleeping quarters for DAP guards. Furthermore, food shortages are not uncommon and therefore family members must supplement limited food rations in the prison. Due to the combination of these factors, the outbreak of disease and bacterial illnesses place the health of the prison population at serious risk. The National Penitentiary is the only prison that appeared to provide minimum services in such areas as food and health care, but the extent of these services remains inadequate in proportion to the number of detainees held there⁵².

59. In light of these and other concerns, the Commission called upon Haiti, in cooperation with the international community, to take urgent measures to develop and implement a plan to repair all of the prison and detention facilities in Haiti, improve the conditions and treatment of detainees, and effectively provide for the security of those institutions⁵³.

60. Haiti's prisons are dangerous places for all prisoners, where disease is rampant and access to healthcare is almost nonexistent⁵⁴.

61. In a 2003 report, the nongovernmental organization then known as the National Coalition for Haitian Rights stated that

water is scarce in certain penitentiary institutions and often of bad quality, which in turn provokes all sorts of illnesses.

⁵² IACHR, *HAÏTI: JUSTICE EN DEROUTE OU L'ÉTAT DE DROIT? DEFIS POUR HAÏTI ET LA COMMUNAUTE INTERNATIONALE*, OEA/Ser/L/V/II.123 /Doc. 6 rev. 1, 26 October 2005, available at <http://www.cidh.org/countryrep/HAITI%20FRENCH7X10%20FINAL.pdf> Annex 11. See also, RESEAU NATIONAL DE DEFENSE DES DROITS HUMAINS, *Le RNDDH fait le point autour de la détention préventive prolongée et des conditions de détention des détenus*, October 2006, available at http://www.rnddh.org/IMG/pdf/La_Journee_internationale_des_prisonniers_-_octobre_2006.pdf Annex 12. See also, MINUSTHA, *DDR and Police, Judicial and Correctional Reform in Haiti: Recommendations for change*, July 2006, available at <http://www.actionaid.org/wps/content/documents/ActionAid%20Minustah%20Haiti%20Report%20July%202006.pdf>.

⁵³ IACHR, *HAÏTI: JUSTICE EN DEROUTE OU L'ÉTAT DE DROIT? DEFIS POUR HAÏTI ET LA COMMUNAUTE INTERNATIONALE*, OEA/Ser/L/V/II.123 /Doc. 6 rev. 1, 26 October 2005, para. 210, available at <http://www.cidh.org/countryrep/HAITI%20FRENCH7X10%20FINAL.pdf> Annex 11.

⁵⁴ IACHR, *HAÏTI: JUSTICE EN DEROUTE OU L'ÉTAT DE DROIT? DEFIS POUR HAÏTI ET LA COMMUNAUTE INTERNATIONALE*, OEA/Ser/L/V/II.123 /Doc. 6 rev. 1, 26 October 2005, para. 209, available at <http://www.cidh.org/countryrep/HAITI%20FRENCH7X10%20FINAL.pdf> Annex 11. See also, RESEAU NATIONAL DE DEFENSE DES DROITS HUMAINS, *Le RNDDH fait le point autour de la détention préventive prolongée et des conditions de détention des détenus*, October 2006, available at http://www.rnddh.org/IMG/pdf/La_Journee_internationale_des_prisonniers_-_octobre_2006.pdf Annex 12. See also, MINUSTHA, *DDR and Police, Judicial and Correctional Reform in Haiti: Recommendations for change*, July 2006, available at <http://www.actionaid.org/wps/content/documents/ActionAid%20Minustah%20Haiti%20Report%20July%202006.pdf>.

000020

[...]

nutrition is a serious problem as the quantity is not sufficient and the preparation is not hygienic. Inmates confirm that they depend on food that is brought to them by their relatives, while those who are less fortunate find themselves in a difficult situation.

[...]

the cells are still over-crowded. The detention centers that were built to accommodate a limited number of inmates now have to cope with a population which is two (2) to three (3) times as large. The civil prison of Port-au-Prince (National Penitentiary) for instance, which is the largest prison in the country, was built to accommodate a thousand (1000) detainees, but now holds some two thousand (2000) inmates. [...] Those who are still presumed innocent in Haitian prisons are mixed with condemned inmates. Minors and adults share the same cells, except for Fort National, where they are held separately.

[...]

[u]pon admission and departure of the prisoners, not a single medical examination is carried out by the penitentiary centers, despite the fact that certain prisons do have infirmaries. Most of them, however, lack medicines and equipment. The medical staff is not always qualified, which leads to the administering of medicines which are not compatible with the detainees' pathology.

[...]

reality shows that prisoners can spend days, months and even years before appearing before a judge.

[...]

[i]n Port-au-Prince's jurisdiction, for instance, the cases are treated with such an off-handed attitude, that many people have started to think it useless to appeal to habeas corpus in Haiti⁵⁵.

62. The extreme overcrowding, unhygienic and unsanitary conditions and poor inmate diet at the National Penitentiary did not even approximate the standards set in the United Nations' Standard Minimum Rules for the Treatment of Prisoners. The Commission will refer to those Rules to examine the State's compliance with its obligations under Article 5(1) and 5(2) of the American Convention.

63. The situation at the National Penitentiary constitutes inhumane and degrading treatment that imperils the inmates' lives and safety. The detainees are in the total custody of the State authorities, with very limited means of protecting themselves, a situation that makes inmates of a given age and health situation as Mr. Neptune, all the more vulnerable.

64. In the Castillo Petruzzi case the Court held that

[t]he violation of the right to physical and psychological integrity of persons is a category of violation that has several gradations and embraces treatment ranging from torture to other types of humiliation or cruel, inhuman or degrading treatment with varying degrees of physical and psychological effects caused by endogenous and exogenous factors [...] The degrading aspect is characterized by the fear,

⁵⁵ RNDH, *Les Conditions d'Incarcération en Haïti*, available at http://www.nchrhaiti.org/article.php?id_article=110. Annex 16.

000021

anxiety and inferiority induced for the purpose of humiliating and degrading the victim and breaking his physical and moral resistance⁵⁶.

65. Article 5 of the Convention provides, *inter alia*, that

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. 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.
- [...]
4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as un-convicted persons.

66. This fundamental principle of respect is likewise set forth in Article 10(1) of the International Covenant on Civil and Political Rights which provides that

[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person

67. In its General Comment No. 21, the United Nations Human Rights Committee wrote that

Article 10, paragraph 1, of the International Covenant on Civil and Political Rights applies to any one deprived of liberty under the laws and authority of the State who is held in prisons, hospitals - particularly psychiatric hospitals - detention camps or correctional institutions or elsewhere. [...] This rule must be applied without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status⁵⁷.

68. In an earlier case, the Inter-American Commission established that

the State, by depriving a person of his liberty, places itself in the unique position of guarantor [...] The obligation that follows from being the guarantor of these rights means that agents of the State must not only refrain from engaging in acts that could harm the life and physical integrity of the prisoner, but must also endeavor, by all means at its disposal, to ensure that the prisoner is maintained in such a way that he continues to enjoy his fundamental rights, especially his right to life and to humane treatment. [...] When the State fails to provide this protection to its prisoners [...] it violates Article 5 of the Convention and incurs international responsibility⁵⁸.

⁵⁶ I/A Court H.R., *Castillo Petruzzi et al. Case*, Judgment of May 30, 1999, Series C No. 52, para. 196.

⁵⁷ CCPR, HRI/GEN/1/Rev. 3, April 10, 1992, paragraphs 4 and 5.

⁵⁸ IACHR, Report No. 41/99, Case 11,491, *Minors in Detention*, Honduras, March 10, 1999, paragraphs 136 and 137.

69. The Inter-American Court has also established that a person who is detained is in an exacerbated situation of vulnerability creating a real risk that his other rights, such as the right to humane treatment and to be treated with dignity, will be violated⁵⁹. Therefore, "since the State is the institution responsible for detention establishments, it is the guarantor of these rights of the prisoners"⁶⁰. The Court has written that

[w]ithout question, the State has the right and duty to guarantee its security. It is also indisputable that all societies suffer some deficiencies in their legal orders. However, regardless of the seriousness of certain actions and the culpability of the perpetrators of certain crimes, the power of the State is not unlimited, nor may the State resort to any means to attain its ends. The State is subject to law and morality. Disrespect for human dignity cannot serve as the basis for any State action⁶¹.

70. More recently, the Court has held that there is a special relationship and interaction of subordination between the person deprived of his liberty and the State. Typically the State can be very rigorous in regulating what the prisoner's rights and obligations are, and determines what the circumstances of the internment will be; the inmate may be prevented from satisfying, on his own, certain basic needs that are essential if one is to live with dignity. Given this unique relationship and interaction of subordination between an inmate and the State, the latter must undertake a number of special responsibilities and initiatives to ensure that persons deprived of their liberty have the conditions necessary to live with dignity and to enable them to enjoy those rights that may not be restricted under any circumstances or those whose restriction is not a necessary consequence of their deprivation of liberty and is, therefore, impermissible. Otherwise, deprivation of liberty would effectively strip the inmate of all his rights, which is unacceptable⁶².

71. In the words of the Court, one of the ineluctable obligations that the State must undertake as guarantor of the life and the integrity of those persons it deprives of their liberty is to provide them with the minimum conditions befitting their dignity as human beings⁶³.

72. The European Court of Human Rights has established that

the State must ensure that a person is detained in conditions which are compatible with respect for her human dignity, that the manner and method of the execution of

⁵⁹ I/A Court H.R., *Case of The "Street Children" v. Guatemala (Villagrán Morales et al.)*, Judgment of November 19, 1999. Series C No. 63, para. 166.

⁶⁰ I/A Court H.R., *Case of Neira Alegría v. Perú*, Judgment of January 19, 1995. Series C No. 20, para. 60.

⁶¹ I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*, Judgment of July 29, 1988. Series C No. 4, para. 154; I/A Court H.R., *Case of Neira Alegría v. Perú*, Judgment of January 19, 1995. Series C No. 20, para. 75.

⁶² I/A Court H.R., *Juvenile Reeducation Institute Case*, Judgment of September 2, 2004, Series C No. 112, paragraphs 152 and 153.

⁶³ I/A Court H.R., *Juvenile Reeducation Institute Case*, Judgment of September 2, 2004, Series C No. 112, para. 159.

the measure do not subject her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, her health and well-being are adequately secured by, among other things, providing her with the requisite medical assistance⁶⁴.

73. For its part, the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has held that the combination of overcrowding, inadequate regime activities (recreational and occupational), lack of integral sanitation and poor hygiene amounts to inhuman and degrading treatment of prisoners⁶⁵.

74. The United Nations Human Rights Committee has stated that "the State party remains responsible for the life and well-being of its detainees"⁶⁶. The understanding being that the State's positive duty involves not just reasonable measures to preserve the detainee's life but also the measures necessary to maintain a proper health standard.

75. Also, the lack of security measures and control of prison life set the stage for outbreaks of violence among detainees, violence that easily escalates into general commotion and rioting, triggering an unrestrained and unprofessional reaction on the part of the agents of the State. The Commission contends that the unlawful conditions under which the inmates, including Mr. Neptune, were forced to live and the lack of preventive strategies to avoid escalating tensions, are in themselves breaches of the State's obligation to ensure the life and personal safety of persons in its custody.

76. The Inter-American Court has recognized that part of the State's international obligation to ensure to all persons the full exercise of their human rights is to devise and apply a prison policy that prevents crisis situations⁶⁷, so as to avoid greater risks.

77. Despite repeated outbreaks of violence in the National Penitentiary, the State keeps its unfit structure intact. Effective security measures to ensure the inmates' lives and the integrity of their person are lacking. It keeps the inmates in overcrowded conditions, where numerous groups live in tight spaces, under conditions that can lead to tragedy.

78. On 1 December 2004, police and prison guards fired shots during a protest at the National Penitentiary, and during the course of the shooting, guards and police killed

⁶⁴ E.C.H.R., *McGlinchey and Others v. The United Kingdom*, Judgment of 29 April 2004, No. 50390/99, Reports of Judgments and Decisions 2003-V.

⁶⁵ C.P.T., Report to the United Kingdom Government on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 26 November 1991, CPT/Inf (91) 15, para. 229.

⁶⁶ H.R.C., *Fabrikant v. Canada*, November 11, 2003, U.N. Doc. CCPR/C/97/D/970/2001, para. 9.3.

⁶⁷ I/A Court H.R., *Case of Urso Branco Prison v. Brasil*, Provisional Measures, Order of June 7, 2004, considering paragraph thirteen.

several prisoners⁶⁸. On 19 February 2005, armed men stormed the National Penitentiary and as a result, nearly 400 prisoners escaped⁶⁹.

79. Lethal violence at the National Penitentiary by prison guards, police and intruders has become virtually a routine⁷⁰.

80. The Commission considers that this description of the living conditions that Mr. Neptune had to endure shows that those conditions did not meet the minimum requirements for treatment befitting their condition as human beings, in the sense of Article 5(1) and (2), in connection with Article 1(1) of the Convention.

81. Compounding the problem, and in violation of domestic and international law, most inmates at the National Penitentiary are standing trial but have not been convicted (which, by extension, means that they are presumed innocent). These inmates are forced to live in these highly dangerous conditions, alongside convicted criminals. No consideration is given to the degree of danger they pose or the status of the proceedings in their cases. The Inter-American Court has established in a previous case that

[i]n the instant case, it has been shown that there was no system for classifying detainees in the penitentiary where Mr. Tibi was incarcerated and as a result, he was forced to live alongside convicted criminals and exposed to greater violence. The failure to separate inmates as described herein is a violation of Article 5(4) of the American Convention⁷¹.

82. Therefore, the Commission contends that the failure to separate the detainees so as to take into account how dangerous each was and the status of proceedings in each one's case, is a violation of Article 5(4) of the American Convention, in conjunction with Article 1(1) thereof.

C. Right to personal liberty and to judicial protection

83. Article 7 of the American Convention upholds the right to personal liberty. In pertinent parts it reads as follows:

⁶⁸ See, *7 morts et environ 50 blessés au pénitencier national : les défenseurs des droits de l'homme exigent*, available at <http://www.haitipressnetwork.com/presse/index.cfm?pressID=849>.

⁶⁹ See, *Yvon Neptune et Jocelerme Privert de nouveau derrière les barreaux*, available at <http://www.haitipressnetwork.com/newsprint.cfm?articleID=5989>. See also, *Au moins 17 détenus retournent au pénitencier national*, available at <http://www.haitipressnetwork.com/newsprint.cfm?articleID=5992>.

⁷⁰ Declaration of Mario Joseph dated April 13, 2005, para. 9. Annex 10. See also RESEAU NATIONAL DE DEFENSE DES DROITS HUMAINS, *Le RNDDH fait le point autour de la détention préventive prolongée et des conditions de détention des détenus*, October 2006, available at http://www.rnddh.org/IMG/pdf/La_Journee_internationale_des_prisonniers_-_octobre_2006.pdf. See also, MINUSTHA, *DDR and Police, Judicial and Correctional Reform in Haiti: Recommendations for change*, July 2006, available at <http://www.actionaid.org/wps/content/documents/ActionAid%20Minustah%20Haiti%20Report%20July%202006.pdf>.

⁷¹ I/A Court H.R., *Tibi Case*. Judgment of September 7, 2004. Series C No. 114, para. 158.

4. 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.
5. 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.
6. 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 States 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 in his behalf is entitled to seek these remedies.

84. In addition, the right to judicial protection under Article 25(1) of the Convention provides

[e]veryone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

[... and that] State Parties undertake:

- a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
- b. to develop the possibilities of judicial remedy; and
- c. to ensure that the competent authorities shall enforce such remedies when granted.

85. Preventive detention is the most severe measure that can be applied to a person accused of a crime, accordingly its application must have an exceptional nature, limited by the principle of legality, the presumption of innocence, need, and proportionality, in accordance with what is strictly necessary in a democratic society⁷². Preventive detention is a precautionary measure, not a punitive one⁷³.

86. The arbitrary extension of a preventive detention turns it into a punishment when it is inflicted without having proven the criminal responsibility of the person to whom this measure is applied⁷⁴, as in the case of Mr. Neptune.

⁷² I/A Court H.R., *Case of Acosta-Calderón v. Ecuador*. Judgment of June 24, 2005. Series C No. 129, para. 74.

⁷³ I/A Court H.R., *Case of Acosta-Calderón v. Ecuador*. Judgment of June 24, 2005. Series C No. 129, para. 75.

⁷⁴ I/A Court H.R., *Case of Acosta-Calderón v. Ecuador*. Judgment of June 24, 2005. Series C No. 129, para. 75.

87. The Inter-American Court has held that "Article 7(4) of the American Convention is a mechanism to avoid illegal or arbitrary detentions, from the very moment when a person is deprived of his or her liberty. It also ensures the right to defense of the detainee"⁷⁵. In the instant case, at the time of his arrest, Mr. Neptune was not told why he was detained. Nor was Mr. Neptune advised of his rights. Mr. Neptune only obtained a statement of the charges when the *ordonnance* was issued by the investigating magistrate on 14 September 2005. The State has failed to provide any explanation or justification for this delay.

88. With regard to Article 7(5) of the Convention, the Court has written that

Article 7(5) of the Convention provides that anyone who is deprived of his liberty shall be brought before a court without delay, in order to avoid arbitrary and illegal detentions. Anyone deprived of his liberty without an order from a court is to be released or immediately brought before a judge⁷⁶.

89. The fourth Principle of the United Nations' Body of Principles for the Protection of All People Submitted to Any Form of Detention or Imprisonment states that

[a]ll form of detention or imprisonment and all measures that affect the human rights of the people submitted to any form of detention or imprisonment must be ordered by a judge or other authority, or remain subject to the effective control of a judge or another authority.

90. Both the Inter-American Court and the European Court of Human Rights have accorded special importance to the prompt judicial supervision of detentions. A person deprived of his freedom without any type of judicial supervision must be released or immediately brought before a judge⁷⁷.

91. The European Court of Human Rights has stated that although the word "immediately" should be interpreted according to the special characteristics of each case, no situation, however serious, grants the authorities the power to unduly prolong the period of detention, because this would violate Article 5(3) of the European Convention⁷⁸.

92. The terms of the guarantee established in Article 7(5) of the Convention are clear in indicating that the person arrested must be taken before a competent judge or judicial authority, pursuant to the principles of judicial control and procedural immediacy. This is essential for the protection of the right to personal liberty and to grant protection to other rights, such as life and personal integrity. The simple awareness of a judge that a

⁷⁵ I/A Court H.R., *Case of Juan Humberto Sánchez v. Honduras*. Judgment of June 7, 2003. Series C No. 99, para. 82.

⁷⁶ I/A Court H.R., *Case of the Gómez Paquiyauri Brothers v. Perú*. Judgment of July 8, 2004. Series C No. 110, para. 95.

⁷⁷ I/A Court H.R., *Case of Tibi v. Ecuador*. Judgment of September 7, 2004. Series C No. 114, para. 115; Eur. Court H.R., *Brogan and Others*, judgment of 29 November 1988, Series A no. 145-B, pars. 58-59, 61-62; and *Kurt v. Turkey*, No. 24276/94, pars. 122, 123 and 124, ECHR 1998-III.

⁷⁸ Eur. Court H.R., *Brogan and Others*. Judgment of 29 November 1988, Series A no. 145-B, pars. 58-59, 61-62.

person is detained does not satisfy this guarantee, since the detainee must appear personally and give his statement before the competent judge or authority⁷⁹.

93. Under Article 26 of the Haitian Constitution, a detainee cannot continue to be held unless a judge has ruled on the legality of the arrest and legally justified the detention within 48 hours.

94. The State failed to bring Mr. Neptune promptly before a judge or other officer authorized by law to exercise judicial power as required by Article 7(5) of the Convention. Rather, Mr. Neptune did not appear before a judge until 11 months after his arrest. The first occasion on which Mr. Neptune appeared before a judge concerning the incident for which he was arrested and detained was on 25 May 2005 when he appeared before the investigating magistrate in the La Scierie matter. According to the record, Mr. Neptune was not formally charged with any crimes until 14 September 2005 when the Investigating Chamber of the Court of First Instance of St. Marc issued an "ordonnance de clôture" in the Scierie case.

95. Furthermore, Article 7(5) of the American Convention states that the detainee "shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings". Two and a half years have passed, the judicial proceedings against Mr. Neptune are still on the initial stages, and even though he has been transferred to a medical facility, the ground for such decision was not the due application of Article's 7(5) principle but humanitarian reasons. This means that, at any given time, Haitian authorities could order that he return to preventive detention.

96. Finally, it has been recognized in the Inter-American system that the right to recourse before a competent court as provided for under Article 7(6) of the Convention is intrinsically linked to the ability of a person held in detention to exercise his or her right to judicial protection under Article 25 of the Convention for the protection of other fundamental rights.

97. These combined guarantees, seek to avoid arbitrariness and illegality in the application of preventive detention. The State "has both the responsibility of guaranteeing the rights of the individuals under their custody as well as providing the information and evidence related to what happens to the detainee"⁸⁰.

98. Article 25(1) of the Convention establishes, in broad terms, the obligation of States to afford all persons subject to their jurisdiction effective judicial recourse against acts that violate their fundamental rights. It also establishes that the guarantee set forth

⁷⁹ I/A Court H.R., *Case of Acosta-Calderón v. Ecuador*. Judgment of June 24, 2005. Series C No. 129, para. 78.

⁸⁰ I/A Court H.R., *Case of Tibi v. Ecuador*. Judgment of September 7, 2004. Series C No. 114, para. 129.

therein applies not only to the rights contained in the Convention, but also to those recognized in the Constitution or laws thereunder⁸¹.

99. In this connection, State parties to the Convention are bound to provide effective judicial remedies to victims of human rights violations; safeguarding the individual from the arbitrary exercise of public authority is the paramount objective of international protection of human rights.

100. The non-existence of effective domestic recourse renders persons defenceless. In this connection, the Court has declared that

[t]he inexistence of an effective recourse against the violation of the rights recognized by the Convention constitutes a transgression of the Convention by the State Party in which such a situation occurs⁸².

101. In this connection, as Court has previously held, the State's obligation to provide judicial recourse is not met by the mere existence of courts or formal procedures, or even by the possibility of resorting to the courts. Rather, the State has to adopt affirmative measures to guarantee that the recourses it provides through the justice system are "truly effective in establishing whether there has been a violation of human rights and in providing redress"⁸³.

102. As Mr. Neptune was not guaranteed his right to recourse and there is no evidence on the record indicating that Mr. Neptune was otherwise afforded access to a competent court or tribunal to exercise his right to judicial protection, the Commission considers that the State is responsible for violating Article 7(6) in connection with Article 25 of the Convention in relation to Mr. Neptune.

103. Summing up, subparagraphs 4, 5 and 6 of Article 7 of the American Convention establish positive obligations that impose specific or special requirements on the agents of the State and on third parties acting with their tolerance or consent⁸⁴. Accordingly, the Commission affirms that the State is responsible for violating Mr. Neptune's rights under Article 7(4), (5) and (6) and 25 of the American Convention, in conjunction with Article 1(1) of the Convention.

⁸¹ I/A Court H.R., *Case of Tibi v. Ecuador*, Judgment of September 7, 2004; para. 130; I/A Court H.R., *Case of Cantos v. Argentina*, Judgment of November 28, 2002; para. 52; I/A Court H.R., *Case of the Mayagna (Sumo) Awas Tingni Community*, Judgment of 31 August 2001. Series C No. 79; para. 111.

⁸² I/A Court H.R., *Case of the Mayagna (Sumo) Awas Tingni Community*, Judgment of 31 August 2001. Series C No. 79; para. 113; Ivcher; para. 136; I/A Court H.R., *Case of Yatama vs. Nicaragua*, Judgment of 23 June 2005. Series C No. 127; para. 168. In connection with the Commission's position see, for example, Case 11.233, Report No. 39/97, *Martín Javier Roca Casas* (Peru), 1998 Annual Report of the IACHR, paras. 98, 99.

⁸³ See, for example, I/A Court H.R., *Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and (8) American Convention on Human Rights)*, Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9. para. 24.

⁸⁴ I/A Court H.R., *Case of Juan Humberto Sánchez v. Honduras*, Judgment of June 7, 2003. Series C No. 99, para. 81.

000029

D. Right to a fair trial

104. Article 8 of the Convention reads, in part, as follows:

1. 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.
2. 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:
[...]
 - b. prior notification in detail to the accused of the charges against him;
 - c. adequate time and means for the preparation of his defense.

105. As interpreted by the Inter-American Court, Article 8 of the American Convention comprises the requirements that must be met in court proceedings in order to ensure true and proper judicial guarantees⁸⁵. The different rights set forth in Article 8 have the common purpose of ensuring a fair trial. The right to a fair trial constitutes one of the fundamental pillars of a democratic society.

106. On this point, the jurisprudence of the Inter-American Court has established that judicial guarantees are key elements of the general principle of a fair trial. This principle, equivalent in its content to "due legal process," covers the conditions that should be met to ensure an adequate defense of persons whose rights or obligations are under legal review⁸⁶.

107. The right to a hearing in particular is one of the core or key guarantees of the right to defense and to due process. The IACHR considers that the exercise of the right to defense is in and of itself fundamental as an essential guarantee for protection of persons against arbitrary measures and abuses of power. This right to defense includes a series of procedural and substantive aspects that make it possible to qualify the proceedings affecting the rights of a person as "due process." Among the minimum guarantees that an individual needs to ensure an effective right to defense, the Convention specifically protects the prior, detailed notification to the accused of the charges against him, and the right to have adequate time and means for the preparation of his defense.

108. The Inter-American Court has observed that the substantive description of the conduct alleged in a charge or indictment contains the factual details gathered in the indictment and constitutes an indispensable reference for the exercise of the right of defense of the accused and the consistent consideration of the trial court in the judgment. The Court has also stated in this respect that the accused has the right to know, through a clear, detailed and precise description, the facts that are alleged against him. According to

⁸⁵ I/A Court H.R., *Judicial Guarantees in States of Emergency* (Arts. 27.2, 25, and 8 of the American Convention on Human Rights), Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9. para. 27.

⁸⁶ I/A Court H.R., *Judicial Guarantees in States of Emergency* (Arts. 27.2, 25, and 8 of the American Convention on Human Rights), Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9. para. 28.

the Court, the legal qualification of these facts can be modified during the process by the prosecutor or the trial court without threatening the right of defense, when the same facts are maintained without change and the procedural guarantees provided for in the law are observed in order to raise the new qualification. Also according to the Court, the so-called "principle of coherence or correlation between the charge and sentence" implies that the sentence must be based solely upon the facts and circumstances contemplated in the indictment⁸⁷.

109. The European Court of Human Rights has similarly emphasized the importance of defining the criminal charges against an accused and stated with respect to the fair trial provisions of the European Convention on Human Rights that

the provisions of paragraph 3 (a) of Article 6 [of the European Convention on Human Rights] point to the need for special attention to be paid to the notification of the "accusation" to the defendant. Particulars of the offence play a crucial role in the criminal process, in that it is from the moment of their service that the suspect is formally put on notice of the factual and legal basis of the charges against him (see the *Kamasinski v. Austria* judgment of 19 December 1989, Series A no. 168, pp. 36-37, § 79). Article 6 § 3 (a) of the Convention affords the defendant the right to be informed not only of the cause of the accusation, that is to say the acts he is alleged to have committed and on which the accusation is based, but also the legal characterisation given to those acts. That information should, as the Commission rightly stated, be detailed.

52. The scope of the above provision must in particular be assessed in the light of the more general right to a fair hearing guaranteed by Article 6 § 1 of the Convention (see, *mutatis mutandis*, the following judgments: *Deweere v. Belgium* of 27 February 1980, Series A no. 35, pp. 30-31, § 56; *Artico v. Italy* of 13 May 1980, Series A no. 37, p. 15, § 32; *Goddi v. Italy* of 9 April 1984, Series A no. 76, p. 11, § 28; and *Colozza v. Italy* of 12 February 1985, Series A no. 89, p. 14, § 26). The Court considers that in criminal matters the provision of full, detailed information concerning the charges against a defendant, and consequently the legal characterisation that the court might adopt in the matter, is an essential prerequisite for ensuring that the proceedings are fair.

[...]

54. Lastly, as regards the complaint under Article 6 § 3 (b) of the Convention, the Court considers that sub-paragraphs (a) and (b) of Article 6 § 3 are connected and that the right to be informed of the nature and the cause of the accusation must be considered in the light of the accused's right to prepare his defence⁸⁸.

110. In light of the above jurisprudence, the Commission maintains that the factual and legal basis of the charges against Mr. Neptune should have been clear from the Order in accordance with the need for clear, detailed and precise notification mandated by the right to a fair trial generally as well as the specific requirements of Article 8(b) and (c) of the Convention.

⁸⁷ See I/A Court H.R., *Case of Fermín Ramírez v. Guatemala*, Judgment of June 20, 2005, Ser. C No. 126, para. 67.

⁸⁸ See Eur. Court H.R., *Pelissier and Sassi v. France*, Case 25444/94 (1999), paras. 51-52, 54.

111. The Order of September 14, 2005 issued against Mr. Neptune raises serious problems regarding Mr. Neptune's ability to effectively defend against those charges. Mr. Neptune is charged as a "complice", or accomplice, in connection with the following crimes:

- 1) du massacre de la Scierie survenu le 11 février 2004 ayant cause la mort a plusieurs personnes dont (the Scierie Massacre of February 11, 2004 that caused the deaths of several persons including): Brice Kener PIERRE-LOUIS; Francky DIMANCHE, Leroy JOSPEH, Kenold SAINT-GILLES, Stanley FORTUNE; Bosquet FAUSTIN, Jonas NELSON;
- 2) d'assassinat sur la personne de (the killings of) Yveto MORENCY, Anserme PETIT-FRERE, Wilguens PETIT-FRERE, Jean-Louis JOSEPH, Guernel JOSEPH, Marc-Antoine CIVIL, Florette SOLIDE, Fanes DORJEAN, Laureste GUILLAUME, Nixon FRANCOIS;
- 3) d'incendies de maisons au préjudice des époux (arson of houses to the detriment of spouses) Luc PAULTRE, Belton DEJEAN, Sointette DIEUJUSTE, Marie-Paule LACOURT, Midelais VAUDREUIL, Emmanuel ALCIME, Ginette ANECHARLES, Andriel LOUIS, Francky EDOUARD, Siantalien THELOT, Patrick JASMIN, André LAMARRE, edith AMBROISE, Bélèbe O. FRANCOIS, Céline MANASSE, Jérôme BERTHO, Taty RODRIGUE, Thérèse DUROGENE, Marcorelle PIERRE.
- 4) D'incendies de vehicules au prejudice de (arson of vehicles to the detriment of) Alain BELLEFLEUR, Wilson MATHURIN, Alcy LACROSSE, Ironce BLAISE;
- 5) De viol commis sur (rape committed upon) Kétia PAUL et Anne PAUL;
- 6) De coups et blessures sur les personnes de (assault and battery upon the persons of) Franck PHILIPPE, Carlo ESTIME.

112. With respect to these charges, the Commission contends that the terms are not sufficiently detailed in defining the circumstances of the crimes charged against Mr. Neptune or the mental and physical elements that are alleged to ground Mr. Neptune's responsibility for those crimes. In particular, the Order indicates that Mr. Neptune participated as an accomplice in specific and serious crimes, including murder, arson, rape, and assault and battery. However, dates, times and other particulars for each of these crimes are not specified, nor are the identities of the individuals who are alleged to have directly perpetrated these crimes. Further, the Order does not indicate with sufficient clarity the facts or circumstances that are alleged to link Mr. Neptune to these specific incidents so as to lead to his individual criminal responsibility. In particular, there is no indication that Mr. Neptune directly perpetrated 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. Rather, the order acknowledges that Mr. Neptune's presence and activities in St Marc were limited to visiting St. Marc by helicopter on February 9, 2004, meeting with local officials, including ex-Deputy of the Communal Council and the Mayor and Vice-Mayor of St. Marc, as well as members of Balé Wouzé⁸⁹ and seems to suggest in this respect that Mr. Neptune's responsibility as an accomplice to the crimes arose out of plans or arrangements made during Mr. Neptune's meetings on February 9, 2004⁹⁰.

⁸⁹ Ordonnance de cloture, 14 September 2005. Annex 7.

⁹⁰ Ordonnance de cloture, 14 September 2005. Annex 7.

113. The mental and physical elements necessary to establish Mr. Neptune's criminal responsibility based upon a complicity theory remain entirely unclear. For example, international criminal law standards governing accomplice liability require evidence that a defendant assisted or otherwise facilitated the commission of a criminal act with the knowledge and intent that his or her acts assisted the commission of the crime or that such assistance would be a possible and foreseeable consequence of his or her conduct⁹¹. In the Order in the present case, however, the Commission is unable to identify sufficient facts or other allegations that would substantiate elements of this nature in relation to Mr. Neptune or his connection to the specific crimes alleged in the Order or the individuals who actually perpetrated those crimes. Without more, the Commission fails to see how Mr. Neptune is expected to respond or otherwise defend himself against the suggestion that he was involved in the serious crimes charged against him.

114. In this regard, the Human Rights Committee has said in its General Comment 13, on Article 14(3)(a) of the Covenant on Civil and Political Rights that, "[t]he specific requirements of subparagraph 3 (a) may be met by stating the charge either orally or in writing, provided that the information indicates both the law and the alleged facts on which it is based"⁹² (emphasis added).

115. In its turn, the European Court on Human Rights has declared that

in criminal matters the provision of full, detailed information to the defendant concerning the charges against him – and consequently the legal characterization that the court might adopt in the matter – is an essential prerequisite for ensuring that the proceedings are fair⁹³.

116. Also of concern is the fact that the *ordonnance* transferred the matter to the Criminal Court of St. Marc to be heard without a jury. According to Article 50 of the Constitution of Haiti of 1987, alleged "crimes of blood" must be tried by a judge sitting with a jury and the Petitioners have claimed, and the State has not contested, that the crimes of murder alleged against Mr. Neptune fall within this category of crime. Accordingly, the disposition in the Order for trial by a judge sitting without a jury does not appear to be consistent with applicable provisions of the Constitution of Haiti, which is the supreme law of the land. In the event that Mr. Neptune's trial proceeds in these circumstances, it appears that he will not be tried by a competent tribunal previously established by Haitian law as mandated under Article 8(1) of the Convention.

117. Based upon the foregoing analysis, the Commission affirms that the deficiencies in the Order render the charges inconsistent with the fair trial protections under Article 8(1) and (2) of the Convention, including Mr. Neptune's rights under Article

⁹¹ See, e.g., *The Prosecutor v. Jean-Paul Akayesu*, Judgment, 2 September 1998, Case No. ICTR-96-4-T (International Criminal Tribunal for Rwanda, Trial Chamber I), para. 484; *The Prosecutor v. Dusko Tadic*, Opinion and Judgment, 7 May 1997, Case No. IT-94-1 (International Criminal Tribunal for the former Yugoslavia, Trial Chamber I), para. 674.

⁹² Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 14 (1994), para. 8.

⁹³ See Eur. Court H.R., *Sadak et al. v. Turkey*, Case 29903/96, Judgment of 17 July 2001, para. 49.

8(2)(b) to prior notification in detail of the charges against him and Article 8(2)(c) to adequate time and means for the preparation of his defence, all in conjunction with the State's obligations under Article 1(1) of the Convention.

E. Principle of Legality

118. With regard to Article 9 of the American Convention, the principle of legality prohibits states from prosecuting or punishing persons for acts or omissions that did not constitute criminal offenses, under applicable law, at the time they were committed. The human rights organs of the inter-American system have interpreted the principle of legality as requiring crimes to be defined in unambiguous terms⁹⁴. According to this requirement, crimes must be classified and described in precise and unambiguous language that narrowly defines the punishable offense. This in turn requires a clear definition of the criminalized conduct, establishing its elements and the factors that distinguish it from behaviors that are either not punishable offenses or are punishable by other penalties⁹⁵. As the Inter-American Court has observed, "[a]mbiguity in describing crimes creates doubts and the opportunity for abuse of power, particularly when it comes to ascertaining the criminal responsibility of individuals and punishing their criminal behavior with penalties that exact their toll on the things that are most precious, such as life and liberty"⁹⁶.

119. The Order of 14 September 2005 issued against Mr. Neptune charged him as accomplice of

du massacre de la Scierie survenu le 11 février 2004 ayant cause la mort a plusieurs personnes dont (the Scierie Massacre of February 11, 2004 that caused the deaths of several persons including): Brice Kener PIERRE-LOUIS; Francky DIMANCHE, Leroy JOSPEH, Kenold SAINT-GILLES, Stanley FORTUNE; Bosquet FAUSTIN, Jonas NELSON⁹⁷.

120. The order implicates Mr. Neptune in the perpetration of a "massacre" when such "crime" appears not to be included or defined under prevailing domestic criminal law⁹⁸. Absent clarification as to the manner in which Mr. Neptune is responsible for a "massacre" in respect of the seven people named under the first charge, it is not possible

⁹⁴ See, e.g., IACHR, Report on the Situation of Human Rights in Peru (2000) OEA/Ser.L/V/II.106, Doc. 59 rev., June 2, 2000, paras. 80, 168; I/A Court H.R., *Castillo Petruzzí et al. Case*, Judgment of May 30, 1999, Series C No. 52, para. 121.

⁹⁵ See, e.g., ; I/A Court H.R., *Case of Castillo Petruzzí et al. v. Perú*, Judgment of May 30, 1999, Series C No. 52, para. 121; I/A Court H.R., *Case of García Asto and Ramírez Rojas v. Perú*, Judgment of November 25, 2005, Ser. C No. 137, paras. 187-191.

⁹⁶ I/A Court H.R., *Case of Castillo Petruzzí et al. v. Perú*, Judgment of May 30, 1999, Series C No. 52, para. 121.

⁹⁷ Ordonnance de cloture, 14 September 2005. Annex 7.

⁹⁸ In this respect, in charging the crime of "massacre", the ordonnance cites Article 224 and following of the Haitian Penal Code. However, Articles 224 to 227 of the Penal Code, entitled "Association de malfaiteurs", or "association of malefactors", provide in part that "[t]oute association de malfaiteurs envers les personnes ou les propriétés, est un crime contre la paix publique" (all association of malefactors toward persons or property is a crime against public peace"), and do not refer to a crime of "massacre". Code Pénal d'Haïti, Arts. 224-227.

for Mr. Neptune to effectively defend these accusations, nor is it apparent that he is being accused of an act or omission that constituted a criminal offence under the applicable law at the time it was committed.

121. For these reasons, the Commission maintains that this deficiency in the Order renders the charge inconsistent with the principle of legality and therefore characterizes a violation of Article 9 of the American Convention, in conjunction with Article 1(1) thereof.

F. The State's noncompliance with the obligation established in Article 1(1) of the American Convention (Obligation to respect and ensure human rights)

122. Article 1(1) of the Convention provides that:

[t]he States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

123. The Court has held the following in this regard:

[a]rticle 1(1) is essential in determining whether a violation of the human rights recognized by the Convention can be imputed to a State Party. In effect, that Article charges the States Parties with the fundamental duty to respect and guarantee the rights recognized in the Convention. Any impairment of those rights which can be attributed under the rules of international law to the action or omission of any public authority constitutes an act imputable to the State, which assumes responsibility in the terms provided by the Convention.

[a]ccording to Article 1(1), any exercise of public power that violates the rights recognized by the Convention is illegal. Whenever a State organ, official or public entity violates one of those rights, this constitutes a failure of the duty to respect the rights and freedoms set forth in the Convention.

[t]his conclusion is independent of whether the organ or official has contravened provisions of internal law or overstepped the limits of his authority. Under international law a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate internal law⁹⁹.

124. It is important to recall that the general obligation undertaken with Article 1(1) applies to all Convention-protected rights. Therefore, "this provision is a general one, and its violation is always related to the violation of a provision that establishes a specific

⁹⁹ I/A Court H.R., *Case of the Gómez Paquiyauri Brothers v. Perú*, Judgment of July 8, 2004, Series C No. 110, para. 72, I/A Court H.R., *Case of The "19 Merchants" v. Colombia*, Judgment of July 5, 2004, Series C No. 109, para. 181; I/A Court H.R., *Case of Herrera Ulloa Case v. Costa Rica*, Judgment of July 2, 2004, Series C No. 107, para. 144.

human right"¹⁰⁰. In other words, if any right protected under the Convention is said to have been violated, then it follows that the general obligation to respect and ensure the Convention-protected rights has also been violated.

125. By its violation of the rights upheld in Articles 5, 7, 8, 9 and 25 of the American Convention, the Haitian State also violated its obligation to respect the rights and freedoms recognized therein and to ensure their free and full exercise to all persons subject to its jurisdiction¹⁰¹. Haiti has a duty to organize the governmental apparatus and, in general, all the structures through which public power is exercised so that they are capable of juridically ensuring the free and full enjoyment of human rights. The Court has therefore held that the foregoing

applies whether those responsible for the violations of those rights are members of the public authorities, private individuals, or groups¹⁰² since any impairment of those rights that can be attributed, under the rules of international law, to the act or omission of any public authority constitutes an act imputable to the State and which entails its responsibility as established in the Convention¹⁰³.

126. Based on these considerations, the Commission is petitioning the Court to conclude and declare that the Haitian State is responsible for noncompliance with its obligation under Article 1(1) of the American Convention, namely, to respect the rights recognized in the Convention and to ensure their free and full exercise to all persons subject to its jurisdiction.

VIII. REPARATIONS AND COSTS

127. Considering the facts alleged in this application and the consistent case-law of the Inter-American Court, the Commission submits to the Court its position on reparations and costs that should be borne by the Haitian State as a result of its responsibility for the violations committed to the detriment of Mr. Yvon Neptune.

¹⁰⁰ I/A Court H.R., *Case of Neira Alegría et al. v. Perú*. Judgment of January 19, 1995. Series C No. 20, para. 85.

¹⁰¹ I/A Court H.R., *Case of Juan Humberto Sánchez v. Honduras*. Judgment of June 7, 2003. Series C No. 99, para. 142; I/A Court H.R., *Case of Bámaca Velásquez Case v. Guatemala*. Judgment of November 25, 2000. Series C No. 70, para. 210; I/A Court H.R., *Case of Caballero-Delgado and Santana v. Colombia*. Judgment of December 8, 1995. Series C No. 22; and I/A Court H.R., *Case of Velásquez Rodríguez Case v. Honduras*. Judgment of July 29, 1988. Series C No. 4, para. 166 y 167.

¹⁰² I/A Court H.R., *Case of the "19 Merchants" v. Colombia*. Judgment of July 5, 2004. Series C No. 109, para. 183; I/A Court H.R., *Case of Juan Humberto Sánchez v. Honduras*. Judgment of June 7, 2003. Series C No. 99, para. 142; I/A Court H.R., *Case of Bámaca Velásquez v. Guatemala*. Judgment of November 25, 2000. Series C No. 70, para. 210; and I/A Court H.R., *Case of the "White Panel Truck" (Paniagua Morales et al.) v. Guatemala*. Judgment of March 8, 1998. Series C No. 37, paragraph 174.

¹⁰³ I/A Court H.R., *Case of Gómez Paquiyauri Brothers v. Perú*. Judgment of July 8, 2004. Series C No. 110, para. 71; I/A Court H.R., *Case of Juan Humberto Sánchez v. Honduras*. Judgment of June 7, 2003. Series C No. 99, para. 142; I/A Court H.R. *Case of "Five Pensioners" v. Perú*. Judgment of February 28, 2003. Series C No. 98, para. 163.

128. Without prejudice to the terms of Articles 23 and related provisions of the Court's Rules of Procedure, the Commission has taken into account, in specifying its reparations claims, the arguments offered in this connection by the petitioners.

A. Obligation to make reparations

129. In compliance with the basic principles of international law, a State's violation of international standards gives rise to its international responsibility and, consequently, its duty to make reparations. In this regard, the Court has expressly and repeatedly maintained¹⁰⁴ in its jurisprudence "that any violation of an international obligation that has produced damage entails the obligation to make adequate reparation"¹⁰⁵.

130. The aforesaid principle of international law has been incorporated into the American Convention, Article 63(1) of which states that when it is decided that a right or freedom protected by the Convention has been undermined, 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".

131. Article 63(1) of the American Convention establishes that:

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.

132. The Court has indicated that this Article is one of the basic principles of international law governing the responsibility of States.

[t]his provision codifies a rule of common law that is one of the fundamental principles of contemporary international law on State responsibility. When an unlawful act occurs that may be attributed to a State, the international responsibility of the latter is immediately engaged for the violation of an international law, with the resulting obligation to make reparation and to ensure that the consequences of the violation cease¹⁰⁶.

133. The Court has also ruled that "reparation of the damage caused by the violation of an international obligation requires, whenever possible, full restitution

¹⁰⁴ I/A Court H.R., *Case of Castillo-Páez v. Perú*. Reparations (art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998; para. 50. I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*. Judgment of June 21, 2002; para. 201.

¹⁰⁵ I/A Court H.R., *Case of Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela*. Judgment of July 5, 2006. Series C No. 150, para. 115; I/A Court H.R., *Case of Ximenes-Lopes v. Brasil*. Judgment of July 4, 2006. Series C No. 149, para. 207; I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Series C No. 148, para. 345.

¹⁰⁶ I/A Court H.R., *Case of Bámaca-Velásquez v. Guatemala*. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of February 22, 2002; para. 38; (Secretariat translation).

(*restitutio in integrum*), which entails re-establishing the situation as it previously stood." If this is not possible, "it falls to the international court to determine a series of measures to guarantee the violated rights and to repair the consequences arising from the violation and to order payment of reparations in compensation for the damage caused. The respondent State may not invoke provisions of domestic law in order to modify or fail to comply with the obligation of making reparation – all aspects of which (scope, nature, methods and determination of the beneficiaries) are regulated by international law"¹⁰⁷.

134. Reparations are the mechanism that takes the Court's decision beyond the sphere of moral condemnation. "The task of reparations is to turn the law into results, to halt violations, and to restore moral balance when an illicit act has taken place"¹⁰⁸. The true effectiveness of the law lies in the principle that the violation of a right makes a remedy necessary¹⁰⁹.

135. In the instant case, the Inter-American Commission has shown that the State's international responsibility was engaged by the violation of the rights to humane treatment, personal liberty, fair trial, principle of legality and judicial protection, in conjunction with non-compliance with the obligation to ensure and respect rights, given the failure to notify the victim of the charges against him; failure to bring him promptly before a judge or other officer authorized by law to exercise judicial power; failure to provide him with recourse to a competent court which could review the lawfulness of his detention; failure to guarantee Mr. Neptune's physical, mental and moral integrity and his right to be segregated from convicted prisoners; the conditions and treatment of detention when he was held at the National Penitentiary; failure to provide him adequate time and means for the preparation of his defense; and for having accused the victim of an act which is not typified as a crime under Haitian Law.

136. Therefore, the Commission asks the Court to conclude that the State has the international obligation of restoring, as far as possible, the affected rights and of making amends to Mr. Yvon Neptune for the human rights violations for which it is responsible.

137. Pursuant to the norms that grant autonomous representation to the injured party, the Commission will present the general criteria concerning redress. The Commission understands that the injured party will concretize its claims, in conformity with Article 63 of the Convention and the Rules of Procedure of the Court. Should the injured party not use that right, the Commission requests the Court to offer an opportunity to quantify and further qualify its claims in this relation.

¹⁰⁷ I/A Court H.R., *Case of Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela*. Judgment of July 5, 2006. Series C No. 150, para. 117; I/A Court H.R., *Case of Ximenes-Lopes v. Brasil*. Judgment of July 4, 2006. Series C No. 149, para. 209; I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Series C No. 148, para. 347.

¹⁰⁸ DINAH SHELTON, *REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW* (1999); (Secretariat translation).

¹⁰⁹ "Where there are unpunished violations or unrepaired damages, law enters into crisis: not only as an instrument for resolving a specific litigation, but as a method for resolving them all – in other words, for ensuring peace with justice." SERGIO GARCÍA RAMÍREZ, *REPARATIONS IN THE INTER-AMERICAN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS*, paper presented at the seminar "The inter-American system for the protection of human rights on the threshold of the 21st century," San José, Costa Rica (November 1999).

000038

B. Beneficiary

138. Article 63(1) of the American Convention demands the reparation of the consequences of a violation. Individuals having the right to said reparation are generally those who have been directly injured by the violation in question.

139. According to the nature of the present case, the beneficiary of the reparations that the Court may order as a result of the violations to human rights perpetrated by the State of Haiti is the victim himself.

C. Reparation measures

140. Some experts in international law argue that in situations such as the one being examined here, in order to remedy the situation of the victim the State must fulfill certain obligations: the obligation to investigate and report the facts that can be reliably established (truth); the obligation to prosecute and punish those responsible (justice); the obligation to make full reparations for the moral and pecuniary damages caused (reparation) and the obligation to oust from the ranks of the security forces anyone who is known to have committed, ordered and tolerated these abuses (creation of the upright forces of law and order that a democratic State should have). None of these obligations is an alternative for the others, nor is any single one of them optional; a responsible State must comply with each and every one to the extent that it is able and in good faith¹¹⁰.

141. The United Nations Special Rapporteur on the right to restitution, compensation and rehabilitation of gross violations of human rights and fundamental freedoms has classified the elements of the duty to repair into 4 different general categories: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition¹¹¹. In the opinion of the United Nations Special Rapporteur on the question of the impunity of perpetrators of human rights violations, these measures include: cessation of the existing violations; verification of the facts; broad, public dissemination of the truth about what happened; an official statement or court order restoring the honor, reputation and rights of the victim and of the persons having ties to him; an apology that includes a public acknowledgement of the facts and admission of responsibility; enforcement of judicial or administrative sanctions against those responsible for the violations; and prevention of new violations, among others.

142. The Court, for its part, has held that measures of reparation serve to remove or redress the consequences of the violations committed¹¹². Those measures include the

¹¹⁰ JUAN E. MÉNDEZ, EL DERECHO A LA VERDAD FRENTE A LAS GRAVES VIOLACIONES A LOS DERECHOS HUMANOS, Article published in *La Aplicación de los Tratados sobre Derechos Humanos por los Tribunales Locales*, CELS, 1997, p. 517.[translation ours].

¹¹¹ Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law, prepared by Mr. Theo van Boven pursuant to Sub-Commission [on Prevention of Discrimination and Protection of Minorities] decision 1995/117. Commission on Human Rights. E/CN.4/ sub.2/1996/17.

¹¹² I/A Court H.R., *Case of Carpio Nicolle et al. v. Guatemala*. Judgment of November 22, 2004. Series C No. 117, para. 89; I/A Court H.R., *Case of De la Cruz Flores v. Perú*. Judgment of November

various ways in which a State can compensate for the international responsibility it has incurred. Under international law, those measures may include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition¹¹³.

143. Furthermore, the United Nations Commission on Human Rights has determined that,

[i]n accordance with international law, States have the duty to adopt special measures, where necessary, to permit expeditious and fully effective reparations. Reparation shall render justice by removing or redressing the consequences of the wrongful acts and by preventing and deterring violations. Reparations shall be proportionate to the gravity of the violations and the resulting damage and shall include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition¹¹⁴.

144. Based on these considerations, the Inter-American Commission is petitioning the Court to order measures of full reparation that also serve to send a message condemning impunity. The problem of impunity requires establishment or reinforcement, where necessary, of the judicial and administrative mechanisms that enable victims to obtain reparation through *ex officio* procedures that are swift, just, inexpensive and accessible.

145. Based on the evidence presented in the present application and given the criteria the Court has established in its case law, the Inter-American Commission is submitting its conclusions and claims concerning the measures of reparation owed in the case of Mr. Neptune.

1. Measures of cessation and guarantees of non-repetition

146. The Commission considers that the State is obligated to take measure to ensure the cessation of the violations set forth and prevent a recurrence of the kind of human rights violations committed in the instant case. As a guarantee of non repetition, the Commission petitions the Court to order the State to adopt, as a matter of priority, the measures necessary to ensure that the right under national law and Article 7 of the

18, 2004. Series C No. 115, para. 141; I/A Court H.R., *Case of Gómez Paquiyauri Brothers v. Perú*. Judgment of July 8, 2004. Series C No. 110, para. 190.

¹¹³ See United Nations, Preliminary Report submitted by Theo Van Boven, Special Rapporteur, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Study concerning the Right to Restitution, Compensation, and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms. E/CN.4/Sub.1/1990/10, July 26, 1990. See also I/A Court H.R., *Case of Blake v. Guatemala*. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of January 22, 1999. Series C No. 48, para. 31; *Case of Suárez Rosero v. Ecuador*, Reparations (Art. 63(1) American Convention on Human Rights), Judgment of January 20, 1999. Series C No. 44, para. 41.

¹¹⁴ United Nations, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1996/17, The Administration of Justice and the Human Rights of Detainees, Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law, prepared by Mr. Theo van Boven pursuant to Sub-Commission decision 1995/117, May 24, 1996, para. 7.

American Convention of any person detained to be brought promptly before a judge or other officer authorized by law to exercise judicial power is given effect generally in Haiti.

147. Haiti has subjected Mr. Neptune and thousands of persons to a system that does not meet the minimum international standards for prison conditions. Therefore, as a form of reparation, the State must be required to modernize the Haitian prison system so that it conforms to the requirements of the Convention concerning humane treatment. The Commission is asking the Court to order the State to adopt all legislative, policy-related, administrative and economic measures necessary to relieve the problems in Haitian prisons resulting from overcrowding, inferior physical and sanitary infrastructure, inferior security systems and the lack of contingency plans.

2. Measures of satisfaction

148. Satisfaction has been defined as all measures that the perpetrator of a violation is required to adopt under international instruments or customary law with the purpose of acknowledging the commission of an illegal act¹¹⁵. Satisfaction takes place when three events occur, generally one after the other: apologies, or any other gesture showing acknowledgement of responsibility for the act in question; prosecution and punishment of the guilty; and the adoption of measures to prevent the harm from recurring¹¹⁶.

149. In the case at hand, given the nature of the violations incurred, the Commission respectfully requests of the Court that, once evidence on harm has been received, it determine the satisfaction measures that are in order.

D. Costs and expenses

150. The Court has stated that costs and expenses must be understood as being covered by the concept of reparations defined in Article 63(1) of the American Convention.

151. Since the steps taken by the victims and their attorneys and representatives to secure international justice imply economic disbursements and expenses that must be compensated when a conviction is handed down, the Court holds that the costs referred to in Article 55(1) of the Rules of Procedure also include the various necessary and reasonable expenses that victims incur in accessing the inter-American human rights protection system, and that these expenses should include the fees of those who provide legal assistance. Consequently, the Court must prudently assess the scope of costs and expenses, bearing in mind the particular circumstances of the case, the nature of the international jurisdiction for the protection of human rights, and the characteristics of the respective case, which are unique and could well differ from those of other national or international proceedings¹¹⁷.

¹¹⁵ BROWNLIE, STATE RESPONSIBILITY, Part 1, Clarendon Press, Oxford, 1983, p. 208.

¹¹⁶ BROWNLIE, STATE RESPONSIBILITY, Part 1, Clarendon Press, Oxford, 1983, p. 208.

¹¹⁷ I/A Court H.R., *Case of the "Panel Blanca" v. Guatemala*. (Paniagua-Morales et al.). Reparations (Art. 63(1) American Convention on Human Rights). Judgment of May 25, 2001; para. 212.

152. The Court has said that the concept of costs includes both those corresponding to the stage of access to justice at the national level and those that refer to justice at the international level before the two instances: the Commission and the Court¹¹⁸.

153. In the case at hand, the Commission asks the Court, once it has heard the petitioners, to order the State to pay the costs incurred at the national level in pursuing the judicial processes brought by the victims or their representatives in domestic venues, together with those incurred at the international level in pursuing this case before the Commission and before the Court, subject to the petitioners' submitting due evidence thereof.

IX. CONCLUSIONS

154. Based on the previous analysis, the Commission requests the Court to declare that Haiti is internationally responsible for

- a) failing to guarantee Mr. Neptune's right to respect for his physical, mental and moral integrity under Article 5(1) and (2) of the Convention and his right under Article 5(4) to be segregated from convicted prisoners, in conjunction with Article 1(1) of the Convention, based upon his conditions of detention and the treatment to which he was subjected when he was held in the National Penitentiary;
- b) violating Mr. Neptune's rights under Article 7(4) of the Convention to be promptly notified of the charge or charges against him, Article 7(5) of the Convention to be brought promptly before a judge or other officer authorized by law to exercise judicial power, and Article 7(6) of the Convention to recourse to a competent court to decide without delay on the lawfulness of his arrest or detention, together with his right to judicial protection under Article 25 of the Convention, in conjunction with Article 1(1) of the Convention, based upon the delay in bringing Mr. Neptune before a competent court or tribunal following his arrest; and
- c) violating Mr. Neptune's rights under Article 8(2)(b) of the Convention to prior notification in detail of the charges against him and Article 8(2)(c) of the Convention to adequate time and means for the preparation of his defense as well as his right to freedom from *ex post facto* laws under Article 9 of the Convention, in conjunction with Article 1(1) of the Convention, based upon deficiencies in the criminal charges ordered against him.

X. PETITION

155. As a result of the abovementioned, the Inter-American Commission requests that the Court order the State to

¹¹⁸ I/A Court H.R., *Case of the "Street Children" v. Guatemala. (Villagrán-Morales et al.)*. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of May 26, 2001; paras 107 and 108.

- a) grant an effective remedy to Mr. Neptune, which includes taking the measures necessary to ensure that any criminal charges pursued against him are consistent with the fair trial protections under Articles 8 and 9 of the American Convention;
- b) take the measures necessary to ensure that the right under national law and Article 7 of the American Convention of any person detained to be brought promptly before a judge or other officer authorized by law to exercise judicial power is given effect in Haiti;
- c) take the measures necessary to ensure that conditions of detention facilities in Haiti comply with the standards of humane treatment under Article 5 of the American Convention;
- d) take all legal, administrative and other measures necessary to avoid a recurrence of similar events in the future, in compliance with the duties to prevent the violation of and ensure the exercise of the human rights recognized in the American Convention; and
- e) pay the legal costs and expenses that the victim incurred in processing the case at the domestic level, and those incurred in bringing the present case to the inter-American system.

XI. EVIDENCE

156. The Inter-American Commission offers the following supporting evidence:

A. Documentary Evidence

Appendices

1. IACHR, Report No. 62/06 (Merits), Case 12.514, Yvon Neptune, Haiti, 20 July 2006.
2. IACHR, Report No. 64/05 (Admissibility), Case 12.514, *Yvon Neptune*, Haiti, 12 October 2005.
3. Case 12.514 File.

Annexes

1. Press clippings from news agencies.
 - 1.1 *Profil de Yvon Neptune, ancien premier ministre*, available at <http://www.haiti-reference.com/histoire/notables/neptune.html>.
 - 1.2 *Yvon Neptune démissionne mais assure les affaires courantes*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=4542>.
 - 1.3 *Le Front de résistance au contrôle des Gonaïves*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=4341>.

000043

- 1.4 *10 morts et une vingtaine de blessés lors de la prise des Gonaïves par des rebelles*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=4354>.
- 1.5 *14 tués dans les rangs de la police aux Gonaïves, tension à Saint-Marc*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=4360>.
- 1.6 *Gonaïves : 18 ans après les Duvalier, 3 ans après la seconde investiture d'Aristide*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=4367>.
- 1.7 *La ville de Saint-Marc aux mains d'une organisation proche de l'opposition*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=4361>.
- 1.8 *Bulletin special - Situation générale dans les grandes villes*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=4368>.
- 1.9 *La police entre à Saint-Marc*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=4377>.
- 1.10 *Saint-Marc : la police intervient dans la ville*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=4373>.
- 1.11 *La PNH tente de reprendre la ville côtière de Saint-Marc*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=4375>.
- 1.12 *Yvon Neptune, un os dans la gorge du Gouvernement de fact*, available at <http://www.hayti.net/tribune/index.php?mod=articles&ac=commentaires&id=155>.
- 1.13 *Deux à six morts à Saint-Marc dans des affrontements*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=4388>.
- 1.14 *Saint-Marc : 9 morts, de nombreux blessés et des maisons incendiées*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=4408>.
- 1.15 *Départ d'Aristide : objectif Palais national*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=4487>.
- 1.16 *Le nouveau Président haïtien se présente en rassembleur, sans étiquette politique*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=4501>.
- 1.17 *Mesures d'interdiction de départ à l'encontre de certains dirigeants lavalas*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=4625>.
- 1.18 *Arrestation de Neptune : l'ambassade des Etats-Unis réclame une enquête rapide*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=4998>.
- 1.19 *Yvon Neptune comparait à Saint-Marc*, available at <http://www.haitipressnetwork.com/presse/presseprint.cfm?pressID=951>.
- 1.20 *Comparution d'Yvon Neptune. Qui veut le garder en prison?*, available at <http://www.haitiprogres.com/2004/sm040721/bottom07-21.html>.
- 1.21 *Yvon Neptune comparait à St-Marc*, published in the daily newspaper *Le Nouvelliste*, on 24 April 2005.
- 1.22 *7 morts et environ 50 blessés au pénitencier national : les défenseurs des droits de l'homme exigent*, available at <http://www.haitipressnetwork.com/presse/index.cfm?pressID=849>.
- 1.23 *Yvon Neptune et Jocelerme Privert de nouveau derrière les barreaux*, available at <http://www.haitipressnetwork.com/newsprint.cfm?articleID=5989>.

- 1.24 *Au moins 17 détenus retournent au pénitencier national*, available at <http://www.haitipressnetwork.com/newsprint.cfm?articleID=5992>.
- 1.25 *l'ancien Premier ministre Neptune soigné dans un hôpital militaire*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=6089>.
- 1.26 *Yvon Neptune libéré par la justice et soigné dans un hôpital de l'ONU*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=3244>.
- 1.27 *Haiti-Justice: Massacre de la Scierie : L'ancien Premier Ministre Neptune officiellement inculpé*, available at <http://www.haitipressnetwork.com/news.cfm?articleID=6682>.
2. RNDDH, Communiqué de Presse, 2 mars 2004: *Massacre de la Scierie (Saint-Marc) : trois (3) présumés génocidaires sous les verrous*, available at http://www.rnddh.org/article.php3?id_article=147&var_recherche=neptune.
3. Order issued by the Court of First Instance of St. Marc, 25 March 2004.
4. *Forum non conveniens* motion, 9 July 2004.
5. Haitian Supreme Court decision on the *Forum non conveniens* motion, 17 January 2005.
6. Tribunal Civil de Port au Prince, Cabinet d'instruction, Interrogatoire d'Yvon Neptune, 16 juillet 2004.
7. Ordonnance de cloture, 14 septembre 2005.
8. Réquisitoire du Ministère Public sur l'audience du mardi 9 mai 2006, pres la Cour d'Appel des Gonaïves.
9. Declaration of Professor William P. Quigley dated 4 April 2005.
10. Declaration of Mario Joseph dated 13 April 2005.
11. IACHR, *HAÏTI: JUSTICE EN DEROUTE OU L'ÉTAT DE DROIT? DEFIS POUR HAÏTI ET LA COMMUNAUTE INTERNATIONALE*, OEA/Ser/L/V/II.123 /Doc. 6 rev. 1, 26 October 2005, available at <http://www.cidh.org/countryrep/HAITI%20FRENCH7X10%20FINAL.pdf>.
12. RESEAU NATIONAL DE DEFENSE DES DROITS HUMAINS, *Le RNDDH fait le point autour de la détention préventive prolongée et des conditions de détention des détenus*, October 2006, available at http://www.rnddh.org/IMG/pdf/La_Journee_internationale_des_prisonniers_-_octobre_2006.pdf.
13. IACHR, Press Release 1/04: LA CIDH SE DIT GRAVEMENT PRÉOCCUPÉE PAR LA VIOLENCE EN HAÏTI, 11 February 2004, available at <http://www.cidh.org/Comunicados/French/1.04.htm>.
14. IACHR, Press Release 19/05: IACHR EXPRIME SA PREOCCUPATION POUR LA SITUATION D'YVON NEPTUNE, 6 May 2005, available at <http://www.cidh.org/Comunicados/French/19.05.htm>.
15. Medical report signed by Jean Pierre Elie, MD, 21 July 2006.
16. RNDDH, *Les Conditions d'Incarcération en Haïti*, available at http://www.nchrhaiti.org/article.php3?id_article=110
17. Curriculum Vitae of Maître Henri Vieux, expert offered by the Commission.
18. Power of Attorney signed by Mr. Yvon Neptune.

157. The Commission requests the Court to request the State to provide certified copies of all documents related to the investigations and judicial process conducted at the domestic level in connection with this case, and an authenticated copy of the applicable laws and regulations.

B. Testimonial and Expert Evidence

Witnesses

158. The Commission asks the Court to summon the following witnesses:

Mr. Yvon Neptune. He will testify about his conditions of detention; the criminal proceedings against him and its effects; the hunger strikes undertaken by him; among other aspects relating to the purpose of this application.

Mr. Mario Joseph, Mr. Neptune's attorney for the domestic proceedings. He will testify about the criminal proceedings against Mr. Neptune and the prison conditions endured by the victim; among other aspects relating to the purpose of this application.

Ronald St.Jean, who visited the victim regularly while detained at the National Penitentiary. He will testify about the prison conditions endured by Mr. Neptune; among other aspects relating to the purpose of this application.

Expert witnesses

159. The Commission asks the Court to summon the following expert witness:

Maître Henri Vieux, Haitian Jurist, to present opinion generally on the Judicial System and the Criminal Process in Haiti, and particularly on the judicial procedure against Mr. Neptune; among other aspects relating to the purpose of this application¹¹⁹.

160. The Commission reserves the right to withdraw or replace one or more of the witnesses and/or expert witnesses listed above.

XII. DATA ON THE ORIGINAL PETITIONERS, THE VICTIM AND REPRESENTATIVES

161. In compliance with Article 33 of the Court's Rules of Procedure, the names of the original petitioners and the victim are listed below.

162. The victim is Mr. Yvon Neptune. The original petitioners in the case are Brian Concannon, Mario Joseph and the Hastings Human Rights Project for Haiti.

¹¹⁹ Maître Henri Vieux's CV is included as Annex 17.

000046

163. Mr. Neptune has appointed Mr. Brian Concannon Jr. of the Institute for Justice & Democracy in Haiti as his representative for the purposes set in Article 23(1) of the Rules of Procedure of the Court¹²⁰.

164. The representative has requested that notifications be made at the following address: Mr. Brian Concannon [REDACTED]
[REDACTED]
[REDACTED]

Washington, DC
14 December 2006

¹²⁰ Power of Attorney, dated 30 October 2006. Annex 19.