



# The Association of the Bar of the City of New York

Office of the President

## PRESIDENT

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*Monsieur le Premier Ministre et Monsieur le Ministre,*

The Association of the Bar of the City of New York (the “Association”) strongly condemns the decision by Haiti's highest court, the Cour de Cassation, to vacate the convictions of sixteen people found guilty in 2000 by a jury in the trial of those charged with responsibility for the Raboteau massacre of April 1994.<sup>i</sup> On May 3, 2005, the Cour de Cassation reversed a trial that had been pronounced fair to both the victims and the accused by international monitors. The Cour de Cassation’s recent order reverses its own former determination and violates Haitian Constitutional and international law. Moreover, the defendants, well represented in both the trial and appeal,<sup>ii</sup> at neither stage objected to having been tried by a jury, the issue on which the court reversed the trial.

The Association is an independent non-governmental organization of more than 22,000 lawyers, judges, law professors and government officials. Founded in 1870, the Association has a long history of dedication to human rights, notably through its Committee on International Human Rights, which investigates and reports on human rights conditions around the world.<sup>iii</sup> Noteworthy also is the expertise of the Committee on African Affairs in legal and policy issues relating to Africa and the African diaspora.

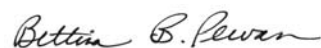
Raboteau is a neighborhood close to the ocean where democratic organization was always vigorous and effective. In 1991, when the Haitian army ousted former President Aristide, the people of Raboteau protested en masse. They also set an inspiring example during the years of the dictatorship. In retribution for this, between April 18 and 22, 1994, soldiers terrorized Raboteau, methodically ransacking and attacking the homes and families of members of the resistance.<sup>iv</sup>

The decision to send the Raboteau massacre case to a jury was made in 1999, a year prior to the trial. Both the Court of Appeals and the Cour de Cassation approved the determination, documented in an *ordonnance* that placed the 1987 Constitution above a conflicting 1928 law.<sup>v</sup> The defendants' lawyers never contested that determination. Apart from reversing its own prior determination, the Cour de Cassation's May 2005 order arguably invalidates Article 50 of Haiti's 1987 Constitution, which requires jury trials for "crimes de sang," generally defined in Haitian law and practice as murder, parricide, infanticide and poisoning.<sup>vi</sup>

Moreover, the Raboteau trial was broadcast on national television and radio and closely observed by both national and international monitors and pronounced to be fair to both the victims and the accused by, among others, the then-United Nations Independent Expert on Haiti, Adama Dieng, and the UN Support Mission to Haiti at the time.<sup>vii</sup> It is troubling that the Cour de Cassation made an apparently political decision to delay its decision on the appeal from early 2001 to March 2005. The Association is also troubled that the reversal of these convictions could encourage the rising lawlessness that has enveloped Haiti since the overthrow of the democratically elected President in February 2004. Indeed, those who support the reversal of these convictions have hailed as "freedom fighters" some of the most notorious criminals convicted in the Raboteau trial.

Finally, Haiti is a State Party to the International Covenant on Civil and Political Rights and the American Convention on Human Rights, which place on States Parties the obligation to ensure the rights to an effective remedy, to its determination by competent judicial, administrative or legislative authorities, and to the enforcement of such remedies.<sup>viii</sup> The politically motivated timing and unconstitutional manner of the vacating of the convictions of those previously and fairly held accountable for the Raboteau massacre is a step backwards for the observance of the rule of law in Haiti. The convictions ought to be reinstated in accordance with the Haitian Constitution and international law.

Respectfully,



Bettina B. Plevan

cc: Caribbean Community (CARICOM)  
Inter-American Commission on Human Rights  
Organization of American States  
United Nations Stabilization Mission in Haiti  
U.S. Secretary of State Condoleezza Rice

<sup>i</sup> See Decision of the Cour de Cassation, 2d Section, Appeal of Castera Cenafils, et al., May 3, 2005, available at <http://www.ijdh.org/pdf/Raboteau.pdf>.

<sup>ii</sup> David Stoelting, *Enforcement of International Criminal Law*, 34 INT'L L. 669, 671 (2000).

<sup>iii</sup> The reports of the Committee are available in full on the Association's website, <http://www.abcnny.org>.

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<sup>iv</sup> Si M Pa Rele, *Rapport de la Commission Nationale de Verite et de Justice* at 66 (1997).

<sup>v</sup> *Sur le Tribunal Compétent avec ou Assistance de Jury, Ordonnance* (signed by Jean Sénat Fleury, *Juge d'Instruction*), at 150-151, available at <http://www.ijdh.org/rabord.pdf>. See also John Donnelly, *Justice Delayed: Showdown Looms in Haiti*, THE BOSTON SUNDAY GLOBE, June 11, 2000, at A1. Article 3 of the 1928 law states that related offenses, even when committed by the same individual will be tried without a jury. *Haiti: Obliterating justice, overturning of sentences for Raboteau massacre by Supreme Court is a huge step backwards*, Press Release, Amnesty International note 1 (May 26, 2005).

<sup>vi</sup> Article 296 of the Constitution of the Republic of Haiti states that “All Codes of Law or Handbooks of Justice, all laws, all decree laws and all decrees and orders (Arrêtés) currently in force shall be maintained in all matters *not contrary* to this Constitution.” (Emphasis added.) See GIBBERT H. FLANTZ & ALBERT P. BLAUSTEIN (EDS.), *CONSTITUTIONS OF THE COUNTRIES OF THE WORLD* (1990), cited in *Haiti: Obliterating justice, overturning of sentences for Raboteau massacre by Supreme Court is a huge step backwards*, Press Release, Amnesty International note 2 (May 26, 2005).

<sup>vii</sup> U.N. Press Release, *Raboteau Verdict in Haiti A Landmark in Fight Against Impunity; But Case Not Yet Finished, Says UN Independent Expert* (Nov. 20, 2000), available at <http://www.unog.ch/news2/documents/newsen/hr00090e.html>; see also Press Release, United Nations Support Mission to Haiti (MICAH) (Nov. 20, 2000); see generally *U.S. Official Says Meaningful Reform in Haiti Will Generate More Aid; Cites good governance as a prerequisite for long-term prosperity*, U.S. State Department (May 23, 2002).

<sup>viii</sup> International Covenant on Civil and Political Rights, Art. 2(3), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976; American Convention on Human Rights, Arts. 2 and 25, OAS Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978.