

In the Matter of XX YY

Application for Asylum, Withholding
Of Removal and Convention Against
Torture

**SUPPLEMENTAL AFFIDAVIT OF BRIAN CONCANNON JR., ESQ. IN
SUPPORT OF XX YY'S APPLICATION FOR ASYLUM, WITHHOLDING OF
REMOVAL, AND CONVENTION AGAINST TORTURE**

I, **Brian E. Concannon Jr., Esq.**, hereby declare under penalty of perjury that the following statements are true and correct to the best of my knowledge.

This affidavit will supplement the affidavit I signed in September, 2004, to incorporate developments in Haiti from September 2004 through September 2007.

1. I am a member of the Massachusetts Bar, and Director of the Institute for Justice & Democracy in Haiti (IJDH). IJDH documents human rights violations in Haiti, and pursues human rights cases in Haitian and international courts. I lived and worked in Haiti from May 1995 until February 2004. In 1995 and 1996, I worked for the United Nations/Organization of American States Civilian Mission to Haiti as a Human Rights Observer. From 1996 until 2004, I co-managed the *Bureau des Avocats Internationaux* (International Lawyers Office, or "BAI"). The BAI, which received most of its support from Haiti's elected governments, helped victims and the justice system prosecute human rights cases. The BAI's work, especially the trial of the Raboteau Massacre in the fall of 2000, was internationally recognized as a landmark in the fight against impunity. I held a Brandeis International Fellowship in Human Rights, Humanitarian Intervention and International Law from 2001 to 2003, and a Wasserstein Public Interest Law Fellowship at Harvard Law School in 2005-2006. I am fluent in French and Haitian Creole.
2. I continue to follow the human rights situation in Haiti through my work at IJDH. I am in almost daily telephone or email contact with colleagues and collaborators in Haiti, and regularly read news reports and human rights reports about Haiti. I last visited Haiti from September 19-26, 2007. During that trip I met with human rights lawyers, victims of human rights violations, grassroots activists, *Lavalas* supporters, former high government officials and current government officials to assess the current human rights conditions in the country.
3. I am regularly consulted regarding human rights and legal procedure in Haiti by U.S. Government officials, human rights organizations and journalists. I have provided training to U.S. immigration officials, international judges and law students. I write

frequently on human rights and law in Haiti, including book chapters and articles in academic journals and newspapers. I speak frequently about human rights in Haiti at law schools, universities and conferences, and am regularly interviewed for radio programs throughout North America and the Caribbean.

4. I do not recall having ever met XX YY, but I have read his affidavit in this matter, and I am also familiar with the broader context of Mr. YY's claim for asylum, including the return of former soldiers and dismissed police officers to positions of power in Haiti, the systematic attacks against perceived *Lavalas* supporters, and current security and human rights conditions in the country.
5. Following my previous affidavit in September 2004, the Interim Government of Haiti (IGH) unleashed another wave of repression against political dissidents, especially supporters of the *Lavalas* movement. The repression included widespread killings by police and allied paramilitary forces. A mortality study published in the British Medical Journal *The Lancet* in August 2006 reported that over 4,000 people were killed in political violence in Port-au-Prince alone between March 2004, when the IGH assumed power, and December 2005. The study concluded that approximately 22 % of the perpetrators of murder were police or other government actors, and 26 % were former soldiers or members of other anti-*Lavalas* groups.
6. Police under the IGH opened fire at several demonstrations, especially in the first six months of 2005. Bel Air, a crowded poor neighborhood that is considered one of the *Lavalas* movement's strongest bastions, was the most frequent site of both major demonstrations and violent police response to those demonstrations. Several police attacks on demonstrations led to deaths among the protestors. As far as I know not a single police officer has been disciplined or prosecuted for any of these killings.
7. The IGH also systematically arrested political opponents, especially *Lavalas* supporters. Former Prime Minister Yvon Neptune, arrested in June 2004, was not released until August 2006, several months after the IGH left office. Rev. Gerard Jean-Juste, a prominent activist priest, spent over seven months in jail in 2004, 2005 and 2006 on trumped-up charges. He was eventually released in order to obtain treatment for leukemia, but the case against him has still not been dismissed, even though the prosecution conceded that the charges against him are without merit at a hearing in April 2007.
8. A police officer with whom I worked in Haiti who, like Mr. YY was known as a *Lavalas* supporter, tried to remain in Haiti and on the force following the February 2004 coup d'état. He was arrested in late 2004, and held for 159 days without any legal proceedings whatsoever before being released. He was then forced to flee Haiti.
9. The insurgents who helped topple the elected government in 2004 were tolerated by the IGH. None have been pursued for the crimes they committed during the insurgency. To the contrary, many were rewarded in 2004 and 2005 when then Minister of the Interior, former General Herard Abraham, systematically

- integrated insurgents and other former soldiers into the police force. This integration bypassed the normal channels for police recruitment and admission. As a result, the police force became militarized, and a large segment of it is not completely answerable to the official police hierarchy.
10. Neither the police nor the judiciary effectively investigate or prosecute political killings. Although the IGH made arrests in some high profile incidents, in most cases those arrests were illegal, and no evidence has been presented against the accused. In the one case where an adequate investigation was done- the August 2005 football game massacre- the police officers implicated in the killings were released. As a result, the justice system provides almost no deterrence to would-be political killers.
 11. The Court system itself acted as an instrument of repression instead of a protection against it under the IGH. Judges routinely held political dissidents in jail in violation of their procedural rights, and granted special treatment to allies of the government. In some cases, the judges formally observed the procedural rules protecting defendants, but held dissidents for months despite a complete absence of evidence against them.
 12. Judges who did not comply with the IGH's dictates were forced out and replaced with compliant successors. The most notorious example happened in December, 2005, when the Prime Minister fired five Supreme Court judges who had issued an unfavorable ruling, and replaced them with his own candidates. Such interference with judicial independence is as unconstitutional in Haiti as it would be in the U.S.
 13. The IGH has left Haiti, and the country is now in the process of a democratic transition. In February 2006, elections were held without widespread violence. Haiti has enjoyed a democratic legislature and executive branch since May 2006. The new government quickly ended the practice of systematically arresting or killing political opponents, and political violence decreased. But several dangers for *Lavalas* activists have survived the democratic transition.
 14. **The first remaining danger** for *Lavalas* supporters is the fact that the perpetrators of past anti-*Lavalas* persecution remain at large. The IGH or the rebels freed every person imprisoned under the democratic governments in connection with human rights violations in February and March 2004. The insurgency's leaders- including those were themselves implicated in human rights violations against the *Lavalas* movement during the 1991-1994 *de facto* dictatorship- are at large. This includes Jodel Chamblain, the second in command of the *FRAPH* death squad, and Jean Pierre, alias Tatoune, a local *FRAPH* leader in Gonaives before 1994. Both had been convicted for murder in the Raboteau massacre trial in 2000. Mr. Chamblain even ran for the House of Deputies in 2006.

15. At least two people with credible accusations of large-scale persecution against them ran as Presidential candidates in the February 2006 elections, including Guy Philippe. The U.S. Drug Enforcement Administration attempted to arrest Mr. Philippe in Haiti in July 2007, but he escaped and is still at large. Franck Romain, a former mayor of Port-au-Prince, spent 16 years in exile fleeing formal charges that he masterminded the 1988 “St. Jean Bosco Massacre.” St. Jean Bosco was the church of Jean-Bertrand Aristide at the time, and the focal point for organizing what subsequently became the *Lavalas* movement. On September 11, 1988, thugs reportedly under the control of Mr. Romain attacked the church during a mass celebrated by Fr. Aristide, killing many of his supporters and destroying the church.
16. The former insurgents were never systematically disarmed, so they retain their ability to strike at their enemies. Although the UN Mission proposed several disarmament programs, none of them led to significant disarmament of the former insurgents.
17. The thugs that persecuted *Lavalas* supporters during the IGH’s reign have not been disarmed or pursued by the police for their crimes. In many cases, they continue to intimidate, and even kill *Lavalas* supporters and activists.
18. On April 14, 2007, Johnson Edouard, a *Lavalas* grassroots leader and journalist, was killed by gunmen who entered his house at night. The prime suspect in the case is Wilfort Ferdinand, a.k.a “Ti Will,” a leader in the 2004 insurgency, who was arrested in May. On September 21, 2006, human rights activist Esterne Bruner was assassinated near his home in the Grande Ravine section of Port-au-Prince, in what is widely considered a political killing.
19. **The second remaining danger** for *Lavalas* supporters is the unreliability of the police force, because of former insurgents illegally integrated into the force under the IGH, and a high level of criminality within the force. The constitutional authorities have not been willing or able to purge the former soldiers that the IGH illegally integrated into police ranks. The police force is sharply reduced already while common crime is very high, so the government is reluctant to take more police, even brutal or crooked ones, off the streets.
20. Police have also been implicated in common crime. The Police force’s Director General, Mario Andresol, publicly conceded that a third of his officers might have been involved in criminal activities. The head of the Judicial Police, Haiti’s main investigative unit, Michael Lucius, was fired and arrested in November 2006, for his involvement in kidnappings. He was released in December, 2007, against the protest of the judge who issued the original arrest order.
21. **The third remaining danger** for *Lavalas* supporters is the justice system, which still contains the judges nominated illegally by the IGH. These judges have demonstrated a willingness to continue persecuting *Lavalas* activists. Although

dozens of *Lavalas* political prisoners have been released since the return of democracy, dozens, and maybe a hundred or more, remain in prison.

22. Although the judiciary has kept political prisoners in jail, it has made no effort to recapture any of the people convicted of persecuting *Lavalas* supporters during the *de facto* dictatorship or other period. Jean-Tatoune was convicted *in absentia* in the Raboteau case, and although he has the right to a new trial, under Haitian law he should be arrested and held until either acquitted at trial or given pre-trial release. Three members of the 1991-1994 *de facto* High Command- Col. Carl Dorelien, Col. Hebert Valmond and Major General Jean-Claude Duperval- were all likewise convicted at the Raboteau trial, and all three were deported from the U.S. for their human rights violations. They escaped from jail in March 2004, and although they are believed to be still in Haiti, none have been arrested.
23. **The fourth remaining danger** for *Lavalas* supporters is Haiti's politics, which continue to be hotly contested, unpredictable, and potentially dangerous. The Constitution required elections for 1/3 of the Senate by the end of 2007, but as of this date, the Provisional Electoral Council has not yet set a date. The delays are the result of fundamental disagreements within the council and within Haitian politics. The council is "provisional" because ten years after ratification of Haiti's 1987 Constitution, the steps to choose a Permanent Electoral Council have not been taken.
24. On August 12, 2007, Lovinsky Pierre-Antoine, a prominent *Lavalas* activist and potential Senate candidate in the upcoming elections, disappeared. Mr. Pierre-Antoine was a particularly prominent opponent of the return of the Haitian armed forces. The next day, his car was found abandoned, and the day after that his family received a ransom demand. Although the family started negotiations, kidnapers cut off contact on August 17. There have been no communications from the kidnapers or signs of Mr. Pierre-Antoine since then. The circumstances of the disappearance, Mr. Pierre-Antoine's profile and the course of the "negotiations" indicate that Mr. Pierre-Antoine was taken because of his political activities, and is most likely related to the upcoming elections.
25. Several individuals and organizations have complained that the police are not vigorously investigating Mr. Pierre-Antoine's disappearance, including Amnesty International, the UN Peacekeeping Force, and Mr. Pierre-Antoine's friends and family.
26. Wilson Mesilien, who has replaced Mr. Pierre-Antoine at the head of their grassroots organization, has been receiving threats that have forced him into hiding. Amnesty International has issued two urgent action alerts for his protection, including one on January 9, 2008. Amnesty also notes that the government has not heeded its calls to provide Mr. Mesilien with protection.

27. On October 28, 2007, Maryse Narcisse, one of the top *Lavalas* officials in Haiti, was kidnapped on her way home from a political meeting. She was released a few days later, reportedly after a ransom was paid.
28. In early November 2007, Guy Delva, a Haitian journalist who is a correspondent for Reuters and the BBC, fled the country following a series of death threats. It has been reported that the threats were the result of his revelations that Senator Boulos, one of the leaders of the anti-*Lavalas* movement in Haiti, was ineligible for the legislature because he has a foreign (U.S.) passport.
29. It is likely that politics in Haiti will become even more hotly contested in the coming months and years, due to the anticipated return of former President Jean-Bertrand Aristide, currently in exile in South Africa. President Aristide is a polarizing figure: his supporters will go to great lengths to support him, while his opponents will go to great lengths to oppose him. He has announced a general intention to return to Haiti when the conditions are right, and he has the constitutional right to return at will. To date, President Aristide has not announced a date for his return, in deference to President Preval's wishes. But as President Aristide's supporters become increasingly discontent with current government policies, there is an increasing mobilization for his return. If he returns, or if it appears likely that he will return, opponents of *Lavalas* may try to block his return through violence and intimidation of *Lavalas* supporters.
30. **The fifth remaining danger** for *Lavalas* supporters is the precedent of 2004- where political violence overthrew an elected government. This precedent will encourage those left out of the government to seek power through violence. If they do, they will likely start by attacking people perceived as *Lavalas* supporters.
31. Given these five risk factors, the background of attacks on journalists and *Lavalas* supporters in Haiti, and the attacks and threats of attacks against him described in his affidavit, it is my professional opinion that XX YY has a well-founded fear of persecution on account of his political opinions and his membership in three different groups that are targets of repression in Haiti.

I declare under penalty of perjury that the foregoing is true and correct. Executed on _____ in _____.