

DECLARATION OF BRIAN E. CONCANNON, JR., ESQ.

I, Brian E. Concannon Jr., Esq., declare as follows:

1. I am the Director of the Institute for Justice & Democracy in Haiti (IJDH) and a member of the Massachusetts Bar. IJDH documents human rights violations in Haiti, and pursues human rights cases in Haitian and international courts.

2. 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 to February 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.

3. From 2001 to 2003, I held a Brandeis International Fellowship in Human Rights, Humanitarian Intervention and International Law, and I was a 2005-2006 Wasserstein Public Interest Law Fellow at Harvard Law School. I am fluent in French and Haitian Creole.

4. Through my work with the United Nations and the BAI in Haiti, I became intimately familiar with Haiti’s laws and Constitution and the capacity of its police force and courts to enforce the laws and to respond to large-scale violations of human rights. I have authored or co-authored several reports and analyses on the current human rights situation in Haiti. I last visited the country in March 2007, and remain in daily email and telephone contact with colleagues in Haiti, especially the BAI staff in Port-au-Prince.

5. I am regularly consulted by U.S. Government officials, human rights organizations and journalists regarding human rights and legal procedure in Haiti. 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 the world.

6. One of my responsibilities with the United Nations was monitoring the Haitian justice system's ability to prosecute cases of large-scale human rights violations from the 1991-1994 *de facto* dictatorship. I regularly met with judges, lawyers, prosecutors and victims, and observed trials and pre-trial proceedings.

7. The BAI's principal mission was to help advance the prosecution of large-scale human rights violations from the *de facto* dictatorship. At the BAI, I worked on a daily basis with Haitian lawyers and victims of human rights violations, and regularly with Haitian police, prosecutors, judges, and top officials, including Presidents and the Ministers of Justice. I also worked regularly with officials from the United Nations and the United States government.

8. The BAI felt it was important in its cases to pursue the chain of command up to the leaders who might not have been at the scene of the crimes, but who ordered, incited or otherwise supported the attacks against unarmed civilians. This included the military officers at the top of the army chain of command, but also the paramilitary leaders, such as Emmanuel Constant, the founder and leader of FRAPH (Revolutionary Front for the Advancement of the Haitian People).

9. We pursued the top leaders through the courts, and our work helped obtain *in absentia* convictions for the entire military High Command, as well as for Mr. Constant and his second-in-command at FRAPH, Louis Jodel Chamblain.

10. The top leaders were all convicted *in absentia* because they had fled Haiti, but the BAI worked to bring them back to face justice. Many of them, including Mr. Constant, were in the U.S. at the time we started pursuing them in 1996. I personally worked with many officials of the U.S. government, in Haiti, Florida and Washington, to help obtain these men's return to Haiti. This collaboration bore significant fruit: three members of the High Command who had been convicted *in absentia* in our cases, Colonel Carl Dorelien, Colonel Hebert Valmond and Major General Jean-Claude Duperval, were deported to Haiti between 2001 and 2003. Major-General Duperval is, to my knowledge, the highest-ranked military officer ever deported from the United States to face human rights charges.

11. We pursued the return of these men because we felt that that the Haitian justice system could effectively and fairly prosecute them, and could provide adequate safety in detention. The Raboteau trial, which received international recognition as fair to defendants and victims alike, demonstrated the courts' ability to try those cases. The safe detention of the three High Command members, until their escape in 2004, showed that the penal system could safely hold high-level prisoners.

12. We tried just as hard, and for a longer time, to obtain Mr. Constant's return to Haiti. At first, we thought his case would be the easiest. Mr. Constant was ordered deported in 1996, in part on the basis of an affidavit of Secretary of State Warren

Christopher that Mr. Constant's presence in the U.S. was inimical to U.S. interests. Human rights groups and the media frequently called for his deportation.

13. But we never succeeded in obtaining Mr. Constant's return. U.S. officials provided varying explanations for failing to execute the deportation order, but the most frequent justification was that they felt that Mr. Constant's safety would be at risk if he were returned to Haiti.

14. I understand that the U.S. government has reported that the Haitian government has said that it will prosecute Mr. Constant if he were returned to Haiti. I believe that the current Haitian government has a commitment to the rule of law- the current President, and many of his top current judicial officials were instrumental in the success of the 2000 Raboteau Massacre trial- and expect that the government would work hard to ensure that Mr. Constant's rights are respected throughout the process. But I fear, for the reasons outlined below, that the Haitian justice system may not be able to effectively prosecute Mr. Constant at this time.

15. I believe that the interests of justice, in both Haiti and the U.S., would be best served if Mr. Constant served the maximum possible sentence in the United States, before being deported to Haiti for judicial proceedings. Serving time in the U.S. will guarantee that Mr. Constant does in fact pay a price for his crimes, but it will also provide the Haitian justice system more opportunity to recover from the compromises made by the unconstitutional Interim Government of Haiti (IGH), and strengthen its capabilities to the point where it will be able to once again handle a case of this magnitude.

HAITI'S LEGACY OF DICTATORSHIP HAS LED TO A WEAK JUDICIARY

16. The Haitian justice system has long been plagued by widespread corruption, a legacy of over two centuries of dictatorships in Haiti.

17. The system's transition to a more functional and democratic system during Haiti's democratic interlude (1994-2004) was slow and frustrating, but also steady.

18. But following the forced departure of Haiti's elected government in February 2004, and the installation of the Interim Government of Haiti (IGH), the justice system went into a sharp decline. Many of the newly trained and competent judges were pushed out, illegally, and replaced by judges willing to follow the dictates of the executive branch. Although democracy was restored to Haiti in May, 2006, one year ago, with the inauguration of an elected President and legislature, the justice system has not recovered from this decline.

THE JUDICIAL SYSTEM HAS NOT RECOVERED FROM THE INTERIM GOVERNMENT OF HAITI

19. The unconstitutional IGH that governed Haiti between March 2004 and May 2006 regularly pushed out judges willing to uphold the rule of law and replaced them with IGH supporters. The most spectacular example of this interference with the independence of the judiciary, in December 2005, has been dubbed "the Friday Night Massacre." The Prime Minister fired and replaced half of the Supreme Court after the Court ruled against the IGH in a controversial case. Both the firings and the executive's unilateral naming of replacements were as unconstitutional in Haiti as they would have been in the United States.

20. There have been other incidents as well, especially at the trial court level. The investigating magistrate who wrote the *ordonnance* –analogous to an indictment in the U.S.- setting forth the charges against Mr. Constant in the Raboteau Massacre case was pushed off the bench by the Minister of Justice in late 2004.

21. Most of those replacement judges are still on the bench.

22. The Raboteau case is a strong example of the politicization of the justice system under the IGH. There were two types of convictions at the trial: 1) the sixteen defendants who were in the courtroom, who, after a full defense, were convicted by a jury and sentenced by the judge; and 2) thirty-seven defendants convicted and sentenced *in absentia*, by a judge. *In absentia* defendants do not have the right to present a defense, but are allowed a re-trial, with no presumptions from the *in absentia* conviction, if they return to Haiti.

23. The in-court convicts in the Raboteau case appealed shortly after the November 2000 jury decision. At the time, the prosecutors and lawyers for the victims felt that the grounds they advanced were weak. But as time passed without the *Cour de Cassation*, Haiti's supreme court, deciding the appeal, we became worried. We initially feared that the convicts' rights were being denied, but after our repeated, unsuccessful efforts to convince the court to hear the appeal, we began to fear that the appeals were being delayed until the next coup d'etat, when the convicts could escape.

24. Those fears now appear well-justified. The *Cour de Cassation* never heard the appeal for three years. After the February 29 coup d'etat, the Court's President was installed as President of the country. By March 1, 2004, every person in jail for Raboteau had escaped. Subsequently, the IGH's judiciary dismantled the Raboteau decision.

25. First the *Cour de Cassation* overturned the convictions of the in-court convicts, on the grounds that the case had been improperly submitted to a jury. The defendants had not even cited the jury issue as a ground for their appeal, and the *Cour de Cassation* had affirmed the document setting a jury trial when it decided a pre-trial appeal in 2000. Second, even though the *in absentia* defendants had not been before the jury, some judicial officials used the reversal of the jury verdict as an excuse to exonerate *in absentia* convicts, including Jodel Chamblain of FRAPH and Carl Dorélien, a colonel and member of the military dictatorship.

EMMANUEL CONSTANT’S CO-DEFENDANTS ARE NOT BEING PURSUED

26. Mr. Constant’s co-defendants in the Raboteau trial are in a similar legal situation, and are not being pursued by authorities in Haiti. Colonels Dorelien and Valmond and Major General Duperval all remained in prison under the elected governments, from their deportation from the U.S. until the February 2004 coup d’etat. They were offered the right that Haitian law guarantees to all *in absentia* defendants to a new trial with no presumptions of guilt. They declined to exercise that right, preferring to stay in prison. I feared at the time that they were waiting for a coup d’etat, which would install a government willing to let them out and annul the judgment.

27. In February 2004, Haiti did have a coup d’etat, and the three escaped prison, along with the 10-12 remaining defendants convicted in person in the Raboteau massacre. None have been returned to prison to my knowledge.

28. Louis Jodel Chamblain, the second in command of FRAPH after Mr. Constant, was a leader in the attacks that led to the February 2004 coup d’etat. Mr.

Chamblain, as well, is out of prison. The IGH, under pressure from human rights groups to prosecute Chamblain, arrested Chamblain in 2004, and held a legal proceeding that was widely considered a sham and resulted in his exoneration. Mr. Chamblain even ran for the national legislature in the February 2006 elections.

29. I am not aware of any efforts to pursue any of the Raboteau defendants, either those convicted *in absentia* or those convicted in court by a jury.

30. Because the Haitian justice system is weak and compromised, and still has a long way to go to successfully transition from the compromises to its integrity and independence imposed by the IGH, I believe that the system would struggle to effectively prosecute any high profile complex human rights case right now. The fact that other people convicted, like Mr. Constant, *in absentia* in the Raboteau massacre case have not been pursued by the justice system makes me believe it is particularly unlikely that Mr. Constant will receive the kind of trial that his victims deserve.

31. I think it is vitally important, for both the U.S. and Haiti, that Mr. Constant be returned to Haiti to face justice. But I believe an effective prosecution will be much more likely if the Haitian justice system is given time to rebuild itself. I fear that if Mr. Constant is deported to Haiti right now, he will continue to evade justice in the same manner as his co-defendants and colleagues from the military dictatorship.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on this 18th day of May, 2007, in Joseph, Oregon.

Brian E. Concannon Jr., Esq.