

COUNTY COURT: KINGS COUNTY

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 THE PEOPLE OF THE STATE OF NEW YORK :  
 :  
 -against- :  
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 EMMANUEL CONSTANT :  
 :  
 Defendant. :  
 :  
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Attorney General  
 Indictment No.  
 8206 2006

**DECLARATION OF MARIO JOSEPH**

## DECLARATION OF MARIO JOSEPH

I, Mario Joseph, declare as follows:

1. I have personal knowledge of the matters set forth in this declaration. If called upon to do so, I could and would testify competently thereto.
2. I am a licensed attorney practicing in Haiti, and a member of the bars of St. Marc and Port-au-Prince. I have extensive experience in civil litigation in Haitian courts. I have directed the Bureau des Avocats Internationaux (BAI) in Port-au-Prince, Haiti since 1996. Under my direction, the BAI offers legal representation to victims of human rights abuses. Our office works closely with judges, prosecutors, police and government officials, providing legal, technical and material assistance, as well as policy advice. The BAI trains Haitian law school graduates, hosts U.S. law student interns and works with U.S. law school clinics through its clinical program. I serve as the attorney of record for the victims, and the chief trial lawyer, and help supervise the BAI training program. Before joining the BAI, I worked as an attorney for the Catholic Church's Justice and Peace Commission. I have also held a variety of teaching and administrative posts. I am a graduate of the Ecole Normale Supérieure, Haiti's leading teaching college, and the Gonaives Law School. I am also a member of the Law Reform Commission in Haiti.
3. The BAI has not received funding from any government since 2004, but from 1995 to 2004, most of its support came from the Haitian government. I worked closely with government officials, from local judges, prosecutors and police to the Minister of Justice and occasionally the President from 1996-2004, and still work regularly with those officials to this day.
4. In the fall of 2000 , I served as the *partie civile* lawyer in the combined criminal and civil proceedings against Emmanuel "Toto" Constant for his role in the Raboteau

Massacre that were held in the court of Gonaives, Haiti. I represented individual victims whose civil complaints against Mr. Constant and his co-defendants were heard simultaneous to the criminal charges. He was convicted *in absentia* for murder and ordered to pay 1 billion Haitian Gourdes in damages to the families of the victims.

5. I also serve as the *partie civile* lawyer representing the many victims of a December 1993 arson perpetrated against the civilian population of one of Port au Prince's largest urban slums known as Cité Soleil. An *ordonnance* – criminal charges similar to an indictment in the U.S. system – that charges Emmanuel Constant with participating in the arson has been issued by the Haitian courts. At least 1000 families lost their homes, and an unknown number of people perished in the fires.

6. There are several other criminal cases in which Emmanuel Constant has been implicated in his capacity as the head of a death squad known as FRAPH (Revolutionary Front for the Advancement of the Haitian People), however, formal charges have not yet been brought.

7. Based on my thirteen years experience working with the Haitian justice system on prominent human rights cases, I believe there is a strong risk that the Haitian government will not adequately prosecute Mr. Constant if he is returned to Haiti because:

- A. The Haitian justice system is historically weak, and was greatly weakened during the two years of the unelected Interim Government of Haiti or the "IGH" (March 2004-May 2006);
- B. Several other people in Mr. Constant's exact legal situation are circulating freely in Haiti without being prosecuted (see below);
- C. High profile and complex human rights cases pose a challenge to Haiti's judicial system. The prosecution of the case of the Raboteau Massacre took more than four years. It finally went to trial six years

after the return of democratic rule to Haiti.

- D. While in power, the IGH forced honest and objective judges off the bench, replacing them with their partisans. The most extreme example came with the firing of all the members of Haiti's highest court, the Cour de Cassation, in one fell swoop in December 2005. This maneuver had a strong impact on lower court judges, undermining their ability to remain impartial and objective. The judges and prosecutors appointed during the unconstitutional period of transitional government under the IGH remain on the bench.

8. I am also concerned about the weakness of Haiti's prison system at this delicate time in Haiti's transition to democratic rule. I visit the Haitian prisons on a regular basis to consult with victims of arbitrary detentions. I am a witness to the extreme overcrowding and poor security at the prisons. The quality of the treatment of prisoners depends on political allegiances of the prisoners and the prison guards. I have seen some prisoners held in inhuman conditions, while others, often the most dangerous, held with almost no security.

9. After years of work to pressure the Haitian government to prosecute for human rights abuses, we were finally able to achieve convictions in the case of the Raboteau Massacre in November 2000. However, in August 2002, one of the most notoriously dangerous of the convicted felons, a former member of Mr. Constant's death squad named Jean Tatoune escaped in a jail break after a bulldozer was used to break through the prison walls. Tatoune remains at large. The others convicted in the Raboteau case escaped from jail in February 2004. These men have not been re-arrested.

10. Other defendants with parallel situations to Mr. Constant have succeeded in evading justice. Three members of the High Command of Haiti's previous military

dictatorship, Colonels Carl Dorélien and Hebert Valmond and Major General Jean-Claude Duperval, also fled to the U.S. after democracy was restored to Haiti in 1994. All three were also convicted *in absentia* for the Raboteau Massacre. Finally, when they were deported back to Haiti in 2003, we thought we would have a chance at holding them accountable for human rights abuses. However, instead of exercising their right to a new trial, their only remedy under Haitian law, they sat in jail. Then, they took advantage of the overthrow of the elected government to break out of jail February 29, 2004 from the main prison in downtown Port au Prince. These men are also currently at large and no action has been taken to re-arrest them.

11. Another person convicted along with Mr. Constant in the Raboteau case is the number-two-in-command of FRAPH, Louis Jodel Chamblain. Mr. Chamblain took refuge in the Dominican Republic for many years. He was a leader in the armed invasion into Haiti that led to the coup d'état of February 2004. Under international pressure, Mr. Chamblain turned himself in to the IGH, ostensibly to stand trial on another *in absentia* murder conviction. But the "trial" in August 2004 was a transparent device to free Mr. Chamblain. There were several procedural irregularities. Amnesty International referred to the trial as "an insult to justice" and a "mockery." The *New York Times* called it "sham justice." Mr. Chamblain was released, and has not been pursued for any of his crimes. He even ran for Parliament in the February 2006 elections.

12. As of May 14, 2007, Haiti has had a democratically-elected government for only one year. There have been improvements in the rule of law. I have worked with President Preval and many justice officials before and know them to be committed to justice. However, their ability to implement that commitment is limited in light of the weaknesses and on-going corruption that still exist within the judiciary.

13. As the *partie civile* lawyer to the many victims of human rights violations from

the period of military de facto rule of 1991 to 1994, I do not feel confident at this time that the Haitian judicial authorities will respect the rule of law in the case of Mr. Constant. The more time that the Haitian government has to stabilize and reinforce our democratic institutions, the better chance that the judicial system will be capable of handling the complex case that Mr. Constant represents.

14. When Mr. Constant is deported to Haiti, I, along with other human rights attorneys, will work diligently for his prosecution for his crimes. However, the more time passes, the more likely it is that the Haitian justice system will recover from the coup and be able to respect the proper legal procedures and apply the rule of law in Mr. Constant's case.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Executed on May \_\_\_\_\_, 2007 in \_\_\_\_\_.

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MARIO JOSEPH, Attorney