

UNITED STATES OF AMERICA

@Failure to protect Haitian refugees

Tens of thousands of Haitians have fled Haiti since October 1991 when a violent military coup which ousted the elected President, Jean-Bertrand Aristide, was followed by widespread repression by the security forces against almost all sectors of society. Chief among the victims were the political supporters of the deposed President, residents of poorer areas of Port-au-Prince or of the rural areas where the majority were supporters of the President, grassroots organizations, women's groups, peasant development groups, trade unions, church groups and youth movements. Hundreds were extrajudicially executed, or detained without warrant and tortured; many of those tortured sustained serious injuries and were denied medical attention in custody; at least seven people are known to have died in custody as a result of ill-treatment. The fate of several of those arrested has not been clarified and they remain "disappeared". An Amnesty International delegation which visited Haiti in March and April 1992 found extensive evidence of continuing grave human rights violations carried out by the security forces or those working with them and, in particular, that in rural areas the reinstatement of the *chefs de section* (rural police chiefs) has resulted in widespread human rights violations¹.

Those who have fled have been driven by this appalling human rights situation, the loss of hope that President Aristide would be returned to power, and the desperate economic situation exacerbated by a trade embargo and the extortion of money from ordinary people by Haiti's military rulers and their henchmen. Several thousand have crossed the border into the Dominican Republic, while over 42,000 have taken to the seas, apparently hoping to reach the United States (US).

Under a bilateral agreement of 1981 between the US and Haiti, US Coast Guard patrols can intercept boats carrying Haitians outside US territorial waters who are trying to reach the US and return them to Haiti. On 18 November 1991 the US State Department announced that, of those intercepted, only those who might qualify for asylum would be allowed to proceed to the US to lodge an asylum claim, and that the others, apart from those granted temporary refuge by other countries in the region, would be returned to Haiti. Immediately after this announcement the US authorities forcibly returned over 500 asylum-seekers to Haiti, but until the end of January were prevented by a series of court rulings from forcibly returning any more. On 31 January 1992 however, the US Supreme Court issued a ruling which allowed such asylum-seekers to be forcibly returned to Haiti.

¹ for details see *HAITI: Human rights held to ransom* (AMR 36/41/92), issued by Amnesty International in August 1992

From early December 1991 until late May 1992 Haitians intercepted at sea were taken to a camp at the US naval base at Guantánamo Bay, Cuba, where they were interviewed by US Immigration and Naturalization Service (INS) officials to determine whether they had a "plausible claim" for asylum. Of some 35,000 intercepted up to the end of May 1992, around 11,000 were reportedly assessed as having a "plausible claim" and most of these were allowed to proceed to the US to pursue their asylum claims². Under this policy around 24,000 were returned from Guantánamo to Haiti.

Article 33 of the 1951 UN Convention relating to the Status of Refugees, which is binding on the USA, prohibits *refoulement* – the forcible return of any person to a country where they risk serious human rights violations. In order to ensure that such people are properly identified and given effective protection from forcible return, it is essential that governments grant all asylum-seekers access to a full and fair procedure for determining the merits of their asylum claims. Asylum-seekers who were taken to Guantánamo were "screened" to ascertain whether they were likely to have a claim for asylum and so might be allowed to proceed to the US to lodge their claim. Amnesty International recognizes that under the procedures followed at Guantánamo a significant proportion (at some stages as high as 39 per cent) of the asylum-seekers were "screened-in" (judged to have a "plausible claim to asylum"). Nevertheless, Amnesty International is concerned at the inadequate procedures followed at Guantánamo. In particular, contrary to international standards, asylum-seekers were given no opportunity to have appropriate legal advice or to have an effective review of a negative decision. In view of these concerns, at the end of 1991 Amnesty International asked the US authorities for permission to send a delegation to Guantánamo to observe the screening procedures and interview Haitian asylum-seekers and officials involved in the screening, but its request was denied.

On 24 May 1992 President Bush issued an Executive Order that all Haitians interdicted at sea should be returned to Haiti; shortly afterwards it was announced that the camp at Guantánamo would be closed. This decision denies asylum-seekers any possibility of having their cases heard. Since May 1992 over 7,000 have been intercepted and returned to Haiti in this way, without the US authorities making even a cursory attempt to hear their asylum claim. Shortly before taking office, President-elect Clinton, departing from earlier statements, announced his intention to keep in force the Executive Order issued by

² The exception was a group of about 200 who were found to be infected with the human immunodeficiency virus (HIV) who were not allowed to travel to the US. The US authorities apparently intended that they should pursue their claims from Guantánamo, although full provisions were not made for this. Amnesty International called on the US authorities to permit the HIV-positive asylum-seekers to go to the US so as to ensure that they received adequate medical treatment and so as to allow for them to have their asylum claim examined in a full and fair hearing, which is not provided for at Guantánamo. (For details, see *Medical and legal concern: Haitian asylum-seekers - USA (Guantánamo)* (AMR 51/05/93) and update (AMR 51/20/93) issued by Amnesty International on 2 February and 25 March 1993 respectively)

President Bush and, despite the continued protests of human rights and refugee organizations, the US authorities have shown no signs of rescinding the order.

The US Government maintains that the Haitian asylum-seekers are mostly "economic migrants" and that there is no indication that people returned by the US are detained or subject to punishment. It also maintains that the policy adopted at the end of May 1992 was necessary to protect the lives of the Haitians, who would otherwise risk their lives by fleeing the country in unseaworthy boats. However, Amnesty International is concerned that under this policy large numbers of asylum-seekers have been forcibly returned to Haiti where many of them are at risk of serious human rights violations. This is a flagrant violation of the internationally recognized principle of *non-refoulement* and of the obligations of the US as party to the 1967 Protocol relating to the Status of Refugees, under which it is bound by Article 33 of the 1951 UN Convention relating to the Status of Refugees, which states:

"No Contracting State shall expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

The US Government's policy also denies the Haitians an effective opportunity of exercising their right under Article 14.1 of the Universal Declaration of Human Rights, which states:

"Everyone has the right to seek and to enjoy in other countries asylum from persecution".

The principle of *non-refoulement* was underlined in the 1984 Cartagena Declaration which was initially adopted in 1984 by several Central American states, and endorsed in 1985 by the General Assembly of the Organization of American States (OAS) which urged all its member states, one of which is the United States, to accept its provisions. The Declaration, among other things, reiterates in Conclusion 5:

"the importance and meaning of the principle of *non-refoulement* (including the prohibition of rejection at the frontier) as a corner-stone of the international protection of refugees. This principle is imperative in regard to refugees and in the present state of international law should be acknowledged and observed as a rule of *jus cogens*";

and in Conclusion 8 states:

"that the countries of the region [should] establish a minimum standard of treatment for refugees, on the basis of the provisions of the 1951 Convention and 1967 Protocol and of the American Convention on Human Rights, taking into consideration the conclusions of the UNHCR Executive Committee, particularly No. 22 on the Protection of Asylum Seekers in Situations of Large-Scale Influx".

The American Convention on Human Rights states, in Article 22.8:

"In no case may an alien be deported or returned to a country, ... if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status or political opinions".

Conclusion 22 of the UNHCR Executive Committee, on the Protection of Asylum Seekers in Situations of Large-Scale Influx, was adopted in 1981 by some 40 governments which are members of that Committee, including the United States. It states, among other things:

"Asylum-seekers should be admitted to the State in which they first seek refuge and if that State is unable to admit them on a durable basis it should always admit them at least on a temporary basis and provide them with protection ... In all cases the fundamental principle of *non-refoulement* – including non-rejection at the frontier – must be scrupulously observed".

The US Government maintains that the prohibition on *refoulement* set out in Article 33 of the 1951 Convention is not binding on the US outside its territorial jurisdiction, and that therefore the US Coast Guard can return directly to Haiti those Haitian asylum-seekers intercepted in international waters. This argument is currently being tested before the US Supreme Court, which is expected to rule on the case in the next few months.

In some cases, people have tried again to reach the US after being forcibly returned. Forty-two asylum-seekers who were returned to Haiti by the US authorities in mid-November fled the country again. When they were interviewed by the US authorities on that second occasion they alleged that they had suffered serious human rights violations in Haiti after their return. Following this, INS officials judged that 41 of them had a "plausible claim" for asylum.

These asylum-seekers reportedly made allegations of harassment, arrests and beatings following their return to Haiti; some alleged that they were interviewed at the docks on arrival and that the information given was then used to arrest them when they returned to their homes; one made allegations of extrajudicial executions of other returned asylum-seekers. Amnesty International itself has been unable to obtain precise details about the allegations made by these asylum-seekers, but their allegations are consistent with the well-documented

general pattern of human rights violations in Haiti. The US Government has maintained that the US embassy in Haiti investigated the allegations but that embassy officials "were unable to turn up any information to corroborate the story". Amnesty International does not know which of the cases US Embassy officials would have attempted to monitor, nor does it have detailed information about their method of inquiry or their findings, but it remains concerned about the allegations made because in its own experience it is impracticable to effectively monitor the fate of asylum-seekers who have been returned by the US authorities.

Several factors contribute to make it almost impossible to verify the fate of the returned asylum-seekers. Because of the current climate of fear, intimidation and repression in the countryside, many of those returned have apparently not gone back to the areas of the country where they previously lived, and many have chosen to remain in hiding for fear of reprisals. Even local religious workers and members of human rights organizations have found difficulties in contacting returned asylum-seekers, despite repeated efforts. For example, a human rights organization operating in the Artibonite Department told Amnesty International that they had sent word to the different communal sections asking returned asylum-seekers to contact them, but that none had done so.

In view of this, Amnesty International does not believe that monitoring by US Government officials can be regarded as a reliable indicator that returned asylum-seekers have not suffered harm after their return. The organization remains concerned that the forcible return of thousands of asylum-seekers to Haiti without first examining the merits of their claim through a full and fair procedure has put them at great risk of serious human rights violations.

The US Government has stated that Haitians who fear human rights violations can apply for asylum to US officials in Haiti, and that the US authorities have taken steps to establish facilities for this in Port-au-Prince. However, Amnesty International does not believe that such a measure can, in the situation prevailing in Haiti, ensure that those most at risk will be able to contact, let alone obtain the protection of, the US authorities.

The Haitian authorities have established a climate of terror so widespread that many people fear to make any move at all; Amnesty International's delegates who visited Haiti in April and May 1992 witnessed that fear when contacts called them by telephone but were unwilling to give their names or meet at their hotel for fear that the line was tapped or that they would be followed or identified. It therefore seems unlikely that those most at risk in Haiti would dare to expose themselves by telephoning or going to the office where applications are processed. The need for applicants to travel to Port-au-Prince to have their cases examined after submitting their initial application, and the potential security risk inherent in going to the building where the processing centre is located are likely to deter many who are at risk in Haiti. A US embassy official was reported in the international press as saying that those at risk "can always write" to the US embassy, but this suggestion is hardly practical since Haiti has a very high rate of illiteracy and it is difficult to envisage, for example,

a peasant writing from a place in hiding in the mountains a letter which could convince the US authorities to offer protection.

In any case, an asylum application lodged at an embassy cannot provide the fundamental safeguards that would be provided in an asylum procedure outside Haiti's territory, established in conformity with the US Government's obligations under international standards dealing with refugee protection; in particular, the right of every asylum-seeker to appropriate legal advice and, if their application for asylum is rejected, the right to have an effective review of their case. Therefore, any arrangements made by the US Government for people to apply for protection to their officials in Haiti cannot be regarded in any way as a satisfactory substitute for the right to seek and enjoy asylum, which has effectively been denied to them by the US authorities' action in intercepting and summarily returning to Haiti those who leave the country by sea.

Since February 1992 applications from almost 4,000 people have been adjudicated under this in-country processing program. Around 600 of these have been accepted on condition that they fulfil certain health and similar requirements for entry to the US, of whom around 300 have so far been admitted to the US. The rest have been refused protection in the US.

Amnesty International continues to be gravely concerned at the US Government's non-compliance with international standards for the protection of refugees and asylum-seekers. It reiterates its call on the US authorities to take immediate steps to ensure that no Haitian who flees the country and seeks the protection of the United States is returned to Haiti without having their claim for protection examined in a full and fair procedure which contains all safeguards necessary to ensure that any who would be at risk in Haiti are identified and given effective and durable protection.