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UNITED STATES OF AMERICA

@Forcible return of Haitian asylum-seekers by the United States

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Recent cases of forcible return (*refoulement*) of Haitian asylum-seekers by the United States (US) highlight Amnesty International's concerns about the US policy of forcibly returning all Haitians intercepted at sea, without any steps being taken to consider their claims for asylum. Since this policy began, in May 1992, thousands of Haitians fleeing human rights violations have been intercepted at sea by the US Coast Guard and returned to Haiti, where many have then been arrested by the Haitian security forces. Amnesty International has received reports that some of those arrested or those awaiting consideration of their asylum case (see below under US ICP system) have been subjected to torture or ill-treatment.

Amnesty International believes that following recent events in Haiti (see below under Background Information) it is even more imperative that the US Government review its policy of intercepting and returning Haitian asylum-seekers.

RECENT CASES OF *REFOULEMENT*

According to statistics of the US Coast Guard, over two dozen boats carrying over 2,000 Haitians were intercepted and returned to Haiti in 1993.

On 7 December 1993, 28 Haitian asylum-seekers were forcibly returned to Haiti by the United States Coast Guard after attempting to flee the country by boat. Among these, ten were reportedly arrested by the Haitian armed forces on disembarking at Port-au-Prince and

taken into police custody, accused of organizing the boat journey. The other 18 people were returned to their homes, most of which are in Cap-Haitien and Gonaïves.

On 10 December 1993 a further six Haitians were among 84 asylum-seekers who were intercepted by the US Coast Guard. They were arrested by the Haitian security forces on return and taken into police custody.

Some 111 Haitian asylum-seekers were forcibly returned to Haiti by the United States Coast Guard on 14 December 1993. Six of them were reportedly arrested on disembarking at Port-au-Prince and taken into police custody.

Although all of the detainees have now been released¹, these cases illustrate the vulnerability of Haitian asylum-seekers who are intercepted by the US authorities and returned to Haiti. Amnesty International has in the past received reports of returned asylum-seekers being arrested and subjected to torture or ill-treatment by the Haitian security forces. However, these reports are difficult to verify since many returned asylum-seekers are forced to go into hiding for fear of their safety.

An earlier case, in September 1993, illustrates how asylum-seekers continue to be in danger even weeks after being forcibly returned. In this case six Haitians were reportedly arrested after their boat was intercepted by the US Coast Guard and returned to Haiti. Then, some two weeks later the home of one of the men who had been on board the boat was searched by the police. The police reportedly fired randomly inside the house before arresting the man and two other relatives. All three were beaten while held in detention before being released some two months later.

US POLICY ON HAITIAN ASYLUM-SEEKERS

Since a 1981 bilateral agreement with the Haitian Government, the US Government has been intercepting Haitians at sea and returning them to Haiti with only the most minimal steps to consider their asylum claims. In spite of the US administration's condemnation of the military coup in September 1991 which ousted democratically-elected President Jean-Bertrand Aristide and the widespread human rights violations which followed, it has continued with this interception policy.

Since the coup thousands of Haitians have taken to the seas, apparently hoping to reach the US. In November 1991 the US authorities announced that, of those intercepted, only those who might qualify for asylum would be allowed to proceed to the US to lodge an asylum

¹ All names of those detained have been omitted to prevent putting victims at risk of human rights violations by drawing further attention to them.

claim; the others, apart from those granted temporary refuge by other countries in the region, would be returned to Haiti. 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.

On 24 May 1992 President George Bush issued Executive Order 12,807, known as the "Kennebunkport Order", under which all Haitians intercepted at sea outside US territorial waters would be forcibly returned direct to Haiti. Since then thousands of Haitians have been intercepted by the US Coast Guard and returned to Haiti without even a cursory attempt to identify those who might be at risk of human rights violations. President Clinton, in spite of campaign promises to change the policy, opted instead to continue with it.

US IN-COUNTRY PROCESSING (ICP) SYSTEM

The only option presently available to Haitians seeking asylum in the US is the in-country processing (ICP) system, established in February 1992, under which officials of the International Organization for Migration (IOM), on behalf of the US authorities, interview Haitian asylum-seekers in Haiti in order that a decision can be made as to whether they qualify for protection in the US. According to the September 1993 Americas Watch report *No Port in a Storm: The Misguided Use of In-Country Refugee Processing in Haiti*, a Refugee Coordinator manages the program under the auspices of the US Consulate. The US Embassy in Port-au-Prince also provides information and advice.

However, an asylum application lodged at an embassy or other office in the country where the asylum-seeker is under threat of human rights violations cannot provide the fundamental safeguards that would be provided in an asylum procedure established in conformity with international standards dealing with refugee protection - safeguards such as the right to appropriate legal advice and to an effective review of the case if the application is rejected. Asylum-seekers risk drawing attention to themselves by going to the office where applications

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 updates (AMR 51/20/93 and AMR 51/65/93) issued by Amnesty International on 2 February, 25 March and 22 July 1993 respectively)

are processed, and sending a written application is in many cases impractical in view of the high rate of illiteracy in Haiti. Moreover, applicants often have to wait months for an interview date, and thus risk becoming victims of human rights violations, such as arbitrary detention, torture or ill-treatment, whilst waiting for their case to be considered. Following an escalation in human rights violations in September and October 1993, the US authorities have taken some steps to shorten the waiting time. However, Amnesty International has continued to receive reports of asylum-seekers having to wait a few months for an interview date.

The mere fact that someone is awaiting an interview date can also be a reason for being subjected to torture or ill-treatment. An example of this is the case of Lormil Rodrigue who was arrested by armed men in civilian clothes on 4 June 1993 in Grande-Goave, Grande-Anse department. When found in possession of a letter citing an interview date for an asylum application he was then badly beaten and received the *kalot marassa* (simultaneous blows to both ears). He was detained in a room for nearly two weeks during which time he was blindfolded and given urine to drink.

Another Haitian, Célor Josaphat, applied for asylum twice through the ICP system following his continued harassment by the Haitian security forces, but his application was rejected on both occasions. Célor Josaphat is a member of the *Rassemblement Paysan Perodin (RPP)*, Perodin Peasants Association, which is a peasant organization dealing with human rights and literacy in Artibonite department, and which has been targeted by the military since the coup in 1991. His most recent arrest took place on 7 November 1993 when members of the security forces took him and two other RPP members to the house of the *chef de section*, rural police chief, in Perodin. While in detention, the men were accused of supporting *Lavalas* (the political movement that supported deposed President Aristide's candidacy), threatened with death, kicked and beaten until unconscious. The following day, the men managed to escape. Célor Josaphat had previously been detained in October and November 1991 and in October 1992, when he was also tortured. His first application for asylum through the ICP system was in November 1992 following his torture by the military. He continues to be in fear for his life.

US POLICY AND INTERNATIONAL STANDARDS

The present US policy denies Haitian asylum-seekers the right to seek and enjoy asylum, as set out in Art 14.1 of the Universal Declaration of Human Rights:

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

Amnesty International further believes that the US policy of intercepting and summarily returning to Haiti those who leave the country by sea is a gross violation of the

internationally-recognized principle of *non-refoulement* and, specifically, the obligations of the US as party to the 1967 United Nations Protocol relating to the Status of Refugees, under which it is bound by Article 33 of the 1951 Convention relating to the Status of Refugees.

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 direct to Haiti those asylum-seekers who are intercepted in international waters. Regrettably this position was upheld by the US Supreme Court in June 1993. But Article 33 of the 1951 Convention provides that refugees shall not be forcibly returned in any manner whatsoever to the frontiers of territories where they risk serious human rights violations. The policy of the US Government with regard to Haitians intercepted at sea is an egregious violation of this fundamental principle of *non-refoulement*. It amounts to saying that, while governments are obliged to protect refugees who have already arrived within a country's territory, if they are able to intercept fleeing refugees before they arrive at the border they may return them to face the risk of arbitrary imprisonment, torture, or death. As such it is clearly contrary to the underlying purpose of the 1951 Convention and 1967 Protocol – the protection of refugees from persecution.

The policy also disregards a Conclusion³ adopted by the intergovernmental Executive Committee of the Programme of the United Nations High Commissioner for Refugees (UNHCR) in 1981, when it was stated that:

"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".

Moreover, the US Government's policy of picking up fleeing asylum-seekers and returning them direct to the country they have fled runs contrary to the position taken in another conclusion of the UNHCR Executive Committee in 1981⁴, which states:

"In accordance with established international practice, supported by the relevant international instruments, persons rescued at sea should normally be disembarked at the next port of call. This practice should also be applied in the case of asylum-seekers rescued at sea. In cases of large-scale influx, asylum-seekers rescued at sea should always be admitted, at least on a temporary basis".

³ Conclusion 22 (the Protection of asylum seekers in cases of large-scale influx)

⁴ Conclusion 23 (Problems related to the rescue of asylum-seekers in distress at sea)

At the time of writing this document, there is a bill (H.R. 3663) expected to come before the US Congress shortly which, among other things, aims to "reaffirm the obligation of the United States to refrain from the involuntary return of refugees outside the United States". The bill specifies that this Act is to be cited as the "Haitian Refugee Fairness Act".

The bill apparently has some support within the US Congress, although opinion in the United States on the bill seems to be divided. The principle point at issue in the bill appears to have support from at least some quarters in the current US Government: following a recent visit to Haiti, in December 1993, John Shattuck, the Assistant Secretary of State for Human Rights and Humanitarian Affairs, concluded that repression in Haiti had intensified following the collapse of the Governor's Island agreement (see below under Background Information), and that there would be a new surge of Haitian asylum-seekers attempting to leave the country. He urged the US administration to review its policy of forcibly returning all boats carrying Haitian asylum-seekers. Other officials of the US administration did not accept his recommendations however.

US GOVERNMENT RESPONSE TO AMNESTY INTERNATIONAL APPEALS

Following letters of appeal by Amnesty International members to President Clinton during 1993, some replies were received. The following is an extract from one of President Clinton's letters:

"Because of my deep concern about the dangers of boat departure from Haiti, I issued a statement on 14 January [1993] urging that the people of Haiti not attempt to depart by boat. I also indicated that the practice of direct return would continue for the time being. I believe that the best way to prevent a mass exodus from Haiti is to return democracy and economic opportunity to that nation. I fully support the restoration of President Aristide's democratically elected government.

I also strongly support efforts of the United Nations and Organization of American States to deploy a substantial number of human rights monitors in Haiti. I hope and expect that an improvement in the human rights situation and progress towards a political settlement will encourage Haitians to remain in their country to build a better future for themselves."

Although President Clinton states that he is concerned about the dangers of boat departure from Haiti, he neglects the fact that the lives of Haitians who remain in the country are also in danger, due to the widespread life-threatening human rights violations carried out by the Haitian security forces, including torture, "disappearances" and extrajudicial executions. This risk has increased since most of the 250-strong group of United Nations (UN) and Organization of American States (OAS) human rights observers, known as the *Misyon Sivil Entènasyonal an Haiti* (MICIVIH), International Civilian Mission to Haiti, left the country on 15/16 October 1993. Their departure left those Haitians in danger of human rights

violations, and particularly those with whom the mission had been in contact, in a position of increased vulnerability to abuses by the Haitian security forces and *attachés* (armed auxiliaries to the security forces). Amnesty International believes that since international attempts to return democracy to Haiti and to protect the human rights of Haitians appear to have failed, at least for the time being and the foreseeable future, it is now even more vital that the US administration review its policy of forcibly returning Haitians.

BACKGROUND INFORMATION

President Aristide was due to return to power on 30 October 1993, according to the Governor's Island agreement signed by him and Commander-in-Chief of the Armed Forces, General Raoul Cédras, on 3 July 1993. Both parties also pledged to cooperate fully in the peaceful transition to a democratic society which would guarantee respect for human rights. Other measures included in the agreement were the creation of a new police force with the President to appoint its new Chief, the early retirement of General Cédras and the nomination of a Prime Minister by the President.

Violence accelerated as the date of President Aristide's agreed return drew nearer, in an apparent effort by his opponents to thwart that return, culminating in the killing of Justice Minister Guy Malary on 14 October 1993. This killing appears to have been a factor in the decision to pull out most of the UN and OAS human rights observers. The first group of these observers had arrived in Haiti in February 1993.

President Aristide did not return to power on 30 October 1993 and there has been no indication of any other firm date being set for his return. General Cédras and Police Chief Michel François are effectively ruling the country. Widespread threats and attacks by members of the security forces and *attachés* against President Aristide's supporters continue to afflict Haiti.

There are now heightened fears, particularly since the UN/OAS mission left Haiti, that many Haitians are at increased risk of serious human rights violations. It is therefore crucial that the US authorities cease their policy of intercepting and returning Haitian asylum-seekers fleeing the country and allow them to exercise their right to seek and to enjoy in other countries asylum from persecution.