

EXTERNAL

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To: Medical and legal professionals
From: Medical Office / Research Department - Americas
Date: 2 February 1993

LETTER WRITING ACTION

Haitian asylum seekers USA (Guantánamo)

Keywords

Theme: AIDS / HIV / medical care / refugees / asylum-seekers

Summary

Since the September 1991 coup in Haiti, tens of thousands of Haitians have fled the island following widespread repression by the security forces, including "disappearances", extrajudicial executions, torture, threats and intimidation of almost all sectors of society, particularly those who had supported President Jean-Bertrand Aristide, ousted in the coup. Under the terms of an Executive Order issued by then President Bush at the end of May 1992, asylum-seekers intercepted at sea have been returned directly to Haiti. Before May 1992 those intercepted were taken to the US naval base at Guantánamo Bay, Cuba, to assess whether they had a "plausible claim" to asylum. While most of those found to have a "plausible claim" were permitted to travel on to the US mainland to pursue their asylum claim, those found to be infected with human immunodeficiency virus (HIV) were denied leave to travel to the United States thus requiring them to pursue their claim from Guantánamo.

The conditions for the more than 270 asylum-seekers currently held at Guantánamo are poor and medical facilities are basic. Amnesty International is concerned that several of those who have already developed AIDS are at significant risk of serious complications due to the conditions at Guantánamo and the lack of adequate medical care.

Amnesty International believes that in order to have proper medical attention and effective legal assistance which are not available at Guantánamo, the asylum-seekers should be permitted to go to the mainland.

Note: On 1 January 1993, the Centers for Disease Control (CDC), Atlanta, adopted a revised definition for AIDS which defines as affected all those who are seropositive for HIV and have a CD4 T-lymphocyte (T-4 cell) count of less than $200 \mu\text{l}^{-1}$. The CDC lists 26 AIDS-indicator diseases which, in the absence of effective cell-mediated immunity, can arise in an HIV-positive person. Infection with HIV can be followed by a shorter or longer time during which the individual is symptom-free. People who are HIV-positive cannot transmit the virus to others by everyday social contact since to establish infection the virus must enter the bloodstream.

However, people with HIV/AIDS have an increased susceptibility to other diseases, and therefore it is particularly important that they are provided with adequate medical care and proper living conditions.

Recommended Actions

Letters from medical and legal professionals, preferably written in English, otherwise your own language, should be sent to the addresses below:

- expressing concern about the conditions prevailing at the Guantánamo camp for asylum-seekers who are HIV-positive and for their dependants;
- noting that US public health officials have drawn attention to the particularly vulnerable state they are in, the unsuitability of Guantánamo for holding a large number of HIV-positive people, and the urgent need of certain of the asylum-seekers for special medical care on the mainland;
- urging that the asylum-seekers at Guantánamo, particularly those needing AIDS-related medical care, are guaranteed immediate access to appropriate medical attention and to appropriately hygienic conditions which are not available at Guantánamo;
- expressing concern at the condition of four men reported to have T-4 cell counts below $60 \mu\text{l}^{-1}$ and urging that they be transferred to an appropriate medical facility as a matter of urgency (you could name the three men who have given consent for their names to be published and the abbreviated identity of the fourth).
- noting with concern that the asylum-seekers at Guantánamo are reported to have started an indefinite hunger strike in protest at their situation
- expressing concern that the asylum-seekers have been given no guarantee that they will not be forcibly returned to Haiti and that they are not being allowed to proceed to the USA (where adequate legal advice would be available) for a full hearing of their asylum claims;
- urging that they be allowed to proceed to the USA so that they may pursue their asylum claims with adequate legal advice and so that they may receive proper medical care.

Addresses

President Bill Clinton
The White House
Office of the President
1600 Pennsylvania Avenue
Washington D.C. 20500
USA

(Dear Mr President)

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Fax: +1.202. 456 2461
Telex: ITT 440074

The Hon. Warren Christopher
Secretary of State
2201 C Street, N.W.,
Washington D.C. 20520
USA

(Dear Secretary of State)

Tel: +1.202. 647 4910
Telex: ITT 440080 SECSTATE

COPIES TO:

Attorney General
Department of Justice
10th Street & Constitution Ave., N.W.
Washington D.C. 20530
USA

(Dear Attorney General)

Tel: +1.202. 514 2000
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Telex: TWX 710 822 1907

Christine Sale
Acting Commissioner
Immigration & Naturalization Service
425 Eye Street, N.W.,
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MEDICAL AND LEGAL CONCERN

Haitian asylum-seekers USA (Guantánamo)

Some 230 HIV-positive asylum-seekers, together with more than 40 dependents, fleeing possible political persecution in Haiti are being kept at the US Naval Base at Guantánamo on the southeast coast of Cuba. Several have developed full-blown AIDS. The asylum-seekers, all of whom are accepted by US immigration authorities as having a plausible claim for refugee status, have received no assurances that they will not be sent back to Haiti and are being excluded from entry to mainland USA solely on the basis of their HIV status. Amnesty International believes that this exclusion is contrary to international standards dealing with the protection of asylum-seekers. The organization is also concerned that the conditions at Guantánamo, including the holding in close proximity of a large number of affected individuals, potential hygiene problems and the lack of adequate medical care, could constitute cruel, inhuman or degrading treatment, particularly in the case of those with AIDS. Amnesty International is urging that the asylum-seekers held at Guantánamo be transferred to the US mainland in order to pursue their asylum claims with effective legal advice and to obtain access to adequate specialist medical care, as provision for neither of these is available at Guantánamo.

Legal concern

Article 33 of the United Nations 1951 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 such forcible return, it is essential that the US Government grants all asylum-seekers access to a full and fair procedure for determining the merits of their asylum claims. Since Haitian asylum-seekers first started to be taken to Guantánamo for "screening" towards the end of 1991, Amnesty International has repeatedly expressed its concern that the screening procedure there lacked certain essential safeguards which must be allowed to asylum-seekers and which are required by international standards. These essential safeguards include the right of every asylum-seeker to effective legal advice and, if their application for asylum is rejected, the right to have an effective review of their case before being expelled from the country where they seek asylum.

Amnesty International's concern was heightened by President Bush's Executive Order of 24 May 1992 under which Haitian asylum seekers were returned to Haiti without any kind of refugee determination procedure. The organization believed there was a grave risk that those returned could include many who were at risk of serious human rights violations in Haiti. Moreover, the policy of returning asylum-seekers which was initiated by the Executive Order is a flagrant

contravention of Article 14.1 of the Universal Declaration of Human Rights, which states that "everyone has the right to seek and to enjoy in other countries asylum from persecution".

Amnesty International is concerned that the HIV-positive asylum-seekers remaining on Guantánamo have reportedly been given no undertaking that they will not be returned to Haiti. Nor have they been given any effective opportunity to lodge an asylum claim under procedures which include the safeguards required by international standards and which would normally be available to them were they allowed to proceed to the USA to lodge their claim.

Medical concern

Medical experts have criticized the conditions under which the HIV-positive Haitian asylum-seekers are being held. Memoranda from public health officials quoted in the *New York Times* (10 December 1992) set out the medical argument for immediate change. Dr Paul V. Effler of the Centers for Disease Control, Atlanta, wrote that "concentrating people known to have an infection that causes immuno-suppression in a tent city is a potential public health disaster". Dr James O. Mason, US Assistant Secretary for Health, wrote earlier in 1992 that:

"Housing so many immunosuppressed individuals in close proximity to one another in a camp environment presents substantial risks for [opportunistic] infection and potential for uncontrolled, sustained transmission of infectious diseases, both to the HIV-infected persons as well as their families and the health care and other personnel who may share their environment. An epidemic of otherwise easily controllable infectious agents could be a major problem in this environment."

Dr Mason was reported to have suggested that the solution was the rapid processing of asylum-seekers' claims and the closing of the temporary camp at Guantánamo.

In an exception to US government policy denying entry to HIV-positive people, a baby born at the camp in mid-1992 and his HIV-positive mother were flown to the Walter Reed Army Hospital in Maryland when the baby developed pneumonia. After the baby died on 15 September 1992, the mother was imprisoned in an Immigration Service facility in Varick Street, New York. According to unnamed officials cited in the *New York Times* (12 December 1992) the reason for this was that "they do not want HIV-infected immigrants released into the United States". The mother was subsequently released on 24 December and is currently living in New York.

In December 1992, doctors at the base urged the Immigration and Naturalization Service (INS) to permit four asylum-seekers (referred to below) to travel to the mainland to obtain medical treatment for AIDS-related problems which they could not adequately treat. However their recommendation was turned down. An INS spokesperson was reported as rejecting the idea of a transfer for medical treatment with the comment, "they're going to die anyway, aren't they?" (*New York Times*, 12 December 1992).

Amnesty International believes that the asylum-seekers should be permitted to proceed to the mainland in order to receive adequate legal advice while their asylum application is heard, and adequate medical care for HIV/AIDS. Neither are available at Guantánamo. In late January, four male asylum-seekers reported to have T-4 cell counts lower than 60 cells per μl — Tilise Damen, Jorel Saintil, Jaures Saintilmon and a fourth, identified as FM — should be granted immediate access to specialist medical care on the mainland. A Reuters dispatch of 31 January 1993 reported that the asylum-seekers at Guantánamo had started an indefinite hunger strike to press for their transfer to the mainland.

Taking into account all the circumstances of these cases, including the reported conditions at Guantánamo and lack of adequate medical care, Amnesty International is concerned that their situation may amount to cruel, inhuman or degrading treatment, particularly in the case of those asylum-seekers with AIDS. The International Covenant on Civil and Political Rights which the USA has ratified prohibits cruel, inhuman or degrading treatment and requires that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person".

Background

In September 1991, the elected President of Haiti, Father Jean-Bertrand Aristide, was removed in a violent military coup. Following the coup Amnesty International received reports of widespread violent repression particularly directed against those sectors which had supported the deposed President Aristide. These included: political supporters; residents of poorer areas of the capital, Port-au-Prince; those in the rural areas, where the majority supported President Aristide; grassroots organizations; women's groups; peasant development groups; trade unions; church groups and youth movements. Hundreds of people were extrajudicially executed, or detained without warrant and tortured. The fate of several of those arrested has not been clarified and they remain "disappeared". 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. 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. In the countryside the reinstatement of the *chefs de section* (rural police chiefs) has resulted in widespread human rights violations. Members of the Catholic Church, journalists and human rights monitors and others involved in the collection and dissemination of information on human rights abuses have also been arrested, beaten, threatened and intimidated by members of the security forces.

This massive and widespread repression prompted a large-scale flight of thousands of Haitians who felt at risk of persecution for their support of the elected president. While many entered the adjacent territory of the Dominican Republic, most of those fleeing took to boats and headed for the USA. Under a 1981 agreement between the USA and Haiti, US Coastguard patrols can intercept boats carrying Haitians outside US territorial waters and ensure that they do not enter US territory. The numbers returned to Haiti under this procedure numbered around 20,000 over the decade to 1991; in the period since October 1991, nearly double that number were reportedly intercepted.

Up to the end of May 1992, those intercepted were taken to a US naval base at Guantánamo Bay, Cuba, for interview to assess whether they had a "plausible claim" for asylum. Most of those adjudged to have a "plausible claim" were permitted to move to the US mainland to pursue their claim. However, around 230 individuals who were assessed as having a "plausible claim" but who had tested HIV-positive were not permitted to enter US territory as a result of government policy that denies entry rights to those who are infected with the AIDS virus. More than 40 of their dependants are also kept at Guantánamo.

In May 1992 the then President George Bush issued an Executive Order that from then on all Haitians intercepted at sea would be returned directly to Haiti without examination of

their claim. Shortly afterwards it was announced that the camp at Guantánamo would be closed. However, it remained open; now the only Haitians remaining there are those who are HIV-positive.