

£UNITED STATES/CUBA

@Cuban "Rafters" - Pawns of Two Governments

On 25 and 26 September 1994 an Amnesty International delegation visited the US Naval Base at Guantánamo Bay, Cuba, to look into the situation with regard to refugee protection of the Cuban and Haitian boat people who were taken there after having been intercepted at sea by the US authorities. This document describes solely the findings related to the Cubans.

BACKGROUND

Since the government of President Fidel Castro came to power in Cuba in 1959, the United States has operated a virtual "open-door" policy to Cubans who have fled to its shores. By 1966, 165,000 Cubans had arrived in the USA and had either parole or extended voluntary departure status, enabling them to remain legally in the USA, at least for a period. At that point, the Cuban Adjustment Act was introduced in order to enable them to apply for US residency from US territory once they had been there for two years. The 1980 Refugee Act reduced the presence requirement from two years to one year. Since then thousands of Cubans have taken advantage of this facility, often having risked their lives to cross the Florida Straits on small boats and rafts to reach the USA and many dying in the attempt. In 1980, in what became known as the Mariel exodus, some 125,000 Cubans undertook the crossing, many with the assistance of US-based Cubans who took boats over to meet them, after President Castro lifted restrictions on such departures.

Those who wish to emigrate from Cuba must normally obtain an exit visa and have an entry visa for another country before they can leave. For years only Cuban women over 60 and men over 65 were allowed to travel but, starting in early 1990, the age limit was gradually reduced and by August 1992 all those over 20 were allowed to apply for exit visas. Nevertheless, people have frequently complained in the past that they have been unable to get exit visas, especially if they were considered to be "counter-revolutionaries". Although they were usually not specifically refused permission, their requests often simply went unanswered. Either because they were unable to get a visa for another country or because they were denied an exit visa, many people therefore resorted to leaving Cuba by illegal methods. Those who are caught trying to depart illegally are liable to a prison sentence of up to eight years' imprisonment under article 216 of the Cuban Penal Code (1988), although in recent years the authorities have tended to deal more leniently with such people, sometimes only imposing a fine if it is a first offence.

Cubans who wish to emigrate to the USA may request visas from the US Interests Section in Havana. Under a 1984 accord, the US authorities agreed to take up to 20,000 Cubans per year if they fulfilled certain criteria. That ceiling was increased in 1990 to

27,845. However, in 1993/94 only 2,700 visas were granted to Cubans. The Cuban authorities have therefore argued that, by refusing visa applications but at the same time permitting anyone who reached US territory by sea to remain in the USA, the US authorities were in effect encouraging people to take to the seas. They also accused them of inciting such action via radio and television broadcasts directed at Cuba by the US government-funded Radio and TV Martí. As of August 1994, 19,700 Cubans were said to be waiting for a response to their applications for US visas.

The number of those fleeing Cuba by sea has risen substantially over the past two or three years as the economic situation within the country has deteriorated. Most want to get to the United States where many have family members, though some have also ended up in surrounding countries, in particular the Bahamas and the Cayman Islands. During 1993, 3,656 Cuban "rafters" ("**balseros**") reached the USA and in the first six months of 1994, 3,554 had arrived. By August 1994, the numbers of those fleeing Cuba had reached levels not known since 1980 and a series of incidents took place in Cuba in which large groups of people attempted to hi-jack, in some cases by use of violence, public ferries and other types of boats in Havana and surrounding areas in order to reach the USA. On 6 August, on the grounds that the US authorities were encouraging such action, President Castro threatened to order the Cuban coastguard to no longer prevent people from leaving Cuba by boat and to stop impeding boats arriving from Florida to pick up people to take back to the USA (as had happened in 1980). The US authorities responded by saying that they would not allow a repeat of Mariel.

In the days that followed the Cuban authorities appeared to turn a blind eye to the large numbers of boats and rafts departing the country's northern coast towards the USA and on 19 August, after the Governor of the State of Florida had declared a state of emergency in the face of the impending influx of Cubans, the US Government ordered the US Coast Guard to prevent undocumented Cubans from reaching US territorial waters. Instead, those intercepted at sea were to be taken to the US naval base at Guantánamo Bay, Cuba¹, while the US authorities explored the possibility of other so-called "safe havens" within the region. Meanwhile, those who did continue to reach US territorial waters were to be sent to special centres pending a determination of how they were to be processed by the Immigration and Naturalization Service (INS). Approximately 32,000 Cubans were picked up by the US Coast Guard between 19 August and mid-September and taken to the Guantánamo base. Since then almost 7,000 have been taken from Guantánamo to US military bases in Panama where facilities are being prepared to accommodate some 10,000 Cubans if they are willing to be transferred there.

¹ The USA maintains the naval base in Guantánamo Bay, Cuba, under the terms of an agreement reached in 1903 when the country was under US occupation. The lease was renewed in 1934 and although the current Cuban Government, which came to power in 1959, objects to the presence of the base on Cuban territory, it has continued to remain there.

The increasing exodus from Cuba led to talks between representatives of the US and Cuban authorities on the migration issue and on 9 September the two governments issued a joint communiqué. The US reiterated its intention to continue taking those rescued at sea to refugee installations outside the USA and stated that it was discontinuing "its practice of granting provisional admission to all Cuban immigrants who arrive in US territory by irregular means". The Republic of Cuba said it would take "effective measures in every way it can to prevent unsafe departures, using mainly persuasive methods". The two governments agreed "to lead Cuban migration through safe, legal and orderly channels through strict application of the 1984 joint communiqué. Consequently, the United States will continue to issue, in accordance with US law, visas for immigrants with immediate relatives in the United States and other preferences for Cuban citizens who visit the US Interests Section and who are eligible to migrate to the United States." It also agreed "to authorize and facilitate an additional legal migration from Cuba to the United States". The total legal migration of Cubans to the United States would be a minimum of 20,000 Cubans per year, excluding the next of kin of US citizens. "As an additional and special measure, the United States will facilitate, within a one-year period, the granting of documents permitting the migration to the United States of those qualified Cuban citizens who are presently in Cuba and who are currently on a waiting list for immigrant visas." The US authorities later announced that a quarter of the 20,000 would be granted admission to the USA by lottery. Both sides agreed to work together to facilitate the necessary procedures for the implementation of the accord. They also agreed to continue to arrange "through diplomatic channels" the voluntary return of Cuban citizens who arrived in the United States or in "refugee centres" outside of the United States as of 19 August 1994.

On 28 August, President Castro had already instructed the Cuban coast guard to stop people leaving on unsafe vessels with children or adolescents on board. Once the agreement with the US Government was concluded on 9 September, the Cuban authorities appealed to Cubans "to suspend travel by your own means and without following legal procedures". They were given a 72-hour deadline after which all departures from the coast would be prevented, if necessary by the use of force. A statement issued to the Cuban media said that the Cuban Government would provide all the facilities to travel legally to all of those who receive visas from the USA or any other country of the world. It said that the fundamental causes that compelled "the massive emigration" were of an economic nature which it blamed on the US trade embargo on Cuba that has been in place since 1962.

Both the US and Cuban authorities have stressed that the people held at Guantánamo Bay and in Panama are what they term "economic migrants". The US authorities said that they could only obtain admittance to the USA if they returned to Havana and requested visas at the US Interests Section there. There are no facilities in the camps for them to request asylum and the US authorities argue that they cannot apply for asylum in the USA from Guantánamo because they have not reached US territory. Under the joint US-Cuban

agreement, no one will be forcibly returned to Cuba. However, it is not clear what will happen to them if they do not go back. The US authorities are continuing to seek "safe havens" for them in other countries of the region and on 6 October the Honduran Government announced that it was negotiating the possibility of accepting 6,000 Cubans from Guantánamo. They would be granted temporary status and would be accommodated in a group of islands called las Islas del Cisne, just off the Atlantic coast, for a maximum period of six months. Venezuela, Costa Rica, Mexico and Spain have also said they are willing to take those who have relatives already on their territory. Panama has said that those who are at the US bases there can only remain for six months and cannot request asylum in Panama.

Some Cubans at Guantánamo, in the absence of what they see as a solution, have agreed to be repatriated. On 9 October 1994 the first 17 people were in fact returned to Havana by the US Immigration and Naturalization Service (INS) and 40 others were expected shortly. According to a Cuban Interior Ministry note, the 17 would be united with their families as soon as they had passed through certain immigration formalities and had had medical checkups. The only exceptions would be those that are wanted by law enforcement agencies for reasons other than that of emigration. The note also made clear, however, that Cuba reserved the right to reject some of the Cubans who apply to be repatriated. In a subsequent development on 25 October, a US judge issued a temporary restraining order blocking the repatriation of a group of 23 Cubans from the Guantánamo base after a group of Miami lawyers filed a lawsuit against the US government demanding that the 32,000 Cubans being held at camps in Guantánamo and Panama be allowed to apply for admission to the United States as refugees. The lawsuit argues that the Clinton administration violated US and international law by denying the "rafters" the opportunity to apply for asylum. At the time of writing, no final ruling had been issued.

According to the Cuban authorities, between 1 September and 7 October, some 122 Cubans tried to escape back to Cuba from the Guantánamo base by scaling the perimeter fence and crossing the minefields that surround the Cuban side of the fence for "defensive" reasons but which also deter Cubans from trying to escape to the base. Two died and one lost a leg after treading on mines. The Cuban Interior Ministry said that the majority of those who had crossed the minefields had received the help of Cuban frontier guards but called on the US authorities to increase surveillance to prevent further escapes.

On 12 October, the US authorities revealed further details of their plan to permit as many as 26,500 Cubans to migrate legally during 1995 using a lottery, accelerated visa processing and easier criteria for refugee status. In the past refugee status was usually granted only to political prisoners. Deputy Assistant Secretary of State Michael Skol announced that that definition would now be expanded to include such categories as persecuted religious minorities, human rights activists, forced labour conscripts and persons deprived of their professional credentials.

In a surprise move on 14 October, the White House announced that a few hundred of those being held in Guantánamo and Panama who met certain criteria would be paroled into the United States. The categories concerned were: those in need of medical attention that is not available in the camps, together with their carers; unaccompanied minors (under 18); and those aged over 70. They were to start arriving within a few days. Parole status means that, as in the past, after a period of one year they will be able to request permanent residency. The US authorities also agreed to go on seeking other countries to accept the rest of the Cubans, to review the status of all the children held in the camps, and to carry on improving conditions in the camps. At the time of writing, it looks as though further concessions may be made to certain categories of "rafters" but it is feared that the vast majority of them - young single men, believed to number between 16,000 and 18,000 - will be left behind in the camps for an indefinite period.

FINDINGS OF THE AMNESTY INTERNATIONAL DELEGATION

Two members of the five-person Amnesty International delegation which visited the US Naval Base at Guantánamo Bay on 25 and 26 September 1994 were responsible for looking specifically at the situation of the Cubans. They were given free access to the camps as well as facilities to interview in private those Cubans they wished to meet. They had general discussions with leaders and others from most of the 22 Cuban camps there and were able to carry out in-depth interviews with ten people who had a history of political persecution in Cuba. They also obtained lists of some 250 people from five camps alone who were said to have suffered for political reasons in Cuba. They included people who had served prison sentences for offences such as spreading "enemy propaganda", showing disrespect (**desacato**) towards state authorities, trying to leave the country illegally, and activities relating to membership of the Jehovah's Witnesses sect, which is banned in Cuba.

One man recognized a member of the delegation because he had met her in Combinado del Este Prison in 1988 when Amnesty International visited Cuba. He was a prisoner there at that time and told her that he had been sent to a punishment cell for two weeks after the visit for passing a note to her during the visit to the prison. Another man interviewed by the delegation stated that he had been conditionally released from prison pending the result of an appeal against a three-year sentence of forced labour (**trabajo correccional por internamiento**) for distributing "enemy propaganda", passed in April 1994.

Another man had been arrested on 5 June 1994 and was also pending trial for "enemy propaganda" because of his activities as a member of an unofficial political group; the prosecution was said to be asking for a five or six-year sentence. Both men would therefore face probable imprisonment as prisoners of conscience if returned to Cuba. The delegation was told that a woman now held in the camps had been especially released from the State Security headquarters at Villa Marista in Havana, where she was under investigation

for disrespect (**desacato**) and enemy propaganda, so that she could take the opportunity to leave the country.

Yet another man interviewed by the delegation said that he had been sacked from his job as an hydrographer (**hidrógrafo**) in 1990 for "betraying the fatherland and the party" ("**traición a la patria y al partido**") after he had been accused of trying to leave the country illegally. He was detained for eight days but released for lack of evidence. After that, he said he was kept under close surveillance by the State Security police and generally harassed. He later joined an unofficial human rights group. On 8 August 1994 he was re-arrested, again accused of planning to leave the country illegally, and was awaiting trial when he was eventually able to leave by sea later that month.

Many others said they were activists of unofficial human rights, religious, trade union and political organizations, and several were indeed known to Amnesty International as such. They included members of the following groups:

- Asociación por los Derechos Políticos (ADEPO)**, Association for Political Rights
- Comité Cubano Pro Derechos Humanos (CCPDH)**, Cuban Committee for Human Rights

- **Grupo Maceísta por la Dignidad**, Maceo Group for Dignity
- **Liga Cívica Martiana**, Martí Civic League
- **Movimiento Cristiano "Liberación"**, "Liberation" Christian Movement
- **Movimiento Fe, Paz y Libertad**, Faith, Peace and Liberty Movement
- **Partido Pro Derechos Humanos en Cuba (PPDHC)**, Party for Human Rights in Cuba
- **Partido Solidaridad Democrático (PSD)**, Democratic Solidarity Party
- **Testigos de Jehová**, Jehovah's Witnesses
- **Unión Cívica Nacional (UCN)**, National Civic Union
- **Unión General de Trabajadores de Cuba (UGTC)**, General Union of Cuban Workers
- **Unión Radical Patria y Libertad**, Fatherland and Freedom Radical Union

Members of such unofficial organizations have frequently suffered harassment, including short-term detention, close police surveillance, regular questioning, and loss of jobs because of their so-called "counter-revolutionary" activities, which usually consist simply of attempts to peacefully exercise their rights to freedom of expression, association and assembly. They have also been subjected to so-called "acts of repudiation" ("**actos de repudio**") at their homes or workplaces and in some instances been attacked by the supposedly voluntary **Brigadas de Respuesta Rápida**, Rapid Response Brigades, set up by the authorities to combat signs of dissent. (*See Cuba: Silencing the Voices of Dissent, AMR 25/26/92, December 1992, for further background.*)

Some of the people interviewed by the delegation reported that they had been told by the Cuban authorities to leave Cuba, under threat of renewed imprisonment if they refused. Two others reported that they and others were physically taken and put on rafts or boats by the Cuban authorities and told to leave. Indeed, Amnesty International has received reports from inside Cuba that lend further credence to these allegations. Over the past few weeks several of those who refused to leave are said to have been repeatedly visited in their homes by State Security officials or taken into custody for short periods and warned to give up their activities and leave the country. One man said that he was told that if he continued to send reports out of the country, they would not physically hit him but they would "get him where it most hurt" ("**me iban a pegar donde más me iba a doler**").

The delegation to Guantánamo was also told that some of those put on boats by the Cuban authorities were said to be Cuban Government agents ordered to infiltrate the camps at Guantánamo. Both the US authorities and some of the Cuban camp leaders said they believed that some of the 30 Cubans held in indefinite administrative segregation at the naval base were such infiltrators, or common criminals released from prison and encouraged to take to sea by the Cuban authorities. Due to time pressures, the delegation was not able to visit those in administrative segregation to establish precisely who was being held and for what reasons.

Several Cubans told the delegation they had requested US visas in Havana and had either not yet received a response or, in some cases, had had their application turned down. One man, who had been spent six months in prison because of his activities as a Jehovah's Witness, showed the delegates a copy of the letter he had received from the US Interests Section rejecting his application for a visa. None of the Cubans Amnesty International spoke to wished to return to Cuba, although the US authorities and some of the Cuban camp leaders told the delegates that some had expressed the desire to do so.

Testimony of a survivor of 13 July tugboat sinking

One of the men interviewed by the delegation was one of about five people in the camps said to be among the 31 survivors of an incident that took place on 13 July 1994 in which about 40 people - including women and children - drowned when the tugboat in which they were attempting to flee from Cuba sank. There were conflicting accounts of what caused the boat, called "13 de Marzo", to sink. Some survivors told foreign journalists that the tugboat was rammed by three other tugboats which had pursued them out of the port of Havana and that waterhoses were also directed at them causing a build-up of water inside the boat. Others appeared in the Cuban press and media as supporting the version put out by the Cuban authorities which claimed that the tugboat sank because it was old and leaking and that the organizers of the escape attempt were the only ones to blame. They denied there

had been any official involvement in the incident. The male survivors were detained and taken to the State Security headquarters at Villa Marista. One female survivor, who lost several relatives in the incident and who made statements to foreign journalists contradicting the official version, was reportedly detained afterwards for several hours.

On 21 July Amnesty International called on the Cuban authorities to conduct a full and impartial investigation into the incident and to make the findings public, and that if the investigation revealed that anyone committed an offence, to bring them to justice and to give them a fair trial. It also called for the release of any survivors detained as a result of the incident unless they were charged with a recognized criminal offence and urged that no reprisals be taken against those who spoke out about what happened.

The testimony of the male survivor who was interviewed by Amnesty International at Guantánamo repeated the allegations that the pursuing tugboats rammed them and, despite their protestations that there were women and children on board, persistently directed jets of water into the hold. Once the tugboat started sinking, the other boats backed off but did not immediately attempt to rescue those on board. He himself was by this time in the water. At a certain point he got the impression that the other boats received orders to pick them up.

He was picked up by what he described as the "least aggressive" of the three. He said that those on board the other three boats were dressed in civilian clothes but he did not believe, as the Cuban authorities alleged, that they were ordinary dockworkers, especially as several of the crew of one boat appeared to be suffering from seasickness. He was held for thirteen days in Villa Marista before being released into house arrest. At the time he left Cuba, he believed that Raúl Muñoz was still in detention accused of being the captain of the tugboat and organizer of the escape attempt. However, he said that in fact Muñoz was only second-in-command and that the man in charge had drowned.

AMNESTY INTERNATIONAL'S CONCERNS REGARDING CUBANS SEEKING TO LEAVE THE COUNTRY

Amnesty International believes that a substantial number of Cubans currently held at the Guantánamo naval base at the time of its delegation's visit, some of whom may have since been transferred to Panama, could be at risk of serious human rights violations if required to return home and in particular could face imprisonment as prisoners of conscience either because of their decision to leave Cuba or as a result of their peaceful activities as members of unofficial human rights, trade union, religious and political groups. The Cuban authorities have reportedly said that no action will be taken against those who choose to return to Cuba unless they are wanted by the authorities for reasons other than that of emigration. In the past those who have tried to leave the country illegally, despite not having committed other serious offences, have frequently been imprisoned for several months, or even years, and become marginalized from Cuban society because their action was

considered to be an "act of betrayal". Amnesty International therefore fears that, at the very least, such people, if returned, will be victimized. Although the US authorities have said that only those who wish to return will be sent back, Amnesty International fears that the current policy of holding the Cubans indefinitely in camps at the US bases in Guantánamo and Panama constitutes an unacceptable level of pressure on those who may be at risk to agree to be repatriated.

Amnesty International recognizes that governments are entitled to control immigration and entry to their territory, but it calls on governments to ensure that asylum-seekers nevertheless have effective access to their asylum procedures, and that immigration control measures do not amount to a denial of the right - set out in the Universal Declaration of Human Rights - to seek asylum in other countries from persecution.

Governments are obliged, under the international principle of non-refoulement, not to return asylum-seekers in any manner whatsoever to any country where they would risk serious human rights violations. In order to ensure that asylum-seekers fleeing serious human rights violations are identified and afforded the protection they need, and to which they are entitled under international law, they must be allowed effective access to a fair and satisfactory asylum procedure. International standards require that any refugee determination procedures include elements such as the right to appropriate legal advice and to an effective review if the application for asylum is refused. Above all, the international principle of non-refoulement requires that no asylum-seeker who expresses a fear of serious human rights violations in a particular country should be returned there against their will, or in any way pressured to return there, unless a fair and thorough examination of their individual case establishes that they would not be at risk after return. Moreover, such asylum-seekers should not be sent to any third country unless the government sending them there has ensured that they will be granted effective and durable protection there, which should normally include legal protection, against forcible return.

In any case where an asylum-seeker would be at risk of serious human rights violations if returned, he or she should be granted effective and durable protection, which should include legal protection.

Recommendations to the US authorities:

Accordingly Amnesty International has urged the US authorities to establish procedures by which Cubans at the Guantánamo Bay naval base, as well as those at the US bases in Panama, can present asylum claims. These procedures should include the safeguards which are required by international standards, to ensure that any asylum-seekers who have a well-founded fear of persecution are not returned to Cuba against their will, and are granted effective and durable legal protection. Given that the repatriation program has started, such procedures should be established and implemented immediately. Amnesty International

also regards it as essential that information provided by independent sources about recent developments in Cuba should be made available to any Cubans who are contemplating volunteering for repatriation, in order that they can make an informed decision on this matter.

Recommendations to the Cuban authorities:

Amnesty International calls on the Cuban authorities to conform to international standards regarding freedom of movement. Paragraph 2 of article 13 of the Universal Declaration of Human Rights states:

"Everyone has the right to leave any country, including his own, and to return to his own country."

Likewise, article 12 of the International Covenant on Civil and Political Rights (ICCPR) states that:

"Everyone shall be free to leave any country, including his own. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the rights recognized in the present Covenant."

Amnesty International believes that those who try to leave Cuba illegally should not be imprisoned unless there is some other legitimate reason for such action to be taken against them (for example, if they have committed a recognizable criminal offence in the process of leaving or they already have criminal charges pending against them at the time they try to leave) and urges the government to release anyone who is currently imprisoned solely for seeking to leave.

Amnesty International also calls on the Cuban authorities to stop putting pressure on political prisoners and government opponents to leave Cuba if they do not wish to do so and also to permit those who have left to return, if they so choose. Article 22 of the American Convention on Human Rights states that:

"No one can be expelled from the territory of the State of which he is a national or be deprived of the right to enter it."

AMNESTY INTERNATIONAL'S CURRENT CONCERNS IN CUBA

Among Amnesty International's current concerns in Cuba are the imprisonment of at least 600 prisoners of conscience, some serving sentences of thirteen or more years; arbitrary detention and unfair trials of political opponents; intimidation and harassment of political opponents and members of human rights, trade union and religious groups by the security forces and the **Rapid Response Brigades**; ill-treatment of prisoners, sometimes amounting to torture; and the continuing use of the death penalty.